

# *Committee on Criminal Rules Regarding Victims*

## Meeting Agenda

**Friday, June 18, 2021**

10:00 a.m. to 1:00 p.m.

State Courts Building \* 1501 West Washington \* Conference Room 345 \* Phoenix, AZ

Telephone number for members of the public: **877-853-5247**, Access Code: **913 5749 5315**

Item no. 1	<b>Call to Order</b>	<i>Hon. John R. Lopez IV</i>
Item no. 2	<b>Approval of the May 21, 2021 draft meeting minutes</b>	<i>Justice Lopez</i>
Item no. 3	<b>Continuing discussion of the proposed rules in petition no. R-20-0031 and proposed amendments to those rules</b>  <b>Consideration of draft Rule 1.3</b>	<i>All</i>
Item no. 4	<b>Roadmap</b> <ul style="list-style-type: none"><li>• <b>Assessment of the committee's progress to-date vis-a-vis the October 1 completion date</b></li><li>• <b>Next meeting date: Tuesday, July 20 (10 a.m. to 1 p.m.)</b></li><li>• <b>Other meeting dates</b></li></ul>	<i>Justice Lopez</i>
Item no. 5	<b>Call to the Public</b>  <b>Adjourn</b>	<i>Justice Lopez</i>

*The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.*

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

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**Committee on Criminal Rules Regarding Victims**  
**State Courts Building, Phoenix (virtual meeting)**

**Meeting Minutes: May 21, 2021**

**Members attending:** Hon. John R. Lopez IV (Chair), Hon. Ronald Reinstein (Vice Chair), Tim Agan, Colleen Clase, Hon. Maria Elena Cruz, Hon. Kellie Johnson, Hon. Patti Starr, Rick Unklesbay, Hon. Maria Del Mar Verdin, Cathryn Whalen

**Members absent:** Ryan Green

**Guests:** Theresa Rassas

**AOC Staff:** Mark Meltzer, Angela Pennington

1. **Call to order; approval of meeting minutes.** The Chair called the fifth—and first virtual—meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 12:03 p.m. The Chair then requested members to review draft minutes of the April 16, 2021 meeting. Ms. Clase requested a correction on page 4 of those minutes; the subject of the correction concerned whether the waiver provision of current Rule 39(f) appeared in the R-20-0031 appendix. After confirming that the waiver provision did appear in the appendix, staff proposed placing a period after the words “indeed the case” in the pertinent paragraph on page 4 and deleting the remainder of that paragraph. Members concurred in this edit.

**Motion:** A member moved to approve the draft April 16, 2021 meeting minutes with the correction noted above. The motion received a second and it passed unanimously. **CRV-005.**

2. **Continuing review of proposed rule amendments.** Members then proceeded with their review of the proposed rule amendments. The Chair noted that a new document prepared by staff (a “consolidated appendix” beginning at page 23 of the meeting packet), consolidated three items (a) the original R-20-0031 appendix; (b) the Rassas/Twist amendments to the R-20-0031 appendix; and (3) revisions suggested by CRV members at the April 16 meeting. This new document will be the basis for today’s review, but members should continue to refer to the original documents when necessary. Although the April 16 CRV session left off at Rule 1.9, members began today’s session with Rule 1.2.

**Rule 1.2 (“purpose and construction”).** Staff restyled and reorganized Rule 1.2 as members had previously directed and as shown in the new document. However, there were two residual issues. First, Rule 1.2(a) (“generally”) uses the word “should” (“should construe these rules”) whereas Rule 1.2(b) (“construction of victims’ rights”) uses the

word “must” (“these rules must be construed”). A similar divergence exists in the current rules; compare current Rule 1.2 and current Rule 39(b). After discussion, members left the verbiage of the proposed amendments unchanged. Their rationale was that “should” in section (a) allowed desirable flexibility in construing general provisions, while “must” in section (b) specifically referred to construing rights of constitutional magnitude. The second issue involved two of the three subparts in Rule 1.2(c) (“limitations on victims’ rights”) that were duplicated in proposed amendments to Rule 1.4; members considered this issue during their discussion of Rule 1.4.

**Rule 1.4 (“definitions”).** The three subparts of proposed Rule 1.2(c) referenced in the preceding sentence are titled, “(1) cessation of victim status,” “(2) legal entities,” and “(3) victims are not parties.” Proposed Rule 1.4(j) contains a definition of “victim,” followed by subparts that duplicate proposed Rule 1.2(c)(1) and (2). Because those two subparts are currently Rule 39(a)(3)(A) and (B), staff proposed relocating them to proposed Rule 1.10. Ms. Clase was not opposed to this change. She preferred, however, that proposed Rule 1.2(c)(3) retain its prominent location in Rule 1.2 because she wanted to eliminate issues about whether victims had the status of parties. One member would retain proposed Rule 1.2(c) as it is currently organized. The Vice Chair suggested reversing the order of the subparts so that what is now (c)(3) would become (c)(1). Members had no consensus today on where to locate or how to sequence these provisions and they will revisit this matter later.

**Rule 1.5 (“interactive audio visual systems”).** Staff noted that a proposed amendment to subpart (c)(4) (“change in a hearing’s scope”) would require notice to a victim if an initial appearance conducted by videoconference was rescheduled because of a change in its scope. Should this provision be qualified with the phrase “upon request?” Members generally agreed that if the scope of an initial appearance (“IA”) changes, it’s probably no longer an IA. This scenario often occurs when a defendant wishes to enter a plea during the IA. It is unlikely, however, that a video IA would be continued as an in-person IA with a broadened scope. Accordingly, members made no change to the proposed amendment to Rule 1.5(c)(4).

**Rule 1.9 (“motions, oral argument, and proposed orders”).** The discussion focused on an amendment to section (b) (“service of motion; response; reply”) proposed by the Rassas/Twist table that would add this sentence: “The victim has standing to seek an order, to bring a special action or to file a notice of appearance in a trial court or an appellate proceeding, seeking to enforce any right or to challenge an order denying any right guaranteed to victims.” Staff noted that the proposed provision appeared to mix the concepts of standing to seek an order and simply filing a notice of appearance. Staff also noted that the proposed provision’s reference to special actions omitted to mention

Rule 2(a)(2) of the Rules of Procedure for Special Actions, which provided greater specificity of this victims' right. One member raised the possibility of amending the Rules of Procedure for Special Action, but the Chair concluded an amendment to that set of rules would be beyond the scope of the CRV's charge. Members agreed, however, that adding a provision concerning special actions in Rule 1.9 might be confusing, and that it might be more sensible to relocate the provision to proposed Rule 1.10. The Chair then directed staff to draft language for a relocated provision.

*Rule 1.10 ("victims' rights: exercising the right to be heard, the right to representation; victim and court obligations").* This new rule purports to import verbatim the content of current Rule 39(c) through (h). If the members integrated Rule 39, as proposed by R-20-0031, would Rule 39 be abrogated? Ms. Clase observed that abrogating Rule 39 would eliminate conflict with other rules, but she was also open to the alternative of retaining portions of current Rule 39. Another member suggested that it might be premature to have this discussion now and proposed that the Committee defer it. Other members agreed. They accordingly will defer the philosophical issue posed by Rule 1.10 (i.e., the relocation of current Rule 39(c) through (h) to Rule 1.10), and consider it later, possibly in conjunction with staff's draft Rule 1.3.

*Rule 4.1 ("procedure upon arrest").* Proposed Rule 4.1 ("prompt initial appearance") contains this new sentence: "Upon request, the victim must be informed of the date, time, and place for the initial appearance in accordance with 13-4406 and 13-4409 [sic]." The underlined language derived from the Rassas/Twist table, and a member noted that the comprehensive document being reviewed today omitted the underlined language in a similar amendment to Rule 4.1(c) ("on arrest with a warrant.") Staff acknowledged the omission. The issue with Rule 4.1, however, was whether the amendment to section (c) was unnecessary because it repeated what was in section (a). Members agreed the proposed text in section (c) was redundant. To avoid uncertainty, however, they requested that text be added to section (a) to clarify that section (a) applied to sections (b) ("arrest without a warrant") and (c). The clarification might include changing the title of section (a) to "generally." Staff proposed resequencing the sentences in section (a). Staff also suggested adding "A.R.S. §" before the referenced statutes. The Chair directed staff to draft provisions that reflect this discussion.

*Rule 4.2 ("initial appearance").* Staff noted a pending rule petition, R-21-0022, which was filed on February 4, 2021 and that would amend Rules 4.2, 6.1, 6.5, 6.6, 7.2, and 7.4. Those proposed amendments would modify bail and release provisions to better ensure that a defendant's lack of financial resources did not by itself cause unnecessary pretrial detention. The comment deadline in R-21-0022 is June 4, and Ms. Clase indicated that the AVCV would be filing a comment. The proposed amendment before CRV today

concerned Rule 4.2(c) (“combining an initial appearance with an arraignment.”) The proposed amendment would require that the victim, “if requested,” be given “notice and an opportunity to be present and heard” in the circumstances described in this section. Ms. Clase noted that “if requested” should be changed to “upon request” in this rule and elsewhere (see, for example, proposed Rule 5.1(a), which also says “if requested”) to assure the phrase appears uniformly throughout the proposed rule amendments. Members had no further comments or questions concerning Rule 4.2.

*Rule 5.1 (“right to a preliminary hearing; waiver; continuance”).* A proposed amendment to Rule 5.1(c)(2) (“continuance”) would permit a magistrate to continue a preliminary hearing “after consideration of the victim’s right to a speedy trial.” Members observed that a trial is not set until an arraignment, and the arraignment is subsequent to a preliminary hearing. Accordingly, members changed “speedy trial” to “speedy disposition.” Members had no objections to the other proposed amendments to Rule 5.1(c)(2) or to the proposed amendments to Rule 5.1(d) (“hearing demand.”) The Chair inquired, however, whether statutory references in these and other proposed provisions are uniformly included throughout the rules, and whether including statutory references is beneficial. Ms. Clase noted that the AVCV’s proposed amendments did not initially include these references. Virtually every one of the proposed amendments, however, originates with a constitutional or statutory provision, and the inclusion of these references is intended to heighten awareness of notice requirements and similar matters, and therefore assure better compliance with victims’ rights. Ms. Rassas agreed that the references could help stakeholders gain more insight about applying these provisions, and she supports including the references. The Chair concluded that a proposed amendment could include a statutory reference if it provided guidance about a legal requirement, and in Rule 5.1, the references serve that purpose.

*Rule 5.4 (“determining probable cause”).* Rule 5.4(a) (“holding a defendant to answer”) allows a magistrate upon holding a defendant to answer to reconsider the defendant’s conditions of release. The proposed amendment would add “after giving the victim the right to be heard.” Members agreed that the proposed amendment was consistent with the Victims’ Bill of Rights.

*Rule 5.8 (“notice if an arraignment is not held”).* This rule applies only in counties that do not hold an arraignment after a defendant is held to answer. (Staff believes that Yavapai is the only county that currently follows that procedure.) In that event, Rule 5.8 requires the magistrate who conducted the preliminary hearing to advise the parties in writing of the dates set for further proceedings. The proposed amendment to section (a) (“notice”), subpart (3) would require the court to also give written notice to a victim, if requested pursuant to A.R.S. § 13-4409. The proposed amendment prompted discussion

because it would impose this obligation on the court rather than the prosecutor. (Ms. Rassas also advised that the referenced statute is inconclusive because it exempts initial appearances and arraignments. Another member noted that Maricopa County now conducts more preliminary hearings because of a reduction during the pandemic in the use of grand juries, and an arraignment might immediately follow the conclusion of the preliminary hearing, so providing a victim five days' notice of the arraignment isn't possible.) A member then proposed a change to subpart (a)(3) that would require the court to notify the parties, "and upon request, the prosecutor will notify counsel for the victim pursuant to statute." Members concurred with this proposal.

**Rule 6.3 ("duties of counsel; withdrawal").** The combined amendments proposed by R-20-0031 and the Rassas/Twist table to section (c) ("withdrawal"), subpart (1) ("before granting a motion") would provide, "If a motion to withdraw may result in a continuance, the court must consider the victim's right to a speedy trial before granting the motion." Members discussed whether a victim has a right to be heard on defense counsel's request to withdraw. Often these requests are due to conflicts, ethical issues, or workloads, are made at an early stage of the proceeding, and don't affect the trial date, which is usually set at arraignment. A request to withdraw made closer to the trial date, however, might require that the trial be continued. Although current Rule 6.3 does not afford the victim a right to be heard on defense counsel's motion to withdraw, members agreed that a victim's right to a speedy disposition could be affected by a motion that's made at a late stage. Members therefore modified the proposed provision by adding this underlined language: "If a motion to withdraw may result in a continuance of the trial date, the court must consider the victim's right to a speedy trial before granting the motion."

**3. Roadmap.** At the next meeting, members will resume their review with Rule 6.7. After discussion with the members, the Chair set the next meeting for Friday, June 18, 2021, beginning at 10:00 a.m. The next meeting will be in-person.

**4. Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 3:03 p.m.



**Committee on Criminal Rules Regarding Victims**

**State Courts Building, Phoenix**

**Meeting Minutes: March 19, 2021**

**Members attending:** Hon. Andrew Gould (Chair), Hon. Ronald Reinstein (Vice Chair), Tim Agan, Colleen Clase, Hon. Maria Elena Cruz, Ryan Green, Hon. Kellie Johnson, Hon. Patti Starr, Rick Unklesbay, Hon. Maria Del Mar Verdin, Cathryn Whalen (all members present)

**Guests:** Delaney Krauss, and by telephone: Theresa Rassas, Rebecca Jones, Kyra Goddard

**AOC Staff:** Mark Meltzer, Angela Pennington

**1. Call to order; approval of meeting minutes; preliminary remarks by the Chair.** The Chair called the third meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 10:00 a.m. He then requested members to review draft minutes of the February 19, 2021 meeting. At page 3, a member requested to change “overweight” to “overweigh” (in a sentence that says Rule 1.2 “might overweight victims’ rights relative to the rights of criminal defendants ...” Members had no other corrections to the draft.

**Motion:** A member moved to approve the draft February 19, 2021 meeting minutes with the above correction. The motion received a second and it passed unanimously. **CRV-002.**

The Chair then informed members that today’s meeting would include a review of the AVCV’s proposed changes to Rules 7, 8, and 15. He noted that members might also consider two new rules: AVCV’s proposed Rule 1.10 and staff’s draft Rule 1.3. Any agreement members reach on these rules today will be documented in a report that members will discuss at the April meeting. Members will also discuss any remaining rules at the April meeting. If members do not reach consensus today or next month, it might be necessary to set a fifth meeting in May.

The Chair announced that today will be his final meeting as committee chair. He is retiring from the Court on March 31, and the Chief Justice will appoint a new chair. The Chair emphasized the Court’s continued support for victims’ rights.

Today’s meeting materials included the Attorney General’s data on violations, and a table prepared by Ms. Rassas and Mr. Twist (the “Rassas/Twist table”) correlating the AVCV’s proposed rule amendments with constitutional and statutory authorities, both of which the committee requested during presentations by Ms. Rassas and Mr. Twist at the February 19 meeting. Materials also included rules proposed by the AVCV (i.e., the

appendix to R-20-0031) with staff's annotations concerning restyling issues presented by the proposed rule amendments. The annotated version contained references to the Court's Order in R-20-0005, which affects the AVCV's proposed amendments to Rule 17.1 on telephonic pleas; and pending Rule petition R-21-0022, which bears on the AVCV's proposed amendments to Rule 7 on the defendant's release. The meeting materials also included staff's draft Rule 1.3 and a two-page explanatory memo concerning this draft rule. The chaptered version of SB 1256 (Laws 2021), which amends A.R.S. § 13-4434, was also included in the materials.

The AVCV's appendix indicated additional text by underline and deleted text by strikethrough, and this formatting is shown in the excerpts from this appendix that are shown below.

## **2. Rule 7 ("release").**

**Rule 7.6(c).** The Chair began with AVCV's proposed provision in Rule 7.6 ("transfer and disposition of bond"), section (c) ("forfeiture procedure"), subpart 2 ("hearing and notice"). The AVCV proposed this amendment:

The court must notify the parties and, if requested, the victim, and any surety of the hearing in writing or electronically.

Members discussed whether a victim has a right to be present at a bond forfeiture hearing. Members agreed that the hearing is civil in nature, although some counties conduct the hearing under the assigned criminal case number. Members also agreed that a defendant does not have a right to appointed counsel at a bond forfeiture hearing. It is often the surety or a family member, and not the defendant, who has a financial interest in the outcome of the hearing. On the other hand, the proceeding is governed by a criminal rather than a civil rule, and if a defendant has a right to be present at the hearing, a victim should have the same right. Moreover, a victim might have an interest in the outcome of a forfeiture hearing because the funds could be a source for restitution. Some prosecutors already provide a "courtesy notice" of the hearing to victims. However, the Chair observed that the proposed amendment would be a substantive change because it would shift to the court the duty to provide notice that is currently a statutory responsibility of the prosecutor. A vote on this provision was deferred.

**Rule 7.2(b).** The AVCV proposed this amendment to Rule 7.2(b)(4), a provision that is titled "bail eligibility hearing." The proposed amendment was in subpart (A) of that provision:

A victim has the right to notice of the hearing and the right to be heard regarding any conditions of release.

Members did not oppose this amendment, provided that it contain the words “upon request.”

**Rule 7.2(c).** Rule 7.2(c) concerns a defendant’s right to release “after conviction.” The AVCV’s proposed amendment to subpart (1)(B), which concerns the right to release after a sentence involving imprisonment is imposed by the superior court, would provide:

If a defendant is convicted of a felony offense and is sentenced to prison, the court may not release the defendant on bail or on the defendant’s own recognizance pending appeal unless the court, after considering the views of the victim, finds the defendant is in such physical condition that continued confinement would endanger the defendant’s life.

The Rassas/Twist table modified this proposed language. In lieu of the underlined language above, their table version would say, “after considering any view presented by any victim...”) Members were divided on these proposed amendments. One view was that the victim has a right to be heard at any post-arrest release of a defendant, including a post-conviction release. The other view was that the proposed amendments would allow the victim to comment on the defendant’s physical condition, which should be strictly a medical determination. Members did not reach consensus on this amendment.

**Rule 7.3(a).** The title of Rule 7.3 is “conditions of release.” In section (a) (“mandatory conditions”), AVCV’s proposed amendment would add a new subpart (4) that says,

the defendant must not contact the victim, unless the court clearly finds good cause to conclude the victim’s safety would be protected without a no-contact order.

In conjunction with that addition, the AVCV’s amendment would delete from section (c) (“additional conditions”) a sentence that provides “~~The court must order the defendant not to contact a victim if such an order is reasonable and necessary to protect a victim from physical harm, harassment, intimidation, or abuse.~~” The Vice Chair noted that the modifier “clearly” before the phrase “finds good cause” in new subpart (4) is extraneous. A member added that some victims are members of the defendant’s family and would prefer not to have a presumptive no-contact order, as provided in the proposed amendment to section (a). The current provision in section (c), which would be stricken, does not presumptively require no-contact, so the change would be substantive. See further A.R.S. § 13-3967, which mandates a no-contact condition of release for specified offenses, but otherwise makes the condition discretionary.

**Rule 7.4(b).** This is a section concerning a bail eligibility hearing. Subpart (2) is a provision concerning victims. The AVCV’s proposed change is:

Victims. Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g). A victim has the right to confer with the State about any decision regarding the preconviction release of the defendant. A victim must be given notice of a bail eligibility hearing and the victim has the right to be present and be heard by the court before the court modifies release conditions. If a victim objects to being called as a witness in a bail eligibility hearing, the court must require the party wishing to present the victim's testimony to make an offer of proof and the court may require a victim to testify only if the court finds that the evidence in the offer of proof would likely impact the court's decision on the matters under consideration at the hearing. If the opposing party stipulates to the information in the offer of proof, the victim will not be required to testify.

The Rassas/Twist table proposed a modified version. In the second underlined sentence above, it would add after the word "victim" the words "upon request pursuant to 13-4406 and 13-4409 [sic]." It would also delete the text of the last two underlined sentences, beginning with the words, "if a victim objects ..."

Rule 7.4(c). The Rassas/Twist table also proposed modifications to Rule 7.4(c) ("later review of conditions"), subpart (2). The version as proposed by the AVCV provides:

(2) *Motion Requirements and Hearing.* The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. ~~A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.~~ A victim has the right to notice of and the right to be heard at any hearing regarding any motion to modify release conditions.

The Rassas/Twist table would modify the sentence shown with underline by adding, after the words "a victim," the words "upon request pursuant to 13-4406 and 13-4409 [sic] ..."

As to both Rule 7.4(b) and 7.4(c), the Chair suggested that at their April meeting, members should determine whether they will consider the rules proposed by AVCV in R-20-0031, or the rules as modified by the Rassas/Twist table. The members could vote on a proposed rule amendment once there is clarity about which of these proposals is going forward. The Chair expressed concern that the charge to the committee was to review the amendments proposed by R-20-0031. However, the amendments proposed by the Rassas/Twist table, notwithstanding AVCV's verbal agreement to what is shown in the

table, modifies the text in the R-20-0031 appendix. The Chair then suggested that the AVCV submit an amended proposal that clarifies its requested rule amendments.

**3. Rule 8 (“speedy trial”).**

**Rule 8.1(e).** The title of this section is “suspension of Rule 8.” The AVCV proposes to amend the second sentence of this 4-sentence rule as follows:

No later than 5 days after the motion [to suspend Rule 8] is filed , the court must hold a hearing on the motion, permit the victim to be heard, and, after considering the victim’s right to a speedy trial, make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8.

Although the Chair believed the proposed amendment was uncontroversial, he added that a victim already has a right to be heard at a suspension motion under current Rule 39(b)(7). A member commented that the issue is not with the substance of the proposed amendment, but rather with relocating parts of Rule 39 to other rules, which has the effect of highlighting some current Rule 39 provisions and omitting others. The Chair responded that the committee can chose to add some but not all of the AVCV’s proposed amendments; members should consider which amendments might be helpful to a judge on the bench. Another member suggested that partial integration might indicate that provisions that had not been integrated were less important, One member recommended that the proposed amendment include the words “upon request;” otherwise, if the victim had not been notified of the suspension motion, it could require reconsideration of a motion that had already been decided. And another member suggested that the proposed amendment should also include a reference to a defendant’s right to a speedy trial.

**Rule 8.2(e).** Rule 8.2 is titled “time limits.” The proposed amendment to Rule 8.2(e) (“specific date for trial”) would add a new sentence as follows:

The superior court must set a specific trial date either at the arraignment or a pretrial conference, unless the court has suspended Rule 8. In setting the date, the court must consider the views of the victim, as well as the rights of both the defendant and the victim to a speedy trial.

Members observed that in the superior court in Maricopa and Pima counties, a specific trial date is initially set without input from the parties. Rather, the first trial date is set administratively, by a computer program. The programmed date is within the speedy trial limits provided by Rule 8.2. Members then proceeded to Rule 8.5.

**Rule 8.5 (b).** Rule 8.5 is titled “continuing a trial date.” The proposed amendment to Rule 8.5(b) (“grounds”) would amend the first sentence as follows:

A court may continue trial only after considering a victim’s and the defendant’s right to a speedy trial and on a showing that extraordinary circumstances exist and that

delay is indispensable to the interests of justice, and only for so long as is necessary to serve the interests of justice. The court must state specific reasons for continuing trial.

[Staff note: The proposed amendment did not accurately edit current Rule 8.5(b), which includes a second sentence shown in bold font below, which was omitted from the AVCV's proposed amendment.]

A court may continue trial only on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice, and only for so long as is necessary to serve the interests of justice. **The court must consider the rights of the defendant and any victim to a speedy disposition of the case.** The court must state specific reasons for continuing trial.

Members acknowledge that trial judges can, and do, consider issues involving the victim's health, employment, travel plans, and the like when resetting a trial date.

**4. Rule 15 ("disclosure").**

Rule 15.1(f). Rule 15.1(f) is titled "scope of the State's disclosure obligation," but the proposed amendment would strike from the title and relocate the word "obligation." The proposed amendment would alter the existing format of the current rule, which has subparts (1), (2), and (3), and add a new subpart (1) titled "obligation." However, there would not be a subpart (2) or (3). The new text would be contained in subpart (1)(C)(i), titled "limitations."

(1) Obligation. The State's disclosure obligation extends to material and information in the possession or control of any of the following:

~~(1)~~ (A) the prosecutor, other attorneys in the prosecutor's office, and members of the prosecutor's staff;

~~(2)~~ (B) any law enforcement agency that has participated in the investigation of the case and is under the prosecutor's direction and control; and

~~(3)~~ (C) any other person who is under the prosecutor's direction or control and who participated in the investigation or evaluation of the case.

(i) Limitations. The State is not required to disclose a victim's identifying or locating information unless the court finds that disclosure is required to protect the defendant's constitutional rights. If disclosure of personal identifying or locating information is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not provide the information to the defendant without prior court authorization and after

considering the rights and views of the victim.

(ii) Redactions. Rule 15.5(e) applies to information withheld under this rule.

The text of this subpart derives from, but is not identical to, current Rule 39(b)(11). One member thought the relocation of this text would serve as a useful reminder. Another member suggested if a part of the proposed text was retained, it should only be the first sentence of subpart (C)(i). And another member observed that the current Rule 39 provision is clearer and more directive than the proposed amendment.

**Rule 15.1(g).** This section is titled “disclosure by court order.” The proposed amendment to subpart (g)(1) provides in pertinent part:

*Disclosure Order.* On the defendant’s motion, a court may order any person other than the victim to make available to the defendant material or information not included in this rule if the court finds: ...

A member believed this amendment might provide further protection of a victim’s work product, such as a diary. Another member thought it might protect against disclosure of a victim’s medical records. However, the Chair expressed caution concerning this amendment because case law has addressed what is protected; a pending Supreme Court opinion also might be pertinent.

**Rule 15.2(h).** Members reviewed, but did not comment on, a proposed amendment to Rule 15.2(h)(1)(B) that would allow the court to extend the time for the defendant’s initial disclosure in a capital case “only after considering the victim’s right to a speedy trial.”

**Rule 15.3(a).** Rule 15.3 is currently titled “depositions.” The AVCV would add the words “victims’ right to refuse” to the title. It would then edit section (a) (“availability”) as follows:

A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant or a victim that a defendant or someone working on their behalf seeks to examine ~~those excluded by Rule 39(b),~~ by oral deposition under the following circumstances: ...

Staff’s annotations noted this language was awkward, and a member commented that the existing provision in Rule 39(b) is less wordy than the proposed amendment. Although not cross-referenced in this rule, a member noted that A.R.S. § 13-4433 is pertinent to the rule and to Rule 15.3(g).

**Rule 15.3(g).** Rule 15.3(g), titled “interviews, depositions, and other discovery requests of a crime victim,” is entirely new. It has these titled subparts: (1)

“communication;” (2) “right to refuse;” (3) “right to assistance and to set conditions;” and (4) “jury instruction if a victim’s refusal is commented on at trial.” The proposed provisions are derived from current provisions in Rule 39(b). One member concluded that relocating this provision would be helpful to a judge while on the bench, and that this is a rational location for the provision. Another member commented that an issue under this rule would more likely arise in a written motion. Accordingly, the issue would not require an immediate ruling from the bench, and the current location of these provisions in Rule 39 was appropriate. Members did not reconcile these different views.

**Rule 15.6(e).** Rule 15.6(e) is titled “extension of time for completion of testing.” The proposed amendment to subpart (e)(3) (“extending time”) would add a new second sentence as follows:

If the court grants a motion under (e)(2) [‘order’], the court may extend other disclosure deadlines as necessary. In determining new deadlines under this rule, the court must consider the victim’s and defendant’s right to a speedy trial.

The court might give extensions on these grounds, for example, for DNA testing. The deadlines should be reasonable. One member supported the amendment because it would require the court to explain to the victim and the defendant the basis of the extension. However, other members believed the proposed provision, which requires the court’s consideration of the victim’s and the defendant’s rights to a speedy trial, is already and adequately covered in Rule 8, as discussed above.

**5. Members discussion of other rules; roadmap.** After the discussion of Rules 7, 8, and 15, the Chair contemplated a review of amendments to other rules proposed by AVCV’s petition, including the amendments to Rules 1.2 and 1.10. A discussion ensued about the AVCV’s intent concerning Rule 39. A member noted that if proposed Rule 1.10 was intended as a replacement for Rule 39, the committee should consider excluding one of these rules rather than retaining both. The Chair also anticipated a discussion of staff’s draft Rule 1.3. The Vice Chair noted that draft Rule 1.3 would place victims’ rights in a prominent location at the beginning of the criminal rules, and that it would serve as a guide or directory for victims’ rights. The review and discussion of these rules will be deferred to the next meeting, which is set for April 16, 2021.

**6. Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 11:39 a.m.

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## Rule 39. Victims' Rights

Arizona Revised Statutes Annotated Rules of Criminal Procedure Effective: December 12, 2019

Arizona Revised Statutes Annotated  
Rules of Criminal Procedure (Refs & Annos)

IX. Miscellaneous

Rule 39. Victims' Rights

Effective: December 12, 2019

16A A.R.S. Rules Crim.Proc., Rule 39

Rule 39. Victims' Rights

[Currentness](#)

**Staff note: The yellow highlights below indicate the location in the R-20-0031 appendix (the proposed rule amendments) of provisions currently contained in Rule 39. After staff found the proposed new location of a current Rule 39 provision, staff added ~~strikethrough~~ to the current provision shown below.**

**(a) ~~Definitions and Limitations.~~ [39(a)(1) and (2) are now in 1.4(b) and (c)]**

~~(1) *Criminal Proceeding.* As used in this rule, a “criminal proceeding” is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.~~

~~(2) *Identifying and Locating Information.* As used in this rule, “identifying and locating information” includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.~~

**(3) *Limitations.* [39(a)(3)(A) and 39(a)(3)(B) are now in 1.2(c)]**

~~(A) *Cessation of Victim Status.* A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402, 13-4402.01, and 13-4433.~~

~~(B) *Legal Entities.* The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.~~

**(b) Victims' Rights.** These rules must be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule, a victim has and is entitled to assert each of the following rights: **[39(b)(1) through (18) are still shown as 39(b)(1) through (18)]**

(1) the right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process; **[39(b)(1) is now in 1.2(b), and also remains in 39(b)(1)]**

**Staff note: Staff did not find in the rules proposed by R-20-0031 the text of current Rule 39 provisions that are shown below in blue highlight, except insofar as those provisions continue to remain in R-20-0031's version of Rule 39.**

(2) the right to notice regarding the rights available to a victim under this rule and any other provision of law, and the court must prominently post or read the statement of rights in accordance with A.R.S. § 13-4438;

(3) upon request, the right to reasonable notice of the date, time, and place of any criminal proceeding in accordance with A.R.S. § 13-4409;

(4) the right to be present at all criminal proceedings;

(5) upon request, the right to be informed of any permanent or temporary release or any proposed release of the defendant; **[see generally Rules 7.2(b) and 7.2(c)]**

(6) upon request, the right to confer with the State regarding: **[39(b)(6) is now roughly 18.1(c), but it is less detailed]**

(A) any decision about the preconviction release of the defendant; **[see 7.4(b)(2)]**

(B) any pretrial resolution including any diversion program or plea offer; **[see current Rule 17.4(a)(3), which is not included in R-20-0031 and that provides in part, "The victim must have an opportunity to confer with the prosecutor, if they have not already conferred, before any case resolution."]**

(C) a decision not to initiate a criminal prosecution or to dismiss charges **[as to dismissal, see proposed Rule 16.4(f)]**; and

(D) the trial, before the trial begins;

(7) upon request, the right to notice of and to be heard at any criminal proceeding involving:

(A) the initial appearance; **[see 4.1(a) and 4.1(b), which concern the right to notice but not the right to be heard]**

- (B) the accused's post-arrest release or release conditions; **[see 7.4(b)(2) and 7.4(c)(2)]**
- (C) a proposed suspension of Rule 8 or a continuance of a trial date; **[see 8.1(e) and 8.5(b)]**
- (D) the court's consideration of a negotiated plea resolution; **[see current Rule 17.4(d), which is not included in R-20-0031 and that provides, "After making the determinations required by this rule and after considering and comments expressed by the victim, the court must either accept or reject the submitted plea."]**
- (E) sentencing; **[39(b)(7)(E) is now in 26.10(b)(1) {with a right to be heard but not a right to notice}]**
- (F) the modification of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution; **[39(b)(7)(F) is now 27.3(b)(1)(C), with modifications]**
- (G) the early termination of probation; **[see current Rules 27.4 and 27.10, which are not included in R-20-0031]**
- (H) a probation revocation disposition; **[see current Rule 27.10, which is not included in R-20-0031]** and
- (I) post-conviction release. **[see proposed 7.2(c)(1)(B)]**

(8) the right to be accompanied at any interview, deposition, or criminal proceeding by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate, unless testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt; **[39(b)(8) is now 15(g)(3)]**

(9) if the victim is eligible, the right to the assistance of a facility dog when testifying as provided in A.R.S. § 13-4442; **[39(b)(9) is now 19.7]**

(10) the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera; **[39(b)(10) is now roughly 15.1(f)(1)(C)(i)]**

(11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information.

(A) Exception. A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights. If disclosure is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator and must not convey the information to the defendant without prior court authorization. **[39(b)(10) is now 15.1(f)(1)(C)(i) and 19.8]**

(B) Redactions. Rule 15.5(e) applies to information withheld under this rule; **[see 15.1(f)(1)(C)(ii)]**

~~(12) the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on the defendant's behalf, and: **[39(b)(12) is now 15(g)(2)]**~~

~~(A) the defense must communicate requests to interview a victim to the prosecutor, not the victim; **[39(b)(12)(A) is now 15(g)(1)]**~~

~~(B) a victim's response to such requests must be communicated through the prosecutor; and **[39(b)(12)(B) is now 15(g)(1)]**~~

~~(C) if there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview; **[39(b)(12)(C) is now 15(g)(4)]**~~

~~(13) at any interview or deposition conducted by defense counsel, the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse; **[39(b)(13) is now 15(g)(3)]**~~

~~(14) the right to terminate an interview at any time or refuse to answer any question during the interview; **[39(b)(14) is now 15(g)(3)]**~~

~~(15) the right to a copy of any presentence report provided to the defendant except those parts that are excised by the court or are confidential by law; **[39(b)(15) is now 26.4(c)]**~~

~~(16) the right to be informed of the disposition of the case; **[39(b)(16) is now 26.17(a)]**~~

~~(17) the right to a speedy trial or disposition and a prompt and final conclusion of the case after conviction and sentence; and **[see Rules 32.7(a)(1)(B), 32.7(a)(1)(C), 32.9(a)(1), 32.9(b), 33.7(a)(3), and 33.9(a)(1)]**~~

~~(18) the right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking the right. **[39(b)(18) is now 26.17(b)]**~~

**(c) Exercising the Right to Be Heard. **[39(c) is now in 1.10(a)]****

~~(1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This subsection~~

does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

~~(2) *Victims in Custody.* If a victim is in custody for an offense, the victim's right to be heard under this rule is satisfied by affording the victim the opportunity to submit a written statement.~~

~~(3) *Victims Not in Custody.* A victim who is not in custody may exercise the right to be heard under this rule through an oral statement or by submitting a written or recorded statement.~~

~~(4) *At Sentencing.* The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.~~

**(d) Assistance and Representation. [39(d) is in 1.10(b)]**

~~(1) *Right to Prosecutor's Assistance.* A victim has the right to the prosecutor's assistance in asserting rights enumerated in this rule or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.~~

~~(2) *Standing.* The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by this rule or by any other provision of law.~~

~~(3) *Conflicts.* If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information for the appropriate state or local bar association.~~

~~(4) *Representation by Counsel.* In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.~~

**(e) Victim's Duties. [39(e)(1) is now 1.10(c)(1)]**

~~(1) *Generally.* Any victim desiring to claim the notification rights and privileges provided in this rule must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.~~

~~(2) *Legal Entities.* **[39(e)(2) is now 1.10(c)(2)]**~~

~~(A) *Designation of a Representative.* If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.~~

~~(B) *Notice.* The prosecutor must notify the defendant and the court if the prosecutor receives notice under (e)(2)(A).~~

~~(C) *Effect.* After notice is provided under (e)(2)(B), only the representative designated under (e)(2)(A) may assert the victim's rights on behalf of the legal entity.~~

~~(D) *Changes in Designation.* The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.~~

~~**(f) *Waiver.* **[39(f) is now 1.10(d)]**** A victim may waive the rights and privileges enumerated in this rule. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under this rule.~~

~~**(g) *Court Enforcement of Victim Notice Requirements.* **[39(g) is now 1.10(e)]****~~

~~(1) *Court's Duty to Inquire.* At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.~~

~~(2) *If the Victim Has Been Notified.* If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (d)(1).~~

~~(3) *If the Victim Has Not Been Notified.* If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of~~

such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

**(h) Appointment of Victim's Representative.** **[39(h) is now in 1.10(b)(5)]** Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

## Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018. Amended on an emergency basis, effective Aug. 27, 2019, adopted on a permanent basis Dec. 12, 2019.

16A A. R. S. Rules Crim. Proc., Rule 39, AZ ST RCRP Rule 39.

The Code of Judicial Administration is current with amendments received through 1/1/21. All other State Court Rules are current with amendments received through 2/1/21.

END OF DOCUMENT

[Documents In Sequence](#)



**R-20-0031**

## **Appendix**

**Proposed Amendments to Arizona Rules of Criminal  
Procedure**

**Submitted January 10, 2020**

**June 18, 2021 CRV Meeting Version**

**(Please note: The additions to text made by staff after  
the May 21, 2021 meeting are shown in bold green  
font. The May meeting concluded after considering  
Rule 6.3.)**

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*Staff note: Members discussed Rules 1.2 through 1.8 at the April 16, 2021 CRV meeting. Staff's suggested changes to those rules are shown with track changes.*

## Rule 1.2. Purpose and Construction

**(a) Generally.** These rules are intended to provide for the just and speedy determination of every criminal proceeding. Courts, parties, and crime victims should construe these rules to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual accused and the victim while preserving the public welfare. ~~These rules must be construed to protect the constitutional rights of victims enumerated in Article II, Section 2.1(A) of the Arizona Constitution, including the rights to justice and due process and to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse throughout the criminal justice process.~~

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~~(a)~~**(b) Construction of Victims' Rights.** These rules must be construed to protect the constitutional rights of victims enumerated in Article II, Section 2.1(A) of the Arizona Constitution, including the rights to justice and due process and to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse throughout the criminal justice process.

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- Staff note: Rule 1.2(a) uses the word "should" ("should construe these rules"), whereas Rule 1.2(b) uses the word "must" ("these rules must be construed.") This appears to be a conflict. If there is a conflict, it might also exist in the current rules. Compare current Rule 1.2, which uses "should" ["should construe these rules"], and current Rule 39(b), which uses "must" ["these rules must be construed"].*

### **(ac) Limitations on Victims' Rights.**

(1) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

(2) Legal Entities. The victims' rights of any corporation, partnership, association, or other similar legal entity are limited as provided ~~in statute~~ **by A.R.S. §§ 13-4401.01 and 13-4404.** [Staff note: Staff replaced the generic reference to "in statute" with two specific statutory references.]

(3) Victims Are Not Parties. ~~These rules are not to be construed to make~~ A victims is

not a party ~~parties~~ to a criminal case.

- *Staff note: The above modification is a simpler and more direct statement than the text proposed by R-20-0031.*

### **Rule 1.3. Computation of Time**

**(a) General Time Computation.** When computing any time period more than 24 hours prescribed by these rules, by court order, or by an applicable statute, the following rules apply:

(1) *Day of the Event.* Exclude the day of the act or event from which the designated time period begins to run.

(2) *Last Day.* Include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Time Period Less Than 7 Days.* If the time period is less than 7 days, exclude intermediate Saturdays, Sundays and legal holidays from the computation.

(4) *Next Day.* The “next day” is determined by counting forward when the period is measured after an event, and backward when measured before an event.

(5) *Additional Time After Service.* If a party or crime-victim may or must act within a specified time after service and service is made under a method authorized by Rule 1.7(c)(2)(C), (D), or (E), 5 calendar days are added after the specified time period would otherwise expire under (a)(1)-(4), except as provided in Rule 31.3(d). This provision does not apply to the clerk’s distribution of notices, minute entries, or other court-generated documents.

- *Staff note: While “victim” is a defined term, “crime victim” is not, and accordingly, staff deleted the word “crime” in the preceding provision.*

**(b) If an Arraignment Is Not Held.** If an arraignment is not held under Rule 14.5, the date of arraignment for the purpose of computing time is the date the defendant receives notice of the next court date under Rule 5.8.

**(c) Entry.** A court order is entered when the clerk files it.

### **Rule 1.4. Definitions**

**(a) The Defendant.** “The defendant” is a person named as such in a complaint, indictment, or information. “The defendant” as used in these rules includes an arrested

person who at the time of arrest is not named in a charging document. “The defendant” in the context of certain rules includes the attorney who represents the defendant.

**(b) Criminal Proceeding.** A “criminal proceeding” is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

**(c) Identifying and Locating Information.** As used in this rule, “identifying and locating information” includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

**(d) ~~(b)~~ Limited Jurisdiction Court.** A “limited jurisdiction court” is a justice court under A.R.S. §§ 22-101 et seq., or a municipal court under A.R.S. §§ 22-401 et seq.

**(e) ~~(e)~~ Magistrate.** “Magistrate” means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the Chief Justice and justices of the Supreme Court, judges of the superior court, judges of the court of appeals, justices of the peace, and judges of a municipal court.

**(f) ~~(d)~~ Parties.** “Parties” means the State of Arizona and the defendants in a case. Use of the word “party” in these rules means either, or any, party.

**(g) ~~(e)~~ Person.** “Person” includes an entity.

**(h) ~~(f)~~ Presiding Judge.**

(1) *For the Superior Court.* The superior court presiding judge is the county's presiding judge. In a county that has only one superior court judge, that judge is the presiding judge. In other counties, the Chief Justice of the Supreme Court designates the presiding judge, who may appoint other judges to carry out one or more of the presiding judge's duties.

(2) *For a Limited Jurisdiction Court.* If a court consists only of one judge, that judge is the presiding judge. In courts having more than one judge, the presiding judge is designated by the appropriate authority.

**(i) ~~(g)~~ The State.** “The State” means the State of Arizona, or any other Arizona state or local governmental entity that files a criminal charge in an Arizona court. “The State” in the context of certain rules includes the prosecutor representing the State.

**(j) ~~(h)~~ Victim.** “Victim” means a person ~~or persons~~ as defined in A.R.S. § 13-4401.

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- *Staff suggests not making the above change (adding “or persons.” ARS 13-4401 defines “victim” in the singular, and because the statute is referenced in the rule, the rule should be consistent with the statute. If there are multiple victims, the current rule and statute seem to be clear that each person is a victim.*

~~(1) *Cessation of Victim Status.* A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.~~

~~(2) *Legal Entities.* The victims’ rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.~~

*Staff note: The above subparts are shown with deletion because they are already contained in Rule 1.2. However, Rule 1.2, which is titled “purpose and construction,” might not be a suitable location for these provisions. Moreover, the provisions are not definitions and probably don’t belong in Rule 1.4 on “definitions”.*

### **Rule 1.5. Interactive Audiovisual Systems**

**(a) Generally.** If the appearance of a defendant or counsel is required in any court, the appearance may be made by using an interactive audiovisual system that complies with the provisions of this rule. Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.

**(b) Requirements.** If an interactive audiovisual system is used:

- (1) the system must operate so the court and all parties can view and converse with each other simultaneously;
- (2) a full record of the proceedings must be made consistent with the requirements of applicable statutes and rules; and
- (3) provisions must be made to:
  - (A) allow for confidential communications between the defendant and defendant’s counsel before, during, and immediately after the proceeding;
  - (B) allow a victim a means to view and participate in the proceedings and ensure compliance with all victims’ rights laws;

*Staff note: The general provision in (b)(3)(B) rendered unnecessary a similar provision in (c)(3) proposed by R-20-0031, and the provision in (b)(3)(B) has been deleted.*

(C) allow the public a means to view the proceedings consistent with applicable law; and

(D) allow for use of interpreter services when necessary and, if an interpreter is required, the interpreter must be present with the defendant absent compelling circumstances.

**(c) When a Defendant May Appear by Videoconference.**

(1) *In the Court's Discretion.* A court may require a defendant's appearance by use of an interactive audiovisual system without the parties' consent at any of the following:

(A) an initial appearance;

(B) a misdemeanor arraignment;

(C) a not-guilty felony arraignment;

(D) a hearing on a motion to continue that does not include a waiver of time under Rule 8;

(E) a hearing on an uncontested motion;

(F) a pretrial or status conference;

(G) a change of plea in a misdemeanor case; or

(H) an informal conference held under Rule 32.7.

(2) *Generally Not Permitted.* A court may not require a defendant's appearance by use of an interactive audiovisual system at any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, unless the court finds extraordinary circumstances and the parties consent by written stipulation or on the record.

(3) *By Stipulation.* For any proceeding not included in (c)(1) and (c)(2), the parties may stipulate that the defendant may appear at the proceeding by use of an interactive audiovisual system. The parties must file a stipulation before the proceeding begins or state the stipulation on the record at the start of the proceeding. Before accepting the stipulation, the court must find that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual system. ~~and that the system will allow a victim means to view and participate in the proceedings and ensure compliance with all victims' rights laws.~~

(4) *Change in Hearing's Scope.* If the scope of a hearing expands beyond that specified in (c)(1) and (c)(3), the court must reschedule a videoconference. ~~give notice to counsel~~

~~and the victim~~, and require the defendant's personal appearance. A victim must be notified of the rescheduled court date.

- ~~Staff note: Subpart (c)(1) includes an initial appearance. Is a victim who has not requested notice of the IA entitled to notice of a rescheduled IA under this provision? Clarification might be necessary.~~

### **Rule 1.7. Filing and Service of Documents**

**(a) "Filing with the Court" Defined.** The filing of a document with the court is accomplished only by filing it with the clerk. If a judge permits, a document may be submitted directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

**(b) Effective Date of Filing.**

*(1) Paper Documents.* A document is deemed filed on the date the clerk receives and accepts it. If a document is submitted to a judge and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

*(2) Electronically Filed Documents.* An electronically filed document is filed on the date and time the clerk receives it. Unless the clerk later rejects the document based on a deficiency, the date and time shown on the email notification from the court's electronic filing portal or as displayed within the portal is the effective date of filing. If a filing is rejected, the clerk must promptly provide the filing party with an explanation for the rejection.

*(3) Late Filing Because of an Interruption in Service.* If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document.

*(4) Incarcerated Parties.* If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must deem the filing date to be the date when the document was delivered to jail or prison authorities to deposit in the mail.

**(c) Service of All Documents Required; Manner of Service.** Every person filing a document with any court must serve a copy of the document on all other parties and ~~to~~ on any victim's attorney as follows:

*(1) Serving an Attorney.* If a party or victim is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the

party.

(2) *Service Generally*. A document is served under this rule by any of the following:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail to the person's last-known address—in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in (c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

(3) *Certificate of Service*. The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

*A copy has been or will be mailed/emailed/hand-delivered [select one] on [insert date] to:*

*[Name of opposing party or attorney] [Address of*

*opposing party or attorney] [Name of any victim's*  
*attorney]*

*[Address of any victim's attorney]*

If the precise manner in which service has actually been made is not noted, it will be presumed that the document was served by mail. This presumption will only apply if service in some form has actually been made.

#### **Rule 1.8. Clerk's Distribution of Minute Entries and Other Documents**

(a) **Generally**. The clerk must distribute, either by U.S. mail, electronic mail, or

attorney drop box, copies of every minute entry to all parties and to any victim's attorney who has filed a notice of appearance under Rule 6.3(a). (Staff note: Staff added these last several words to clarify that the clerk's duty to distribute a notice to victim's counsel is dependent on counsel filing a notice of appearance. A new provision requiring victim's counsel to file a notice of appearance has also been added to Rule 6.3(a).

**(b) Electronic Distribution.** The clerk by electronic means may distribute minute entries, notices, and other court-generated documents to a party ~~or~~ a party's ~~or victim's~~ attorney, or a victim's attorney who has entered a notice of appearance by electronic means. Electronic distribution of a document is complete when the clerk transmits it to the email address that the party or attorney has provided to the clerk.

**RULE 1.9 AND SUBSEQUENT RULES SHOW WITH RED FONT AND YELLOW HIGHLIGHT THE AMENDMENTS PROPOSED BY THE RASSAS/TWIST TABLE.**

### **Rule 1.9. Motions, Oral Argument, and Proposed Orders**

**(a) Content.** A motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion.

**(b) Service of Motion; Response; Reply.** The moving party must serve the motion on all other parties. No later than 10 days after service, another party may file and serve a response, and, no later than 3 days after service of a response, the moving party may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record. When addressing matters that impact any victims' rights, a victim may file motions, responses, and replies that comply with these rules. [The preceding sentence was deleted by the Rassas/Twist table, which then added: "The victim has standing to seek an order, to bring a special action or to file a notice of appearance in a trial court or an appellate proceeding, seeking to enforce any right or to challenge an order denying any right guaranteed to victims."] [Staff note: Regarding this deleted text, see further Rule 1.9(e).]

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**Staff note:** *The sentence in section (b) that says, "if no response is filed, the court may deem the motion submitted on the record," was omitted from the Rassas/Twist table, but was included in the R-20-0031 appendix.*

*Rule 1.9 might not be a suitable location for the language proposed by the Rassas/Twist table for a few reasons. First, a practitioner who is looking to file a*

*special action in the COA might not look to the superior court rule on motions for guidance. Second, and as noted during the April 16 meeting, a reference to Rule 2(a)(2) of the Rules of Procedure for Special Actions might be helpful in his regard; but Rule 1.9 might not be the correct location for that reference. Perhaps a preferable approach would be a new rule on a victim's standing, in lieu of wedging the provision into a rule on motions. Third, the proposed provision confounds the concepts of standing to seek an order and filing a notice of appearance. They should be separate and independent rights and processes.*

**(c) Length.** Unless the court orders otherwise, a motion or response, including a supporting memorandum, may not exceed 11 pages, exclusive of attachments, and a reply may not exceed 6 pages, exclusive of attachments.

**(d) Waiver of Requirements.** ~~On a party's request or on its own,~~ The court may waive a requirement specified in this rule, or it may overlook a formal defect in a motion.

**(e) Standing of a Victim.** A victim has standing to file a motion that requests the court to enforce any right guaranteed to victims or that challenges an order denying any such right. A victim may file a reply concerning the motion. A victim may also file a response to a party's motion if the motion impacts a victim's right. A victim may file a petition for special action as provided by Rule 2(a) of the Rules of Procedure for Special Actions. [Staff note: See further a new provision staff added in Rule 1.10(b)(6).]

**(f) Oral Argument.** ~~On a party's request or on its own,~~ The court may set a motion for argument or hearing.

**(g) Proposed Orders.** A proposed order must be prepared as a separate document and may not be included as part of a motion, stipulation, or other document. There must be at least two lines of text on the signature page of a proposed order. A party or victim's attorney must serve the proposed order on the court and all other parties and victim's attorney. A party or victim's attorney must not file a proposed order, and the court will not docket it, until a judge has reviewed and signed it. Absent a notice of filing, proposed orders will not be part of the record.

**Rule 1.10. Victims' Rights: Exercising the Right to be Heard, The Right to Representation; Victim and Court Obligations.**

- **Staff note:** The Rassas/Twist table indicates that the content of Rule 1.10 is "verbatim Rule 39."

**(a) Exercising the Right to Be Heard**

(1) Nature of the Right. If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This rule does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

(2) Victims in Custody. If a victim is in custody for an offense, the victim's right to be heard under these rules is satisfied by affording the victim the opportunity to submit a written statement.

(3) Victims Not in Custody. A victim who is not in custody may exercise the right to be heard under these rules through an oral statement or by submitting a written or recorded statement.

(4) At Sentencing. The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

**(b) Assistance and Representation.**

(1) Right to Prosecutor's Assistance. A victim has the right to the prosecutor's assistance in asserting rights enumerated in these rules or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.

(2) Standing. The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by these rules or by any other provision of law.

(3) Conflicts. If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information to the appropriate state or local bar association for referral to a lawyer. *Staff note: These five highlighted words are not in the current rule.*

(4) Representation by Counsel. In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When

present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.

(5) Appointment of Victim's Representative. Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

**(6) Court Filings. A victim may file a motion, response, or reply, or a complaint for special action, as provided in Rule 1.9(e).**

**(c) Victim's Duties.**

(1) Generally. Any victim desiring to claim the notification rights and privileges provided in these rules must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

(2) Legal Entities.

(A) Designation of a Representative. If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.

(B) Notice. The prosecutor must notify the defendant and the court if the prosecutor receives notice under (c)(2)(A).

(C) Effect. After notice is provided under (c)(2)(B), only the representative designated under (c)(2)(A) may assert the victim's rights on behalf of the legal entity.

(D) Changes in Designation. The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

**(d) Waiver.** A victim may waive the rights and privileges enumerated in these rules. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under these rules.

**(e) Court Enforcement of Victim Notice Requirements.**

(1) Court's Duty to Inquire. At the beginning of any proceeding that takes place more

than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.

(2) If the Victim Has Been Notified. If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (b)(1).

(3) If the Victim Has Not Been Notified. If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

**(f) Appointment of Victim's Representative.** Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative. *Staff note: This provision duplicates the provision in 1.10(b)(5) above. Both provisions derive from current Rule 39(h).*

#### Rule 4.1. Procedure upon Arrest

##### (a) Prompt Initial Appearance **Generally.**

**(1) Prompt Initial Appearance.** An arrested person must be promptly taken before a magistrate. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody.

**(2) Victims' Rights to Notice.** Upon request, the victim must be informed of the date, time, and place for the initial appearance **in accordance with A.R.S. §§ 13-4406 and 13-4409 [sic].** **The victim upon request must be notified of any the defendant's release from custody at or after the initial appearance.** *Staff note: Does the foregoing amendment eliminate the need to add the same language to section (c)?*

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**(3) Application.** The provisions of subparts (a)(1) and (a)(2) apply to sections (b) and (c). [Staff note: the addition of subpart (a)(3) allows duplicative text in sections (b) and (c) to be deleted, as members discussed at the May meeting.]

**(b) On Arrest Without a Warrant.** A person arrested without a warrant must be taken before the nearest or most accessible magistrate in the county of arrest. A complaint, if not already filed, must be promptly prepared and filed. If a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated.

**(c) On Arrest with a Warrant.**

(1) *Arrest in the County of Issuance.* A person arrested in the county where the warrant was issued must be taken before the magistrate who issued the warrant for an initial appearance. If the magistrate is absent or unable to act, the arrested person must be taken to the nearest or most accessible magistrate in the same county. ~~Upon request, the victim must be informed of the date, time, and place for the initial appearance.~~

(2) *Arrest in Another County.* If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest. If eligible for release as a matter of right, the person must then be released under Rule 7.2. If not released immediately, the arrested person must be taken to the issuing magistrate in the county where the warrant originated, or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the county where the warrant originated. ~~The victim upon request must be notified of any release.~~

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**(d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance.** Each presiding judge must make a magistrate available every day of the week to hold the initial appearances required under Rule 4.1(a). The presiding judge also must set at least one fixed time each day for conducting initial appearances, and notify local law enforcement agencies of the fixed time(s).

**(e) Sample for DNA Testing; Proof of Compliance.** If the arresting authority is required to secure a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-610(K), it must provide proof of compliance to the court before the initial appearance.

**Rule 4.2. Initial Appearance**

*Staff note: Staff previously noted R-21-0022, which was filed by David Byers on*

February 4, 2021. [Click here for R-21-0022](#). R-21-0022 would amend **Rules 4.2, 6.1, 6.5, 6.6, 7.2, and 7.4** and modify bail and release provisions in those rules to better ensure that cash bonds do not cause unnecessary pretrial detentions based on the defendant's lack of financial resources. The materials associated with R-20-0031, including this version of the appendix, do not account for the amendments proposed by R-21-0022. The Court will probably consider R-21-0022 at its August 2021 rules agenda.

**(a) Generally.** At an initial appearance, the magistrate must:

- (1) determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;
- (2) inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;
- (3) inform the defendant of the right to counsel and the right to remain silent;
- (4) determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;
- (5) appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;
- (6) permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;
- (7) unless the magistrate determines under (a)(8) that release on bail is prohibited, determine the conditions of release under Rule 7.2(a);
- (8) determine whether probable cause exists to believe:
  - (A) the defendant committed a capital offense, or any felony offense committed while the person was on pretrial release for a separate felony charge; or
  - (B) the defendant committed a felony for which release on bail is prohibited because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of the victim, any other person, or the community based on the considerations provided in Rule 7.2(b)(3);

(9) if the court determines that the defendant is not eligible for bail based on a determination under (a)(8)(A) or (B), schedule a bail eligibility hearing in superior court as required under Rule 7.2(b)(4);

(10) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and

(B) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number; and

(11) order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:

(A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and

(B) the court has not received proof of compliance with A.R.S. § 13-610(K).

**(b) Felonies Charged by Complaint.** If a defendant is charged in a complaint with a felony, in addition to following the procedures in (a), the magistrate must:

(1) inform the defendant of the right to a preliminary hearing and the procedures by which that right may be waived; and

(2) unless waived, set the time for a preliminary hearing under Rule 5.1.

**(c) Combining an Initial Appearance with an Arraignment.** If the defendant is charged with a misdemeanor or indicted for a felony and defense counsel is present or the defendant waives the presence of counsel, and, if requested, the victim has been given notice and an opportunity to be present and heard, the magistrate may arraign a defendant under Rule 14 during an initial appearance under (a). If, however, the magistrate lacks jurisdiction to try the offense, the magistrate may not arraign the defendant and must instead transfer the case to the proper court for arraignment. If the court finds that delaying the defendant's arraignment is indispensable to the interests of justice, the court when setting a date for the continued arraignment must provide sufficient notice to victims, ~~under Rule 39(b)(2).~~

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

**(a) Right to a Preliminary Hearing.** A defendant has a right to a preliminary hearing if charged in a complaint with a felony. The victim, if requested, must be given notice of the preliminary hearing. A preliminary hearing must commence before a magistrate no later than 10 days after the defendant’s initial appearance if the defendant is in custody, or no later than 20 days after the defendant’s initial appearance if the defendant is not in custody, unless:

- (1) the complaint is dismissed;
- (2) the hearing is waived;
- (3) the defendant has been transferred from the juvenile court for criminal prosecution on specified charges; or
- (4) the magistrate orders the hearing continued under (c).

**(b) Waiver.** The parties may waive a preliminary hearing but the waiver must be in writing and the defendant, defense counsel, and the State must sign it.

**(c) Continuance.**

(1) *Release Absent Continuance.* If a preliminary hearing for an in-custody defendant did not commence within 10 days as required under (a) and was not continued, the defendant must be released from custody, unless the defendant is charged with a non-bailable offense, in which case the magistrate must immediately notify that county’s presiding judge of the reasons for the delay.

(2) *Continuance.* On motion or on its own, a magistrate may continue a preliminary hearing beyond the 20-day deadline specified in (a). A magistrate may continue the hearing only ~~if it~~, if after consideration of the victim’s right to a speedy trial disposition, the court finds that extraordinary circumstances exist and that delay is indispensable to the interests of justice. The magistrate also must file a written order detailing the reasons for these findings. The court must promptly notify the parties and, if requested, the victim pursuant to A.R.S. § 13-4409 of the order.

(3) *Resetting Hearing Date.* If the magistrate orders a continuance, the order must reset the preliminary hearing for a specific date to avoid uncertainty and additional delay.

**(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 upon request, to provide notice to any victims in accordance with A.R.S. § 13-4409.

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#### **Rule 5.4. Determining Probable Cause**

**(a) Holding a Defendant to Answer.** If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release, after giving the victim the right to be heard. Upon the State's request, this rule's requirements are satisfied if a probable cause or proof evident presumption great finding was made at a bail eligibility hearing under Rule 7.2(b)(4).

**(b) Amending the Complaint.** A magistrate may grant a motion to amend a complaint so that its factual allegations conform to the evidence, but the magistrate must not hold the defendant to answer for crimes different than those charged in the original complaint.

**(c) Evidence.** A magistrate must base a probable cause finding on substantial evidence, which may include hearsay in the following forms:

- (1) a written report of an expert witness;
- (2) documentary evidence, even without foundation, if there is a substantial basis for believing that foundation will be available at trial and the document is otherwise admissible; or
- (3) a witness's testimony about another person's declarations if such evidence is cumulative or if there are reasonable grounds to believe that the declarant will be personally available for trial.

**(d) Lack of Probable Cause.** The magistrate must dismiss the complaint and discharge the defendant if a magistrate finds that there is not probable cause to believe that an offense has been committed or that the defendant committed it.

#### **Rule 5.8. Notice if an Arraignment Is Not Held**

**(a) Notice.** If a defendant is held to answer in a county where an arraignment is not held as provided in Rule 14.2(d), the magistrate must:

- (1) enter a plea of not guilty for the defendant and provide the defendant and defense counsel with a notice specifying that a plea of not guilty has been entered;
- (2) set dates for a trial or pretrial conference;
- (3) advise the parties ~~and, if requested, the victim pursuant to 13-4409~~, in writing of the dates set for further proceedings and other important deadlines, **and upon request, the prosecutor will notify counsel for the victim pursuant to A.R.S. §**

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**13-4409;**

(4) advise the defendant of the defendant's right to be present at all future proceedings, that any proceeding may be held in the defendant's absence, and that if the defendant fails to appear, the defendant may be charged with an offense and a warrant may be issued for the defendant's arrest; and

(5) advise the defendant of the right to a jury trial, if applicable.

**(b) Notice Form.** The magistrate must provide written notice to the defendant of the matters in (a). The defendant and defense counsel must sign the notice and return it to the court.

**Rule 6.3. Duties of Counsel; Withdrawal**

**(a) Notice of Appearance.**

(1) *Generally.* Before representing the defendant in court, counsel--whether privately retained or appointed by the court--must file a notice of appearance.

(2) *Earlier Appearance in a Limited Jurisdiction Court.* Counsel who has filed a notice of appearance in a felony case in a limited jurisdiction court does not need to file a new notice of appearance if the defendant is bound over to superior court.

**(3) Appearance by Victim's Counsel. Before representing a victim in court, counsel—other than the prosecutor—must file a notice of appearance.**

**(b) Duty of Continuing Representation.** Unless the court permits counsel to withdraw, counsel who represents a defendant at any stage of a case has a continuing duty to represent the defendant in all further proceedings in the trial court, including the filing of a notice of appeal.

**(c) Withdrawal.**

(1) *Before Granting a Motion to Withdraw.* ~~Before granting a motion to permit counsel to withdraw~~ **If a motion to withdraw may result in a continuance of the trial date, the court must consider the victim's right to a speedy trial before granting the motion.** [Rassas/Twist table deleted certain text as shown.] **Staff note: Suggest changing the name of this subpart title, e.g., to "victims' rights."**

⊕ (2) *If the Defendant Is Ineligible for Appointed Counsel.* Appointed counsel may not withdraw after arraignment on the ground that the defendant is ineligible for appointed counsel unless counsel shows that withdrawal will not disrupt the orderly processing of the case.

⊕ (3) *If the Case Is Set for Trial.* After a case is set for trial, the court may not permit counsel to withdraw unless counsel files a motion that provides:

(A) the name and address of new counsel and a signed statement from the new counsel that acknowledges the trial date and avows that the new counsel will be prepared for trial; or

(B) ethical grounds for withdrawing.

**(d) Duty of Defense Counsel to Preserve the File.** Defense counsel must:

(1) maintain records of the case in a manner that will inform successor counsel of all significant developments relevant to the case; and

(2) make available to successor counsel the client's complete records and files, as well as all information regarding every aspect of the representation.

**(e) Duty of Successor Counsel to Collect the File in a Capital Case.** Immediately upon undertaking representation of a defendant in a capital case in which the defendant was previously represented by counsel, defense counsel must collect the complete file from prior counsel and maintain the records and files in a manner that complies with (d).

#### **Rule 6.7. Appointment of Investigators and Expert Witnesses for Indigent Defendants**

**(a) Appointment.** On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, and/or mitigation specialist for an indigent defendant at county or city expense. After considering the victim's right to a speedy trial, the court should impose reasonable deadlines on anyone appointed under this rule.

**(b) Ex Parte Proceeding.** A defendant may not make an ex parte request under this rule without showing a need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request, which must be available for appellate review.

**(c) Definition of a "Mitigation Specialist."** As used in this rule, a "mitigation

specialist” is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate, and present psychosocial and other mitigation evidence.

**(d) Capital Case.** In a capital case, a defendant should make any motion for an expert or mitigation specialist no later than 60 days after the State makes its disclosure under Rule 15.1(i)(3).

*Reminder of this staff note at the beginning of Rule 4.2: Staff previously noted R-21-0022, which was filed by David Byers on February 4, 2021. [Click here for R-21-0022](#). R-21-0022 would amend **Rules 4.2, 6.1, 6.5, 6.6, 7.2, and 7.4** and modify bail and release provisions in those rules to better ensure that cash bonds do not cause unnecessary pretrial detentions based on the defendant’s lack of financial resources. The materials associated with R-20-0031, including this version of the appendix, do not account for the amendments proposed by R-21-0022. The Court will probably consider R-21-0022 at its August 2021 rules agenda.*

## **Rule 7.2. Right to Release**

### **(a) Before Conviction; Bailable Offenses.**

(1) *Presumption of Innocence.* A defendant charged with a crime but not yet convicted is presumed to be innocent.

(2) *Right to Release.* Except as these rules otherwise provide, any defendant charged with an offense bailable as a matter of right must be released pending and during trial on the defendant’s own recognizance with only the mandatory conditions of release required under Rule 7.3(a). This rule does not apply if the court determines that such a release will not reasonably assure the defendant’s appearance or protect the victim, any other person, or the community from risk of harm by the defendant. If the court makes such a determination, it must impose the least onerous conditions of release set forth in Rule 7.3(c).

(3) *Determining Method of Release or Bail Amount.* In determining the method of release or the amount of bail, the court must consider the factors set forth in A.R.S. § 13-3967(B).

### **(b) Before Conviction: Defendants Charged with an Offense Not Eligible for Bail.**

(1) *Not Eligible Based on Commission of a Specified Felony or Any Felony While on Pretrial Release.* A defendant must not be released if the court finds the proof is evident or the presumption great that the defendant committed:

(A) a capital offense;

(B) any felony offense while the defendant was on pretrial release for a separate felony charge.

(2) *Not Eligible Based on Commission of any Felony and Other Factors.* Under article 2, section 22(A)(3) of the Arizona Constitution, the court may not release any defendant charged with a felony if the court finds all of the following:

(A) the proof is evident or the presumption great that the defendant committed one or more of the charged felony offenses;

(B) clear and convincing evidence that the defendant poses a substantial danger to the victim, any other person, or the community or, on certification by motion of the state, the defendant engaged in conduct constituting a dangerous crime against children or terrorism; and

(C) no condition or combination of conditions of release will reasonably assure the safety of the victim, any other person, or the community.

(3) *Bail Eligibility Considerations.* In making the determinations required by (b)(2)(B) and (b)(2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;

(B) the weight of the evidence against the defendant;

(C) the history and characteristics of the defendant, including the defendant's character, physical and mental condition, past conduct including membership in a criminal street gang, history relating to drug or alcohol abuse, and criminal history;

(D) the nature and seriousness of the danger to the victim, any other person, or the community that would be posed by releasing the defendant on bail, including any threat to a victim or other participants in the judicial process;

(E) the recommendation of the pretrial services program based on an appropriate risk assessment instrument;

(F) any victim statement about the offense and release on bail; and

(G) any other factor relevant to the determination required under (b)(2)(B) and (b)(2)(C).

(4) *Bail Eligibility Hearing.*

(A) Generally. The superior court must hold a hearing to determine whether a defendant held in custody under Rule 4.2(a)(8) is not eligible for bail as required

under (b)(1) or (b)(2), unless the defendant waives this hearing. A victim, upon request, has the right to notice of the hearing and the right to be heard regarding any conditions of release.

(B) Timing. If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance or the court finds that extraordinary circumstances exist and delay is indispensable to the interests of justice. For this purpose, extraordinary circumstances are events that would prohibit the hearing from occurring and that are beyond the prosecutor's control. Upon a finding of extraordinary circumstances, the court may continue the hearing once and for no more than 3 calendar days.

(C) Determination of Probable Cause and Release Conditions. If the court does not find the proof evident or the presumption great under (b)(1) or (b)(2)(A) and there has been no prior finding of probable cause for the charges by a grand jury or through a preliminary hearing, the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it.

(i) Probable Cause Found. If the court finds probable cause, or probable cause for the charges was previously determined by a grand jury or through a preliminary hearing, the court must determine the release conditions under (a).

(ii) No Probable Cause Found. Unless there was a finding of probable cause for the charges by a grand jury or through a preliminary hearing, if the court does not find probable cause, the defendant must be released from custody. Upon the State's request, the court must schedule a preliminary hearing as provided in Rule 5.1(a). If the state does not request a preliminary hearing, the court must dismiss the complaint and discharge the defendant, unless probable cause for the charges was previously determined by a grand jury or through a preliminary hearing.

(D) Effect of Findings. If the court finds the proof is evident or the presumption great or finds probable cause, upon the State's request, the court will hold the defendant to answer before the superior court as provided in Rule 5.4 (a).

(E) Findings on the Record. The court's findings must be on the record.

**(c) After Conviction.**

(1) *Superior Court.*

(A) *Before Sentencing.* After a defendant is convicted of an offense for which the person will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the person on bail or on the person's own recognizance unless:

- (i) the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, judgment of acquittal, or other post-trial motion; or
- (ii) the parties stipulate otherwise and the court approves the stipulation.

*After a Sentencing Involving Imprisonment.* If a defendant is convicted of a felony offense and is sentenced to prison, the court may not release the defendant on bail or on the defendant's own recognizance pending appeal unless the court, **after considering the views of any view presented by the victim,** finds the defendant is in such physical condition that continued confinement would endanger the defendant's life. [deleted text above shown in Rassas/Twist table]

(B) *Protecting Safety.* In determining release conditions if the defendant is released under (c)(1)(A) or (B), the court must impose conditions that will protect the victim, any other person, and the community from risk of harm by the defendant.

(C) *After Sentence, Pending Appeal.* If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

(D) *Release upon Sentence Completion.* A defendant held in custody pending appeal must be released if the term of incarceration is completed before the appeal is decided.

(2) *Limited Jurisdiction Courts.*

(A) *Conditions of Release on Appeal.* If a defendant files a timely notice of appeal of a conviction for an offense for which the court has imposed a sentence of incarceration, the defendant may remain out of custody under the same conditions of release imposed at or after the defendant's initial appearance or arraignment.

(B) *Lack of Diligence on Appeal.* If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

(C) *Motion to Amend Conditions of Release.*

(i) Upon the filing of a timely notice of appeal, the court—on motion or on its own—may amend the conditions of release if it finds a substantial risk exists that the defendant presents a danger to the victim, another person or the community, or the defendant is unlikely to return to court if required to do so after the appeal concludes.

(ii) The court must hear a motion under this rule no later than 3 days after filing,

although it may continue the hearing for good cause. The defendant may be detained pending the hearing. The hearing must be on the record, and the defendant is entitled to representation by counsel. Any testimony by the defendant is not admissible in another proceeding except as it relates to compliance with prior conditions of release, perjury, or impeachment. The court must state its findings on the record.

(iii) The court may amend the conditions of release in accordance with the standards set forth in Rule 7.3 and Rule 7.4(b). In determining the method of release or the amount of bail, the court must consider the nature and circumstances of the offense, family or local ties, employment, financial resources, the defendant's character and mental condition, the length of residence in the community, the record of arrests or convictions, the risk of harm to the victim, other persons, or the community, and appearances at prior court proceedings.

(D) Release upon Sentence Completion. A defendant held in custody pending appeal must be released if the defendant's term of incarceration is completed before the appeal is decided.

(E) Superior Court Review. If the trial court enters an order setting a bond or requiring incarceration during the appeal, the defendant may petition the superior court to stay the execution of sentence and to allow the defendant's release either without bond or on a reduced bond.

**(d) Burden of Proof.** A court must determine issues under (a) and (c) by a preponderance of the evidence. The State bears the burden of establishing factual issues under (a), (b) and (c)(2). The defendant bears the burden of establishing factual issues under (c)(1).

### **Rule 7.3. Conditions of Release**

**(a) Mandatory Conditions.** Every order of release must contain the following conditions:

- (1) the defendant must appear at all court proceedings;
- (2) the defendant must not commit any criminal offense;
- (3) the defendant must not leave Arizona without the court's permission; ~~and~~
- (4) the defendant must not contact the victim, unless the court clearly finds good cause to conclude the victim's safety would be protected without a no-contact order;  
and *Staff note:* Adding this as a mandatory condition means it would be included in the release conditions even in cases without a victim, which might be confusing. Isn't the current language in section (c), shown with strikethrough below, preferable?

~~(4)~~(5) if a defendant is released during an appeal after judgment and sentence, the defendant will diligently pursue the appeal.

**(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13- 610(O)(3).**

(1) *Generally.* If a defendant is charged with an offense listed in A.R.S. § 13- 610(O)(3) and has been summoned to appear in court, the magistrate must order the defendant to report to the arresting law enforcement agency or its designee no later than 5 days after release, and submit a sample of buccal cells or other bodily substances for DNA testing as directed. The defendant must provide proof of compliance at the next scheduled court proceeding.

(2) *Required Notice.* The court must inform a defendant that a willful failure to comply with an order under (b)(1) will result in revocation of release.

**(c) Additional Conditions.** ~~The court must order the defendant not to contact a victim if such an order is reasonable and necessary to protect a victim from physical harm, harassment, intimidation, or abuse.~~ The court also may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant. In making determinations under this rule, the court must consider, if provided, the results of a risk assessment approved by the Supreme Court and a law enforcement's lethality assessment.

(1) *Non-Monetary Conditions.* A court may impose the following non-monetary conditions:

- (A) placing the defendant in the custody of a designated person or organization that agrees to provide supervision;
- (B) restricting the defendant's travel, associations, or residence;
- (C) prohibiting the defendant from possessing any dangerous weapon;
- (D) engaging in certain described activities, or consuming intoxicating liquors or any controlled substance that is not properly prescribed;
- (E) requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (F) returning the defendant to custody after specified hours; or
- (G) imposing any other non-monetary condition that is reasonably related to securing the defendant's appearance or protecting others or the community from risk of harm

by the defendant.

(2) *Monetary Conditions.*

(A) Generally. A court's imposition of a monetary condition of release must be based on an individualized determination of the defendant's risk of non- appearance, risk of harm to the victim, or to others or the community, and the defendant's financial circumstances. The court may not rely on a schedule or charge-based bond amounts, and it must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition.

(B) Least Onerous Alternative. If the court determines a monetary condition is necessary, it must impose the least onerous type of condition in the lowest amount necessary to secure the defendant's appearance or protect the victim, or other persons or the community from risk of harm by the defendant.

(C) Types of Conditions. The types of monetary conditions a court may impose include the following:

- (i) an unsecured appearance bond;
- (ii) a deposit bond;
- (iii) another type of secured bond; and
- (iv) a cash bond.

**Rule 7.4. Procedure**

**(a) Initial Appearance.** At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

**(b) Bail Eligibility Hearing.**

(1) *Right to Secure Witnesses, Cross-Examine, and Review Witness Statements.* At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement by the witness before cross-examination.

(2) *Victims*. Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g). **\*\*A victim has the right to confer with the State about any decision regarding the preconviction release of the defendant. A victim upon request pursuant to 13-4406 and 13-4409 [sic] must be given notice of a bail eligibility hearing and the victim has the right to be present and be heard by the court before the court modifies release conditions. If a victim objects to being called as a witness in a bail eligibility hearing, the court must require the party wishing to present the victim's testimony to make an offer of proof and the court may require a victim to testify only if the court finds that the evidence in the offer of proof would likely impact the court's decision on the matters under consideration at the hearing. If the opposing party stipulates to the information in the offer of proof, the victim will not be required to testify. [Deleted text is shown in Rassas/Twist table]**

*\*\*Staff note: The first sentence of subpart (b)(2) above would seemingly apply to any pre-conviction release determination. Section (b), however, is limited to those defendants who have a bail eligibility hearing, which would probably be a small percentage of defendants.*

*See further R-21-0022, which proposes different amendments to Rule 7.4(b).*

(3) *Admissibility*. Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

### **(c) Later Review of Conditions.**

(1) *Generally*. On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

(2) *Motion Requirements and Hearing*. The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. ~~A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.~~ **A victim upon request pursuant to 13-4406 and 13-4409 has the right to notice of and the right to be heard at any hearing regarding any motion to modify release conditions.**

(3) *Eligibility for Bail*. If the motion is by the State and involves a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

**(d) Evidence.** A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

**(e) Defendant's Bail Status.** If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

**(f) Review of Conditions of Release for Misdemeanors.** No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

**(g) Appointment of Counsel.** The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

#### **Rule 7.5. Review of Conditions; Revocation of Release**

**(a) On State's Petition.** If the State files a verified petition stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the petition. A copy of the petition must be provided with the summons, warrant, or notice.

**(b) On Pretrial Services' Report.** If pretrial services submits a written report to the court stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the report. A copy of the report must be provided to the State and provided with the summons, warrant, or notice.

**(c) On Victim's Petition.** If the prosecutor decides not to file a petition under (a), the victim may petition the court to revoke the defendant's bond or own recognizance release, or otherwise modify the conditions of the defendant's release. Before filing a petition, the victim must consult with the prosecutor about the requested relief. The petition must include a statement under oath by the victim asserting any harassment, threats, physical violence, abuse, or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family.

#### **(d) Hearing; Modification of Conditions; Revocation.**

(1) *Modification of Conditions of Release.* After a hearing on the matters set forth in the petition or report, the court may impose different or additional conditions of release if it finds that the defendant has willfully violated the conditions of release.

(2) *Revocation of Release on a Felony Offense.* The court may revoke release of a person charged with a felony if, after a hearing, the court finds that the proof is evident or presumption great as to the present charge and:

(A) probable cause exists to believe that the person committed another felony during the period of release; or

(B) the person poses a substantial danger to the victim, another person or the community, and no other conditions of release will reasonably assure the safety of the victim, other person or the community.

**(e) Revocation of Release: DNA Testing.** The State may file a motion asking the court to revoke a defendant's release for failing to comply with the court's order to provide a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-3967(F)(4) and to provide proof of compliance. The motion must state facts establishing probable cause to believe that the defendant has not complied with the order. At the defendant's next court appearance, the court must proceed in accordance with this rule's requirements and A.R.S. § 13-3967(F)(4).

**(f) Revocation of Release: 10-print Fingerprinting.** If a defendant fails to timely present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court may remand the defendant into custody for 10-print fingerprinting. If otherwise eligible for release, the defendant must be released from custody after being 10-print fingerprinted.

#### **Rule 7.6. Transfer and Disposition of Bond**

**(a) Transfer upon Supervening Indictment.** An appearance bond or release order issued following the filing of a felony complaint in justice court will automatically be transferred to a criminal case in superior court after an indictment is filed that alleges the same charges.

**(b) Filing and Custody of Appearance Bonds and Security.** A defendant must file an appearance bond and security, if ordered, with the clerk of the court in which a case is pending or the court in which the initial appearance is held. If the case is transferred to another court, the transferring court also must transfer any appearance bond and security.

#### **(c) Forfeiture Procedure.**

(1) *Arrest Warrant and Notice to Surety.* If the court is informed that the defendant has violated a condition of an appearance bond, it may issue a warrant for the defendant's arrest. No later than 10 days after the warrant's issuance, the court must notify the surety, in writing or electronically, that the warrant was issued.

(2) *Hearing and Notice.* After issuing the arrest warrant, the court must set a hearing within a reasonable time, no later than 120 days after it issued the warrant, requiring the parties and any surety to show cause why the bond should not be forfeited. The court must notify the parties and, if requested, the victim, and any surety of the hearing in writing or electronically. The forfeiture hearing may be combined with a Rule 7.5(d) hearing. *Staff note: Does a victim have a right to notice of a bond forfeiture hearing? See further the Task Force discussion of Rule 7.6(c) in the March 19 meeting minutes. The discussion concluded, “A vote on this provision was deferred.”*

(3) *Forfeiture.* If the court finds that the violation is not excused, it may enter an order forfeiting all or part of the bond amount, and the State may enforce that order as a civil judgment. The order must comply with Arizona Rule of Civil Procedure 58(a).

**(d) Exoneration.**

(1) *Generally.* If the court finds before a violation that there is no further need for an appearance bond, it must exonerate the bond and order the return of any security.

(2) *Amount Returned.* When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited under Rule 7.6(c)(3) or the bond depositor authorizes it be applied to a financial obligation.

(3) *If the Defendant Is Surrendered, In-Custody, or Transferred.* The court must exonerate the bond if:

(A) the surety surrenders the defendant to the sheriff of the county in which the prosecution is pending, and:

(i) the surrender is on or before the day and time the defendant is ordered to appear in court; and

(ii) the sheriff informs the court of the defendant’s surrender;

(B) the defendant is in the custody of the sheriff of the county in which the prosecution is pending on or before the day and time the defendant is ordered to appear in court under the following conditions:

(i) the surety provides the sheriff with an affidavit of surrender of the appearance bond; and

(ii) the sheriff reports the defendant is in custody and that the surety has provided an affidavit of surrender of the appearance bond; or

(C) before the defendant was released to the custody of the surety, the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court on the scheduled court date and the surety establishes:

(i) the surety did not know and could not have reasonably known of the release or transfer or that a release or transfer was likely to occur; and

(ii) the defendant's failure to appear was a direct result of the release or transfer.

(4) *Conditions When Not Required to Exonerate Bond.* The court is not required to exonerate the bond under (d)(2)(C) if a detainer was placed on the defendant before the bond was posted or the release or transfer to another government agency was for 24 hours or less.

(5) *Other Circumstances.* In all other instances, the decision whether or not to exonerate a bond is within the discretion of the court.

(6) *Post-Forfeiture Notice.* After filing an order of forfeiture, the court must provide:

(A) a copy of the order to the State, the defendant, the defendant's attorney, and the surety; and

(B) a copy of a signed order to the county attorney for collection.

#### **Rule 8.1. Priorities in Scheduling Criminal Cases**

**(a) Priority of Criminal Trials.** A trial of a criminal case has priority over a trial of a civil case.

**(b) Preferences.** The trial of a defendant in custody, and the trial of a defendant whose pretrial liberty may present unusual risks, have preference over other criminal cases.

**(c) Duty of the Prosecutor.** The prosecutor must advise the court of facts relevant to the priority of cases for trial.

**(d) Duty of Defense Counsel.** Defense counsel must advise the court of an impending expiration of time limits. A court may sanction counsel for failing to do so, and should consider a failure to timely notify the court of an expiring time limit in determining whether to dismiss an action with prejudice under Rule 8.6.

**(e) Suspension of Rule 8.** No later than 25 days after a superior court arraignment, either party may move for a hearing to establish extraordinary circumstances requiring a suspension of Rule 8. No later than 5 days after the motion is filed, the court must

hold a hearing on the motion, permit the victim to be heard, and, after considering the victim's right to a speedy trial, make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8. If the trial court finds that Rule 8 should be suspended, the court must immediately transmit its findings to the Supreme Court Chief Justice. If the Chief Justice approves the findings, the trial court may suspend Rule 8's provisions and reset the trial for a later specified date.

### **Rule 8.2. Time Limits**

**(a) Generally.** Subject to Rule 8.4, the court must try every defendant against whom an indictment, information, or complaint is filed within the following times:

(1) *Defendants in Custody.* No later than 150 days after arraignment if the defendant is in custody, except as provided in (a)(3).

(2) *Defendants out of Custody.* No later than 180 days after arraignment if the defendant is released under Rule 7, except as provided in (a)(3).

(3) *Defendants in Complex Cases.* No later than 270 days after arraignment if the defendant is charged with any of the following:

(A) first degree murder, except as provided in (a)(4);

(B) offenses that will require the court to consider evidence obtained as the result of an order permitting the interception of wire, electronic, or oral communication; or

(C) any case the court determines by written factual findings to be complex.

(4) *Capital Cases.* No later than 24 months after the date the State files a notice of intent to seek the death penalty under Rule 15.1(i).

**(b) Waiver of Appearance at Arraignment.** If a defendant waives an appearance at arraignment under Rule 14.3, the date of an arraignment held in the defendant's absence is deemed to be the arraignment date.

**(c) New Trial.** A trial ordered after a mistrial or the granting of a new trial must begin no later than 60 days after entry of the court's order. A trial ordered upon an appellate court's reversal of a judgment must begin no later than 90 days after the appellate court issues its mandate. A new trial ordered by a state court under Rule 32 or a federal court under collateral review must begin no later than 90 days after entry of the court's order.

**(d) Extension of Time Limits.** The court may extend the time limits in (a) and (c) under Rule 8.5.

**(e) Specific Date for Trial.** The superior court must set a specific trial date either at the arraignment or a pretrial conference, unless the court has suspended Rule 8. In

setting the date, the court must consider the views of the victim, as well as the rights of both the defendant and the victim to a speedy trial.

- *Is the above a new substantive provision?*

### **Rule 8.5. Continuing a Trial Date**

(a) **Motion.** A party may ask to continue trial by filing a motion stating the specific reasons for the request.

(b) **Grounds.** A court may continue trial only after considering a victim's and the defendant's right to a speedy trial and on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice, and only for so long as is necessary to serve the interests of justice. **The court must consider the rights of the defendant and any victim to a speedy disposition of the case.** The court must state specific reasons for continuing trial.

*Staff note: The proposed amendment to Rule 8.2(e) says "the defendant and the victim." Rule 8.5(b) reverses that ("a victim's and the defendant's right"). The order of these references should be consistent.*

*Staff note: The AVCV version omitted the second sentence of Rule 8.5(b) shown above, which might obviate the need for the AVCV's amendment.*

### **Rule 10.2. Change of Judge as a Matter of Right**

#### **(a) Entitlement.**

(1) *Generally.* Each side in a criminal case is entitled to one change of judge as a matter of right. If two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.

(2) *Meaning of "Side."* Each case, including one that is consolidated, is treated as having only two sides.

(3) *Per Party Limit.* A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.

(4) *Inapplicability to Certain Proceedings.* A party is not entitled to a change of judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.

#### **(b) Procedure.**

(1) *Generally.* A party may exercise a right to change of judge by filing a "Notice of Change of Judge" signed by counsel or a self-represented defendant, and stating the

name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney's avowal is in the attorney's capacity as an officer of the court.

(2) *“Improper Purpose.”* “Improper purpose” means:

(A) for the purpose of delay;

(B) to obtain a severance;

(C) to interfere with the judge's reasonable case management practices;

(D) to remove a judge for reasons of race, gender or religious affiliation;

(E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;

(F) to obtain a more convenient geographical location; or

(G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).

(3) *Further Action by the Judge.* If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee. If the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.

**(c) Timing.**

(1) *Generally.* Except as provided in (c)(2), a party must file a notice of change of judge no later than 10 days after any of the following:

(A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;

(B) the superior court clerk's filing of a mandate issued by an appellate court; or

(C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.

(2) *Exception.* Despite (c)(1), if a new judge is assigned to a case less than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties and any counsel for the victim, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs earlier.

**(d) Assignment to a New Judge and Effect on Other Defendants.**

(1) *On Stipulation.* If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed-on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any rights under this rule that existed immediately before the assignment of the action to that judge.

(2) *Absent Stipulation.* If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.

(3) *Effect on Other Defendants.* If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.

(e) **Waiver.** A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, a proceeding under Rule 17, or the beginning of trial.

(f) **Following Remand.** Unless previously exercised, a party may exercise a change of judge as a matter of right following an appellate court's remand for new trial, and no event connected with the first trial constitutes a waiver. A party may not exercise a change of judge as a matter of right following a remand for resentencing.

### **Rule 10.3. Changing the Place of Trial**

(a) **Grounds.** A party is entitled to change the place of trial to another county if the party shows that the party cannot have a fair and impartial trial in that place for any reason other than the trial judge's interest or prejudice.

(b) **Prejudicial Pretrial Publicity.** If the grounds to change the place of trial are based on pretrial publicity, the moving party must prove that the dissemination of the prejudicial material probably will result in the party being deprived of a fair trial.

(c) **Procedure.** A party seeking to change the place of trial must file a motion seeking that relief. The motion must be filed before trial, and, in superior court, at or before a pretrial conference. The victim has the right to be heard on the matter. The court must consider the victim's right to be present and consider alternatives to moving the trial that will protect the defendant's right to a fair trial while reasonably allowing the victim to exercise the right to be present. [Deleted text is shown in Rassas/Twist

table.]

- *Is the above a new substantive provision?*

**(d) Waiver.** A party loses the right to change the place of trial if the party allows a proceeding to begin or continue without raising a timely objection after learning of the cause for challenge.

**(e) Renewal on Remand.** If an appellate court remands an action for a new trial on one or more offenses charged in an indictment or information, all parties' rights to change the place of trial are renewed, and no event connected with the first trial constitutes a waiver.

### **Rule 15.1. The State's Disclosures**

**(a) Initial Disclosures in a Felony Case.** Unless a local rule provides or the court orders otherwise:

(1) the State must make available to the defendant all reports containing information identified in (b)(3) and (b)(4) that the charging attorney possessed when the charge was filed; and

(2) the State must make these reports available by the preliminary hearing or, if no preliminary hearing is held, the arraignment.

**(b) Supplemental Disclosure.** Except as provided in ~~Rule 39(b)~~ (f)(2), the State must make available to the defendant the following material and information within the State's possession or control:

(1) the name and address of each person the State intends to call as a witness in the State's case-in-chief and any relevant written or recorded statement of the witness;

(2) any statement of the defendant and any co-defendant;

(3) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;

(4) for each expert who has examined a defendant or any evidence in the case, or who the State intends to call at trial:

(A) the expert's name, address, and qualifications;

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;

- (5) a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from or purportedly belong to the defendant;
- (6) a list of the defendant's prior felony convictions the State intends to use at trial;
- (7) a list of the defendant's other acts the State intends to use at trial;
- (8) all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment;
- (9) whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;
- (10) whether a search warrant has been executed in connection with the case; and
- (11) whether the case involved an informant, and, if so, the informant's identity, subject to the restrictions under Rule 15.4(b)(2).

**(c) Time for Supplemental Disclosures.** Unless the court orders otherwise, the State must disclose the material and information listed in (b) no later than:

- (1) in the superior court, 30 days after arraignment.
- (2) in a limited jurisdiction court, at the first pretrial conference.

**(d) Prior Felony Convictions.** The State must make available to a defendant a list of prior felony convictions of each witness the State intends to call at trial and a list of the prior felony convictions the State intends to use to impeach a disclosed defense witness at trial:

- (1) in a felony case, no later than 30 days before trial or 30 days after the defendant's request, whichever occurs first; and
- (2) in a misdemeanor case, no later than 10 days before trial.

**(e) Disclosures upon Request.**

(1) *Generally.* Unless the court orders otherwise, the State must make the following items available to the defendant for examination, testing, and reproduction no later than 30 days after receiving a defendant's written request:

- (A) any of the items specified in the list submitted under (b)(5);
- (B) any 911 calls existing at the time of the request that the record's custodian can reasonably ascertain are related to the case; and
- (C) any completed written report, statement, and examination notes made by an expert listed in (b)(1) and (b)(4) related to the case.

(2) *Conditions.* The State may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence or to allow time for the examination or testing of any items.

**(f) Scope of the State's Disclosure ~~Obligation.~~**

(1) Obligation. The State's disclosure obligation extends to material and information in the possession or control of any of the following:

~~(1)~~ (A) the prosecutor, other attorneys in the prosecutor's office, and members of the prosecutor's staff;

~~(2)~~ (B) any law enforcement agency that has participated in the investigation of the case and is under the prosecutor's direction and control; and

~~(3)~~ (C) any other person who is under the prosecutor's direction or control and who participated in the investigation or evaluation of the case.

(i) Limitations. The State is not required to disclose a victim's identifying or locating information unless the court finds that disclosure is required to protect the defendant's constitutional rights. If disclosure of personal identifying or locating information is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not provide the information to the defendant without prior court authorization and after considering the rights and views of the victim.

(ii) Redactions. Rule 15.5(e) applies to information withheld under this rule.

- *Staff note: There is a subpart (f)(1) but no subpart (f)(2), so this provision is contrary to restyling conventions.*

**(g) Disclosure by Court Order.**

(1) *Disclosure Order.* On the defendant's motion, a court may order any person other than the victim to make available to the defendant material or information not included in this rule if the court finds:

(A) the defendant has a substantial need for the material or information to prepare the defendant's case; and

(B) the defendant cannot obtain the substantial equivalent by other means without undue hardship.

(2) *Modifying or Vacating Order.* On the request of any person affected by an order, the court may modify or vacate the order if the court determines that compliance would be unreasonable or oppressive.

**(h) Disclosure of Rebuttal Evidence.** Upon receiving the defendant's notice of defenses under Rule 15.2(b), the State must disclose the name and address of each person the State intends to call as a rebuttal witness, and any relevant written or recorded statement of the witness.

**(i) Additional Disclosures in a Capital Case.**

*(1) Notice of Intent to Seek the Death Penalty.*

(A) Generally. No later than 60 days after a defendant's arraignment in superior court on a charge of first-degree murder, the State must provide notice to the defendant of whether the State intends to seek the death penalty.

(B) Time Extensions. The court may extend the State's deadline for providing notice by an additional 60 days if the parties file a written stipulation agreeing to the extension. If the court approves the extension, the case is considered a capital case for all administrative purposes, including, but not limited to, scheduling, appointment of counsel under Rule 6.8, and the assignment of a mitigation specialist. The court may grant additional extensions if the parties file written stipulations agreeing to them.

(C) Victim Notification. If the victim has requested notice under A.R.S. § 13- 4405, the prosecutor must confer with the victim before agreeing to extend the deadline under (i)(1)(B).

*(2) Aggravating Circumstances.* If the State files a notice of intent to seek the death penalty, the State must, at the same time, provide the defendant with a list of aggravating circumstances that the State intends to prove in the aggravation phase of the trial.

*(3) Initial Disclosures.*

(A) Generally. No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs, or other tangible objects, or electronically stored information the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) Time Extensions. The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate to the deadline extension.

(4) *Rebuttal and Penalty Phase Disclosures.* No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

(A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness,

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs or other tangible objects the State intends to use during the aggravation and penalty hearings.

**(j) Item Prohibited by A.R.S. §§ 13-3551 et seq., or Is the Subject of a Prosecution Under A.R.S. § 13-1425.**

(1) *Scope.* This rule applies to an item that cannot be produced or possessed under A.R.S. §§ 13-3551 et seq. or is an image that is the subject of a prosecution under A.R.S. § 13-1425, but is included in the list disclosed under (b)(5).

(2) *Disclosure Obligation.* The State is not required to reproduce the item or release it to the defendant for testing or examination except as provided in (j)(3) and (j)(4). The State must make the item reasonably available for inspection by the defendant, but only under such terms and conditions necessary to protect a victim's rights.

(3) *Court-Ordered Disclosure for Examination or Testing.*

(A) Generally. The court may order the item's reproduction or its release to the defendant for examination or testing if the defendant makes a substantial showing that it is necessary for the effective investigation or presentation of a defense, including an expert's analysis.

(B) Conditions. A court must issue any order necessary to protect a victim's rights, document the chain of custody, or protect physical evidence.

(4) *General Restrictions.* In addition to any court order issued, the following restrictions apply to the reproduction or release of any item to the defendant for examination or testing:

- (A) the item must not be further reproduced or distributed except as the court order allows;
- (B) the item may be viewed or possessed only by the persons authorized by the court order;
- (C) the item must not be possessed or viewed by the defendant outside the direct supervision of defense counsel, advisory counsel, or a defense expert;
- (D) the item must be delivered to defense counsel or advisory counsel, or if expressly permitted by court order, to a specified defense expert; and
- (E) the item must be returned to the State by a deadline set by the court.

**Rule 15.2. The Defendant's Disclosures**

**(a) Physical Evidence.**

(1) *Generally.* At any time after the filing of an indictment, information or complaint, and upon the State's written request, the defendant must, in connection with the particular offense with which the defendant is charged:

- (A) appear in a line-up;
- (B) speak for identification by one or more witnesses;
- (C) be fingerprinted, palm-printed, foot-printed, or voice printed;
- (D) pose for photographs not involving a re-enactment of an event;
- (E) try on clothing;
- (F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials if doing so does not involve an unreasonable intrusion of the defendant's body;
- (G) provide handwriting specimens; and
- (H) submit to a reasonable physical or medical inspection of the defendant's body, but such an inspection may not include a psychiatric or psychological examination.

(2) *Presence of Counsel.* The defendant is entitled to have counsel present when the State takes evidence under this rule.

(3) *Other Procedures.* This rule supplements and does not limit any other

procedures established by law.

**(b) Notice of Defenses.**

(1) *Generally.* By the deadline specified in (d), the defendant must provide written notice to the State specifying all defenses the defendant intends to assert at trial, including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character.

(2) *Witnesses.* For each listed defense, the notice must specify each person, other than the defendant, that the defendant intends to call as a witness at trial in support of the defense.

(3) *Signature and Filing.* Defense counsel—or if the defendant is self-represented, the defendant—must sign the notice and file it with the court.

**(c) Content of Disclosure.** At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) the name and address of each person, other than the defendant, the defendant intends to call as a witness at trial, and any written or recorded statement of the witness;

(2) for each expert the defendant intends to call at trial:

(A) the expert's name, address, and qualifications;

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter on which the expert is expected to testify; and

(3) a list of all documents, photographs, other tangible objects, and electronically stored information the defendant intends to use at trial.

**(d) Time for Disclosures.** Unless the court orders otherwise, the defendant must disclose the material and information listed in (b) and (c) no later than:

(1) in superior court, 40 days after arraignment, or 10 days after the State's disclosure under Rule 15.1(b), whichever occurs first;

(2) in a limited jurisdiction court, 20 days after the State's disclosure under Rule 15.1(b).

**(e) Additional Disclosures upon Request.**

(1) *Generally.* Unless the court orders otherwise, the defendant must make the following items available to the State for examination, testing, and reproduction no later than 30 days after receiving the State’s written request:

- (A) any of the items specified in the list submitted under (c)(3); and
- (B) any completed written report, statement, and examination notes made by an expert listed in (c)(2) in connection with the particular case.

(2) *Conditions.* The defendant may impose reasonable conditions, including an appropriate stipulation concerning chain of custody for physical evidence or to allow time for the examination or testing of any items.

**(f) Scope of Disclosure.** A defendant’s disclosure obligation extends to material and information within the possession or control of the defendant, defense counsel, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant’s direction or control.

**(g) Disclosure by Court Order.**

(1) *Disclosure Order.* On the State’s motion, a court may order any person to make available to the State material or information not included in this rule if the court finds:

- (A) the State has a substantial need for the material or information for the preparation of the State’s case;
- (B) the State cannot obtain the substantial equivalent by other means without undue hardship; and
- (C) the disclosure of the material or information would not violate the defendant’s constitutional rights.

(2) *Modifying or Vacating Order.* The court may modify or vacate an order if the court determines that compliance would be unreasonable or oppressive.

**(h) Additional Disclosures in a Capital Case.**

(1) *Initial Disclosures.*

(A) *Generally.* No later than 180 days after receiving the State’s initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

- (i) a list of all mitigating circumstances the defendant intends to prove;
- (ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any

written or recorded statement of the witness;

(iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

(iv) a list of all documents, photographs, other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

(B) Time Extensions. The court may extend the deadline for the defendant's initial disclosures under (h)(1) or allow the defendant to amend those disclosures only if the defendant shows good cause or if the parties stipulate to the deadline extension and only after considering the victim's right to a speedy trial.

(2) *Later Disclosures.* No later than 60 days after receiving the State's supplemental disclosure under Rule 15.1(i)(4), the defendant must disclose the following to the State:

(A) the name and address of each person the defendant intends to call as a rebuttal witness, and any written or recorded statement of the witness; and

(B) the name and address of each expert the defendant intends to call as a witness at the penalty hearing, and any report the expert has prepared.

### **Rule 15.3. Depositions; Victims' Right to Refuse**

(a) **Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant or a victim that a defendant or someone working on their behalf seeks to examine those excluded by Rule 39(b), by oral deposition under the following circumstances: **Awkward language**

(1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at trial; or

(2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or

(3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

**(b) Follow-up Examination.** If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

- (1) the magistrate limited the person's previous testimony under Rule 5.3; and
- (2) the person will not cooperate in granting a personal interview.

**(c) Motion for Taking Deposition; Notice; Service.**

(1) *Requirements.* A motion to take a deposition must:

- (A) state the name and address of the person to be deposed;
- (B) show that a deposition may be ordered under (a) or (b);
- (C) specify the time and place for taking the deposition; and

(D) designate any nonprivileged documents, photographs, other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) *Order.* If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

(3) *Notice and Subpoena.* If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072(A)-(E) or as otherwise ordered by the court.

**(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) The Defendant's Right to Be Present.** A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

**(f) Use.** A party may use a deposition in the same manner as former testimony.

**(g) Interviews, Depositions, and Other Discovery Requests of a Victim.**

(1) Communication. The defense must communicate the request to interview the victim to the prosecutor or to the victim's attorney if the victim is represented. A victim's response to any request must be communicated through the prosecutor or the victim's attorney if the victim is represented. A defendant, a defendant's attorney, or any person acting on the defendant's behalf may not contact the victim.

(2) Right to Refuse. A victim has the right to refuse a defense request for interview, deposition, or any other discovery. If a victim consents to an interview, the victim has the right to refuse to answer any question and to terminate the interview at any time.

(3) Right to assistance and to set conditions. If a victim consents to a defense interview, the victim has the right to be accompanied by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate unless the testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt. A victim also has the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition including a

requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse.

(4) Jury Instruction if a victim's refusal is commented on at trial. If there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview.

**Rule 15.6. Continuing Duty to Disclose; Final Disclosure Deadline; Extension**

**(a) Continuing Duties.** The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party.

**(b) Additional Disclosures.** Any party who anticipates a need to provide additional disclosure no later than 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure.

**(c) Final Deadline for Disclosure.** Unless otherwise permitted, all disclosure required by Rule 15 must be completed at least 7 days before trial.

**(d) Disclosure After the Final Deadline.**

(1) *Motion to Extend Disclosure.* If a party seeks to use material or information that was disclosed less than 7 days before trial, the party must file a motion to extend the disclosure deadline and to use the material or information. The moving party also must file a supporting affidavit setting forth facts justifying an extension.

(2) *Order Granting Motion.* The court must extend the disclosure deadline and allow the use of the material or information if it finds the material or information:

- (A) could not have been discovered or disclosed earlier with due diligence; and
- (B) was disclosed immediately upon its discovery.

(3) *Order Denying Motion or Granting Continuance; Sanctions.* If the court finds that the moving party has failed to establish facts sufficient to justify an extension under (d)(2), it may:

(A) deny the motion to extend the disclosure deadline and deny the use of the material or information; or

(B) extend the disclosure deadline and allow the use of the material or information and, if it extends the deadline, the court may impose any sanction listed in Rule

15.7 except preclusion or dismissal.

**(e) Extension of Time for Completion of Testing.**

(1) *Motion.* Before the final disclosure deadline in (c), a party may move to extend the deadline to permit the completion of scientific or other testing. The motion must be supported by an affidavit from a crime laboratory representative or other scientific expert stating that additional time is needed to complete the testing or a report based on the testing. The affidavit must specify how much additional time is needed.

(2) *Order.* If a motion is filed under (e)(1), the court must grant reasonable time to complete disclosure unless the court finds that the need for the extension resulted from dilatory conduct or neglect, or that the request is being made for an improper reason by the moving party or a person listed in Rule 15.1(f) or 15.2(f).

(3) *Extending Time.* If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary. In determining new deadlines under this rule, the court must consider the victim's and defendant's right to a speedy trial.

**Rule 16.3. Pretrial Conference**

**(a) Generally.** A court may conduct one or more pretrial conferences. The court may establish procedures and requirements that are necessary to accomplish a conference's objectives, including identifying appropriate cases for pretrial conferences, identifying who must attend, and determining sanctions for failing to attend. A superior court must conduct at least one pretrial conference.

**(b) Objectives.** The objectives of a pretrial conference may include:

- (1) providing a forum and a process for the fair, orderly, and just disposition of cases without trial;
- (2) permitting the parties, without prejudice to their rights to trial, to engage in disclosure and to conduct negotiations for dispositions without trial;
- (3) discussing compliance with discovery requirements set forth in these rules and constitutional law; and
- (4) enabling the court to set a trial date.

**(c) Duty to Confer.** The court may require the parties to confer and submit memoranda before the conference.

**(d) Scope of Proceeding.** At the conference, the court may:

- (1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate ~~after considering the rights and views of the victim, the victim's right to a speedy trial, and the victim's right to be present at all proceedings;~~ [deleted text is shown in the Rassas/Twist table]

(3) obtain stipulations to relevant facts; and

(4) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving brief pre-voir dire opening statements and preliminary instructions, and managing documents and exhibits effectively during trial.

(e) **Stipulated Evidence.** At a pretrial conference or any time before the start of an evidentiary hearing, the parties may submit any issue to the court for decision based on stipulated evidence.

(f) **Record of Proceedings.** Proceedings at a pretrial conference must be on the record.

#### **Rule 16.4. Dismissal of Prosecution**

(a) **On the State's Motion.** On the State's motion and for good cause, the court, ~~after considering the views of the victim,~~ may order a prosecution dismissed without prejudice if it finds that the dismissal is not to avoid Rule 8 time limits. [deleted text is shown in the Rassas/Twist table]

- *Staff note: Is the above a new substantive provision?*

(b) **On a Defendant's Motion.** On a defendant's motion, the court must order a prosecution's dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law.

(c) **Record.** If the court grants a motion to dismiss a prosecution, it must state on the record its reasons for ordering dismissal.

(d) **Effect of Dismissal.** Dismissal of a prosecution is without prejudice to commencing another prosecution, unless the court finds that the interests of justice require that the dismissal be with prejudice. ~~Before dismissing any case with prejudice, the court must consider a victim's right to justice and due process.~~ [deleted text is shown in the Rassas/Twist table]

- *Staff note: Is the above a new substantive provision?*

(e) **Release of Defendant; Exoneration of Bond.** If a court dismisses a prosecution, the court must order the release of the defendant from custody, unless the defendant also is being held on another charge. It also must exonerate any appearance bond.

**(f) Upon request of the victim, the victim must have an opportunity to confer with the prosecutor about the disposition or dismissal.**

*Staff note: The proposed new section (f) requires a section title. Query: would this provision be more suitably located elsewhere? It includes the opportunity to speak with the prosecutor about disposition, but it's included in a rule that concerns dismissal.*

*Also consider consolidating the proposed amendments to section (a) and section (d) in a single new section.*

### **Rule 17.1. The Defendant's Plea**

#### **(a) Jurisdiction; Personal Appearance.**

(1) *Jurisdiction.* Only a court having jurisdiction to try the offense may accept a plea of guilty or no contest.

(2) *Personal Appearance.* Except as provided in these rules, a court may accept a plea only if the defendant makes it personally in open court. If the defendant is a corporation, defense counsel or a corporate officer may enter a plea for the corporation. For purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.

**(b) Voluntary and Intelligent Plea.** A court may accept a plea of guilty or no contest only if the defendant enters the plea voluntarily and intelligently. Courts must use the procedures in Rules 17.2, 17.3, and 17.4 to assure compliance with this rule.

**(c) No Contest Plea.** A plea of no contest may be accepted only after the court gives due consideration to the parties' views and to the interest of the public in the effective administration of justice.

**(d) Record of a Plea.** The court must make a complete record of all plea proceedings.

**(e) Waiver of Appeal.** A defendant who pleads guilty or no contest in a noncapital case, waives the right to file a notice of appeal and to have an appellate court review the proceedings on a direct appeal under Rule 31. A defendant who pleads guilty or no contest may seek relief under Rule 33 by filing a Notice Requesting Post-Conviction Relief and a Petition for Post-Conviction Relief in the trial court.

#### **(f) Limited Jurisdiction Court Alternatives for Entering a Plea.**

*Staff note: As staff previously noted, the text of Rule 17.1(f)(1) was substantially changed by R-20-0005; [click here](#). The new provisions became effective on January 1, 2021. The text of Rule 17.1(f)(1) shown below, which is the text shown*

*in the appendix to R-20-0031, has therefore been superseded..*

(1) *Telephonic Pleas.*

(A) Eligibility. A limited jurisdiction court has discretion to accept a telephonic plea of guilty or no contest to an offense if the defendant provides written certification and the court finds the defendant:

(i) resides out-of-state or more than 100 miles from the court in which the plea is taken; or

(ii) has a serious medical condition so that appearing in person would be an undue hardship, regardless of distance to the court.

(B) Procedure. The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28. It must include the following:

(i) a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of offenses in the complaint; and

(ii) a certification from a peace officer in the state in which the defendant resides—or, if the defendant is an Arizona resident, a peace officer in the county in which the defendant resides—that the defendant personally appeared before the officer and signed the certification described in (f)(1)(B)(i), and the officer affixes the defendant's fingerprint to the form.

(C) *Judicial Findings.* Before accepting a plea, the court must hold a telephonic hearing with the parties, ~~and the victim if any;~~ **the victim has requested the right to be present and heard and** inform the defendant that the offense may be used as a prior conviction, and find:

(i) it has personally advised the defendant of the items set forth in the form;

(ii) a factual basis exists for believing the defendant is guilty of the charged offenses; and

(iii) the defendant's plea is knowingly, voluntarily, and intelligently entered.

(2) *Plea by Mail.*

(A) Eligibility. A limited jurisdiction court has discretion to accept by mail a written plea of guilty or no contest to a misdemeanor or petty offense if the court finds that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial travel distance, or incarceration. The presiding

judge of each court must establish a policy for the State's participation in pleas submitted by mail.

(B) When a Plea May Not Be Accepted by Mail. A court may not accept a plea by mail in a case:

(i) involving a victim;

(ii) in which the court may impose a jail term, unless the defendant is sentenced to time served or the defendant is currently incarcerated and the proposed term of incarceration would be served concurrently and not extend the period of incarceration;

(iii) in which the court may sentence the defendant to a term of probation;

(iv) involving an offense for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; or

(v) in which this method of entering a plea would not be in the interests of justice.

(C) Procedure. The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28(a). The defendant must sign the plea form, which must include the following:

(i) a statement that the defendant has read and understands the information on the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint and consents to the entry of judgment; and

(ii) a statement for the court to consider when determining the sentence.

(D) Mailing. The court must mail a copy of the judgment to the defendant.

### **Rule 18.1 Trial by Jury.**

(a) **By Jury.** The number of jurors required to try a case and render a verdict is provided by law.

(b) **Waiver.**

(1) *Generally.* The defendant may waive the right to a trial by jury if the State and the court consent. If the State and the court agree, a defendant also may waive the right to have a jury determine aggravation or the penalty in a capital case.

(2) *Voluntariness.* Before accepting a defendant's waiver of a jury trial, the court must address the defendant personally, inform the defendant of the defendant's right to a jury trial, and determine that the defendant's waiver is knowing, voluntary, and intelligent.

(3) *Form of Waiver.* A defendant's waiver of a jury trial must be in writing or on the record in open court.

(4) *Withdrawal of Waiver.* With the court's permission, a defendant may withdraw a waiver of jury trial, but a defendant may not withdraw a waiver after the court begins taking evidence.

(c) **Victim Participation.** Upon request of the victim, the victim must have an opportunity to confer with the prosecutor about trial before the trial begins.

*Staff note: The Rassas/Twist table shows the title of section (c) with strikethrough, but the table does not propose an alternative title.*

#### **Rule 19.7. Victim's Right to Use of Facility Dog.**

(a) **Definition.** For the purposes of this rule, a "facility dog" means a dog that is a graduate of an assistance dog organization that is a member of an organization or entity whose main purpose is to improve the areas of training, placement and utilization of assistance dogs, staff and volunteer education and to establish and promote standards of excellence in all areas of assistance dog acquisition, training, and partnership.

(b) **Mandatory.** A court **must shall** allow a victim who is under eighteen at the time of testifying to have a facility dog accompany the victim while testifying if a facility dog is available.

*Staff note: Use of the word "shall," which is an ambiguous term, is contrary to rule restyling conventions.*

(c) **Discretionary.** A court may **permit allow** any victim who is eighteen years of age or more or witness to use a facility dog.

(d) **Notice.** A party seeking to use a facility dog must file a notice that includes the certification of the dog, the name of the certifying person or entity who certified the dog, and **proof evidence** that the dog is insured.

(e) **Jury Instruction.** The court must take reasonable measures to ensure that the presence of a facility dog does not influence the jury or reflect on the truthfulness of any testimony that is offered during the use of a facility dog including instructing the jury on the role of the facility dog and that the facility dog is a trained animal.

*Staff note: The title of the rule says, “victim’s right to use of facility dog,” but a non-victim witness may also use a facility dog, so the title is incorrect. Perhaps the title could be “use of a facility dog.” Beyond that, the body of the rule repeats what is in A.R.S. section 13-4442. Wouldn’t it be just as useful to reference the statute, as done in current Rule 39(b)(9)?*

### **Rule 19.8. Victim Testimony.**

(a) A victim has the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera.

*Staff note: There is no need to have a designated section (a) if there is no section (b).*

### **Rule 24.3. Modification of Sentence**

**(a) Generally.** No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

**(b) Mitigation.** Unless otherwise provided by law, the court may mitigate a monetary obligation imposed at sentencing. ~~The provisions of Rule 39~~ Victims’ rights apply to any criminal proceeding concerning mitigation of a monetary obligation.

*Staff note: What victims’ rights apply – the right to notice, the right to be heard?*

### **(c) Appeal.**

(1) *Noncapital Cases.* In noncapital cases, the party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision in superior court cases, or no later than 14 days after entry of the decision in limited jurisdiction court cases.

(2) *Capital Cases.* In capital cases, after denying modification of a sentence of death, the court must order the clerk to file a notice of appeal from the denial.

### **Rule 26.4. Presentence Report.**

**(a) When Required.** The court must order a presentence report in every case in which it has discretion over the penalty. However, a presentence report is optional if:

- (1) the defendant may only be sentenced to imprisonment for less than one year;
- (2) the court granted a request under Rule 26.3(a)(1)(B); or
- (3) a presentence report concerning the defendant is already available.

**(b) When Prepared.** A presentence report may not be prepared until after the court makes a determination of guilt or the defendant enters a plea of guilty or no contest.

**(c) When Due.** Unless the court grants a request under Rule 26.3(a)(1)(B) for an earlier sentencing, the presentence report must be delivered to the sentencing judge and to all counsel at least two days before the date set for sentencing. A victim or victim's attorney has the right to a copy of the presentence report provided to the defendant except those parts that are excised by the court or are confidential by law.

**(d) Inadmissibility.** Neither a presentence report nor any statement made in connection with its preparation is admissible as evidence in any proceeding bearing on the issue of guilt.

#### **Rule 26.7. Presentencing Hearing; Prehearing Conference**

**(a) Request for a Presentencing Hearing.** If the court has discretion concerning the imposition of a penalty, it may—and, on any party's request, must—hold a presentencing hearing before sentencing.

**(b) Timing and Conduct of a Presentencing Hearing.**

(1) *Timing.* The court may not hold a presentencing hearing until the parties have had an opportunity to review all reports concerning the defendant prepared under Rules 26.4 and 26.5.

(2) *Presenting Evidence.* At the hearing, the victim must be afforded the right to be heard and any party may introduce any reliable, relevant evidence, including hearsay, to show aggravating or mitigating circumstances, to show why the court should not impose a particular sentence, or to correct or amplify the presentence, diagnostic, or mental health reports.

(3) *Record.* A presentencing hearing must be held in open court, and the court must make a complete record of the proceedings.

**(c) Prehearing Conference.**

(1) *Generally.* On motion or on its own, the court may hold a prehearing conference to determine what matters are in dispute, and to limit or otherwise expedite a presentencing hearing.

(2) *Attendance of Probation Officer.* The court may order the probation officer who prepared the presentence report to attend a prehearing conference.

(3) *Postponing Sentencing and Presentencing Hearing.* At the conference, the court may postpone the date of sentencing for no more than 10 days beyond the maximum extension permitted by Rule 26.3(b), and may delay the presentencing hearing accordingly, to allow the probation officer to investigate any matter the court specifies, or to refer the defendant for mental health examinations or diagnostic tests.

**Rule 26.10. Pronouncement of judgment and sentence**

**(a) Judgment.** In pronouncing judgment on any noncapital count, the court must indicate whether the defendant’s conviction is pursuant to a plea or trial, the offense for which the defendant was convicted, and whether the offense falls in the categories of dangerous, non-dangerous, repetitive, or non-repetitive offenses.

**(b) Sentence.** When the court pronounces sentence, it must:

- (1) give the defendant and the victim an opportunity to address the court;
- (2) state that it has considered the time the defendant has spent in custody on the present charge;
- (3) explain to the defendant the terms of the sentence or probation;
- (4) specify the beginning date for the term of imprisonment and the amount of time to be credited against the sentence as required by law;
- (5) For any felony offense or a violation of §§ 13-1802, 13-1805, 28-1381, or 28-1382, permanently affix the defendant’s right index fingerprint to the sentencing document or order; and
- (6) if the court sentences the defendant to a prison term, the court must send, or direct the clerk to send, to the Department of Corrections the sentencing order and copies of all presentence reports, probation violation reports, and medical and mental health reports prepared for, or relating to, the defendant.

**Rule 26.17. Victim’s Right to Information**

**(a) Sentencing.** After sentencing, the victim has a right to be informed of the

disposition of the case.

**(b) Restitution.** A victim has a right to be informed of the right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking that right.

**(c) Post-Conviction Notification.** A victim has a right to be informed of the procedures to opt into post-conviction notification.

### **Rule 27.3. Modification of Conditions or Regulations**

**(a) By a Probation Officer.** A probation officer may modify or clarify any regulation imposed.

**(b) By the Court.**

(1) *Generally.* Any modification of probation must comply with case law and statutes, due process, and statutory limitations. The court may modify or clarify any condition or regulation of probation after:

(A) Giving notice to the State, the probationer, the probation department, and a victim who has the right to notice under Rule 27.10; ~~and~~

(B) Considering an ~~and~~ investigation report, when required by (b)(3) of this rule; ~~and~~

(C) ~~The Due Process Rights of the Victim. The Due Process Rights of the victim include giving the victim notice of~~ after ensuring the victim, if requested, received notice and an opportunity to be heard at any proceedings involving a probation modification and an opportunity to be heard by the court regarding the modification and of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution. ~~[deleted text is shown in the Rassas/Twist table]~~

(2) *Who May Request Modification or Clarification.* At any time before the probationer's absolute discharge, a probationer, probation officer, the State, or any other person the court designates, may ask the court to modify or clarify any condition or regulation.

(3) *Required Investigation Report.* Upon any request for modification from supervised to unsupervised probation, the probation department must prepare and file an investigative report describing the probationer's compliance with conditions and regulations and recommending either for or against a request to modify.

(4) *Restitution.* At any time before the probationer's absolute discharge, persons

entitled to restitution under a court order may ask the court, based on changed circumstances, to modify or clarify the manner in which restitution is paid.

(5) *Hearing*. The court may hold a hearing on any request for modification or clarification under (c)(2) or (c)(3).

**(c) Written Copy and Effect.** The probationer and the probation department must be given a written copy of any modification or clarification of a condition or regulation of probation. A modification of a regulation may go into effect immediately. An oral modification may not be the sole basis for revoking probation unless the condition or regulation is in writing and both the probationer and the probation department received a copy before the violation.

#### **Rule 27.4. Early Termination of Probation**

##### **(a) Discretionary Probation Termination.**

(1) *Generally*. At any time during the term of probation, the court may terminate probation and discharge the probationer as provided by law after:

(A) Giving notice to the State, the probationer, the probation department, and the victim who has the right to notice under Rule 27.10; ~~and~~

(B) Considering an investigation report; ~~and~~

~~(C) Considering the rights and views of the victim. [sic] [deleted text is shown in the Rassas/Twist table]~~

(2) *Who May Request Termination*. At any time before a probationer's discharge from probation, the court may terminate probation and discharge the probationer on motion of the probationer, probation department, the State or the court.

(3) *Required Investigation Report*. Upon any request for termination, the probation department must prepare and file an investigative report describing the probationer's compliance with conditions and regulations recommending either for or against a request to modify.

(4) *Hearing*. The court may hold a hearing on any request for early termination.

**(b) Earned Time Credit Probation Termination.** The court may reduce the term or duration of supervised probation for earned time credit as provided by law.

**(c) Written Copy and Effect.** The court must provide probationer and the probation department a copy of the order terminating probation and specifying the effective date.

#### **Rule 27.7. Initial Appearance After Arrest**

**(a) Probationer Arrested.** If a probationer is arrested on a warrant issued under Rule 27.6 or is arrested by the probationer's probation officer under A.R.S. § 13-901(D), the probationer must be taken without unreasonable delay to the court with jurisdiction over the probationer.

**(b) Notice.** If a probationer is arrested on a warrant issued under Rule 27.6, the court must immediately notify the probationer's probation officer of the initial appearance.

**(c) Procedure.** At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and make a release determination, after considering the rights and views of the victim providing the victim with the right to notice and the right to be heard. [deleted text is shown in the Rassas/Twist table]

#### **Rule 27.8. Probation Revocation**

##### **(a) Revocation Arraignment.**

(1) *Timing.* The court must hold a revocation arraignment no later than 7 days after the summons is served or after the probationer's initial appearance under Rule 27.7.

(2) *Conduct of the Proceeding.* The court must inform the probationer of each alleged probation violation, and the probationer must admit or deny each allegation.

(3) *Setting a Violation Hearing.* If the probationer does not admit to a violation or if the court does not accept an admission, the court must set a violation hearing, unless both parties agree that a violation hearing may proceed immediately after the arraignment.

##### **(b) Violation Hearing.**

(1) *Timing.* The court must hold a hearing to determine whether a probationer has violated a written condition or regulation of probation no less than 7 and no more than 20 days after the revocation arraignment, unless the probationer in writing or on the record requests, and the court agrees, to set the hearing for another date.

(2) *Probationer's Right to Be Present.* The probationer and the victim ~~has~~ have a right to be present at the violation hearing. If the probationer was previously arraigned under Rule 27.8, the hearing may proceed in the probationer's absence under Rule 9.1.

(3) *Conduct of the Hearing.* A violation must be established by a preponderance of

the evidence. Each party may present evidence and has the right to cross-examine any witness who testifies. The court may receive any reliable evidence, including hearsay, that is not legally privileged.

(4) *Admissions.* An admission by the probationer at any hearing in the same case relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing in which the admission was made.

(5) *Findings and Setting a Disposition Hearing.* If the court finds that the probationer committed a violation of a condition or regulation of probation, it must make specific findings of the facts that establish the violation and then set a disposition hearing.

**(c) Disposition Hearing.**

(1) *Timing.* The court must hold a disposition hearing no less than 7 nor more than 20 days after making a determination that the probationer has violated a condition or regulation of probation.

(2) *Disposition.* Upon finding that the probationer violated a condition or regulation of probation, the court may revoke, modify, or continue probation. If the court revokes probation, the court must pronounce sentence in accordance with Rule 26. The court may not find a violation of a condition or regulation that the probationer did not receive in writing.

**(d) Waiver of Disposition Hearing.** If a probationer admits, or the court finds, a violation of a condition or regulation of probation, the probationer may waive a disposition hearing. If the court accepts the waiver, it may proceed immediately to a disposition under (c)(2).

**(e) Disposition upon Determination of Guilt for a Later Offense.** If a court makes a determination of guilt under Rule 26.1(a) that the probationer committed a later criminal offense, the court need not hold a violation hearing and may set the matter for a disposition hearing at the time set for entry of judgment on the criminal offense.

**(f) Record.** The court must make a record of the revocation arraignment, violation hearing, and disposition hearing.

**Rule 27.10. Victims' Rights in Probation Proceedings.**

The court must afford a victim who has requested notice under Rule 39 the opportunity to be present and to be heard at any proceeding involving:

- (a) the termination of any type of probation;
- (b) probation revocation dispositions;
- (c) a modification of probation or intensive probation conditions or regulations that would substantially affect the probationer's contact with, or safety of, the victim or that would affect restitution or incarceration status; or
- (d) transfers of probation jurisdiction.

**Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline**

(a) **Suspension of Rule 31.** For good cause, an appellate court, on motion or on its own, may suspend any provision of this rule in a particular case, and may order such proceedings as the court directs.

(b) **Suspension of an Appeal.**

(1) *Generally.* An appellate court on motion or on its own, ~~after considering the rights of the victim including the right to prompt and final conclusion of the case after conviction and sentence,~~ may suspend an appeal if a motion under Rule 24 or a petition under Rule 32 is pending to permit the superior court to decide those matters. ~~[deleted text is shown in the Rassas/Twist table]~~

(2) *Notice.* If an appeal is suspended, the appellate clerk must notify the parties, the superior court clerk, and, if certified transcripts have not yet been filed, the certified reporters or transcribers.

(3) *Later Notification.* No later than 20 days after the superior court's decision on the Rule 24 motion or Rule 32 petition, the appellant must file with the appellate clerk either a notice of reinstatement of the appeal or a motion to dismiss the

appeal under Rule 31.24(b), and must serve a copy of such documents on all persons entitled to notice under (b)(2).

(c) **New Matters.** Other than a petition for post-conviction relief that is not otherwise precluded under Rule 32.2, a party to an appeal may not, without the appellate court's consent, file any new matter in the superior court later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed.

(d) **Computation of Time.** Rule 1.3(a) governs the computation of any time period in Rule 31, an appellate court order, or a statute regarding a criminal appeal, except that 5 calendar days are not added to the time for responding to an electronically served

document.

**(e) Modifying a Deadline.** A party seeking to modify a deadline in the appellate court must obtain an appellate court order authorizing the modified deadline. For good cause and after considering the rights of the victim, an appellate court may shorten or extend the time for doing any act required by Rule 31, a court order, or an applicable statute.

### **Rule 32.7. Petition for Post-Conviction Relief**

#### **(a) Deadlines for Filing a Petition for Post-Conviction Relief.**

##### *(1) Noncapital Cases.*

(A) Generally. In every case except those in which the defendant was sentenced to death:

(i) Appointed counsel must file a petition no later than 60 days after the date of appointment.

(ii) A self-represented defendant must file a petition no later than 60 days after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

(B) Time Extensions. For good cause and after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence, the court may grant a defendant in a noncapital case a 30-day extension to file the petition. The court may grant additional 30-day extensions only on a showing of extraordinary circumstances.

##### *(2) Capital Cases.*

(A) Generally. In a capital case, the defendant must file a petition no later than 12 months after the first notice is filed.

(B) Filing Deadline for Any Successive Petition. On a successive notice in a capital case, the defendant must file the petition no later than 30 days after the notice is filed.

(C) Time Extensions. For good cause, the court may grant a capital defendant one 60-day extension in which to file a petition. After considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence, the court may grant additional extensions for good cause.

**(b) Form of Petition.** A petition for post-conviction relief should contain the information shown in Rule 41, Form 25, and must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities.

**(c) Length of Petition.**

(1) *Non-Capital Cases.* In noncapital cases, the petition must not exceed 28 pages.

(2) *Capital Cases.* In capital cases, the petition must not exceed 160 pages.

**(d) Declaration.** A petition by a self-represented defendant must include a declaration stating under penalty of perjury that the information contained in the petition is true to the best of the defendant's knowledge and belief.

**(e) Attachments.** The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the allegations in the petition.

**(f) Effect of Non-Compliance.** The court will return to the defendant any petition that fails to comply with this rule, with an order specifying how the petition fails to comply. The defendant has 40 days after that order is entered to revise the petition to comply with this rule, and to return it to the court for refiling. If the defendant does not return the petition within 40 days, the court may dismiss the proceeding with prejudice. The State's time to respond to a refiled petition begins on the date of refiling.

**Rule 32.9. Response and Reply; Amendments**

**(a) State's Response.**

(1) *Deadlines.* The State must file its response no later than 45 days after the defendant files the petition. The court for good cause may grant the State a 30-day extension to file its response and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim-, including the right to a prompt and final conclusion after conviction and sentence.

(2) *Contents.* The State’s response must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition’s allegations. The State must plead and prove any ground of preclusion by a preponderance of the evidence.

**(b) Defendant’s Reply.** The defendant may file a reply 15 days after a response is served. The court for good cause may grant one extension of time, and additional extensions only for extraordinary circumstances-after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence.

**(c) Length of Response and Reply. (1) Non-Capital Cases.** In noncapital cases, the State’s response must not exceed 28 pages, and defendant’s reply, if any, must not exceed 11 pages.

**(2) Capital Cases.** In capital cases, the State’s response must not exceed 160 pages, and defendant’s reply must not exceed 80 pages.

**(d) Amending the Petition.** After the defendant files a petition for post-conviction relief, the court may permit amendments to the petition only for good cause.

### **Rule 33.7. Petition for Post-Conviction Relief**

#### **(a) Deadlines for Filing a Petition for Post-Conviction Relief.**

(1) *Defendant with Counsel.* Appointed counsel must file a petition no later than 60 days after the date of appointment.

(2) *Self-Represented Defendant.* A self-represented defendant must file a petition no later than 60 days after the notice is filed or the court denies the defendant’s request for appointed counsel, whichever is later.

(3) *Time Extensions.* For good cause and after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence, the court may grant a defendant a 30-day extension to file the petition. The court may grant additional 30-day extensions only on a showing of extraordinary circumstances.

**(b) Form of Petition.** A petition for post-conviction relief should contain the information shown in Rule 41, Form 25, and must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities.

**(c) Length of Petition.** The petition must not exceed 28 pages.

**(d) Declaration.** A petition by a self-represented defendant must include a declaration stating under penalty of perjury that the information contained in the petition is true to the best of the defendant's knowledge or belief.

**(e) Attachments.** The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the allegations in the petition.

**(f) Effects of Non-Compliance.** The court will return to the defendant any petition that fails to comply with this rule, with an order specifying how the petition fails to comply. The defendant has 40 days after that order is entered to revise the petition to comply with this rule, and to return it to the court for refiling. If the defendant does not return the petition within 40 days, the court may dismiss the proceeding with prejudice. The State's time to respond to a refiled petition begins on the date of refiling.

### **Rule 33.9. Response and Reply; Amendments**

#### **(a) State's Response.**

(1) *Deadlines.* The State must file its response no later than 45 days after the defendant files the petition. The court for good cause may grant the State a 30-day extension to file its response and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence.

(2) *Contents.* The State's response must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition's allegations. The State must plead and prove any ground of preclusion by a preponderance of the evidence.

**(b) Defendant's Reply.** The defendant may file a reply 15 days after a response is served. The court for good cause may grant one extension of time, and additional extensions only for extraordinary circumstances.

**(c) Length of Response and Reply.** The State's response must not exceed 28 pages, and defendant's reply, if any, must not exceed 11 pages.

**(d) Amending the Petition.** After the defendant files a petition for post-conviction relief, the court may permit amendments to the petition only for good cause.

### **Rule 39. Victims' Rights**

*Staff note: Rule 39 repeats considerable language that is contained in the previous rules. See also the note in subpart (a)(3) below. It appears that the Rassas/Twist table had uncertainty about whether Rule 39 was retained or eliminated.*

#### **(a) Definitions and Limitations.**

(1) *Criminal Proceeding.* As used in this rule, a “criminal proceeding” is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

(2) *Identifying and Locating Information.* As used in this rule, “identifying and locating information” includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

(3) *Limitations.*

(A) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402, 13-4402.01, and 13-4433.

(B) Legal Entities. The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

(C) Conflicts Between Rule Provisions. If any provision of Rule 39 conflicts with a rule provision where a victim’s right is addressed, the individual rule provision where the victim’s right has been integrated shall prevail over Rule 39. [The Rassas/Twist table says, “this is new but necessary if Rule 39 is kept.”]

**(b) Victims' Rights.** These rules must be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule, a victim has and is entitled to assert each of the following rights:

(1) the right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

(2) the right to notice regarding the rights available to a victim under this rule and any other provision of law, and the court must prominently post or read the statement of rights in accordance with A.R.S. § 13-4438;

(3) upon request, the right to reasonable notice of the date, time, and place of any criminal proceeding in accordance with A.R.S. § 13-4409;

(4) the right to be present at all criminal proceedings;

- (5) upon request, the right to be informed of any permanent or temporary release or any proposed release of the defendant;
- (6) upon request, the right to confer with the State regarding:
- (A) any decision about the preconviction release of the defendant;
  - (B) any pretrial resolution including any diversion program or plea offer;
  - (C) a decision not to initiate a criminal prosecution or to dismiss charges; and
  - (D) the trial, before the trial begins;
- (7) upon request, the right to notice of and to be heard at any criminal proceeding involving:
- (A) the initial appearance;
  - (B) the accused's post-arrest release or release conditions;
  - (C) a proposed suspension of Rule 8 or a continuance of a trial date;
  - (D) the court's consideration of a negotiated plea resolution;
  - (E) sentencing;
  - (F) the modification of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution;
  - (G) the early termination of probation;
  - (H) a probation revocation disposition; and
  - (I) post-conviction release.
- (8) the right to be accompanied at any interview, deposition, or criminal proceeding by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate, unless testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt;
- (9) if the victim is eligible, the right to the assistance of a facility dog when testifying as provided in A.R.S. § 13-4442;
- (10) the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera;
- (11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information.
- (A) Exception. A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights. If disclosure is

made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not convey the information to the defendant without prior court authorization.

(B) Redactions. Rule 15.5(e) applies to information withheld under this rule;

(12) the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on the defendant's behalf, and:

(A) the defense must communicate requests to interview a victim to the prosecutor, not the victim;

(B) a victim's response to such requests must be communicated through the prosecutor; and

(C) if there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview;

(13) at any interview or deposition conducted by defense counsel, the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse;

(14) the right to terminate an interview at any time or refuse to answer any question during the interview;

(15) the right to a copy of any presentence report provided to the defendant except those parts that are excised by the court or are confidential by law;

(16) the right to be informed of the disposition of the case;

(17) the right to a trial or disposition and a prompt and final conclusion of the case after conviction and sentence; and

(18) the right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking the right.

**(c) Exercising the Right to Be Heard.**

(1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This subsection does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

(2) *Victims in Custody*. If a victim is in custody for an offense, the victim's right to be heard under this rule is satisfied by affording the victim the opportunity to submit a written statement.

(3) *Victims Not in Custody*. A victim who is not in custody may exercise the right to be heard under this rule through an oral statement or by submitting a written or recorded statement.

(4) *At Sentencing*. The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

**(d) Assistance and Representation.**

(1) *Right to Prosecutor's Assistance*. A victim has the right to the prosecutor's assistance in asserting rights enumerated in this rule or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.

(2) *Standing*. The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by this rule or by any other provision of law.

(3) *Conflicts*. If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information for the appropriate state or local bar association.

(4) *Representation by Counsel*. In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.

**(e) Victim's Duties.**

(1) *Generally*. Any victim desiring to claim the notification rights and privileges provided in this rule must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

(2) *Legal Entities*.

(A) Designation of a Representative. If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.

(B) Notice. The prosecutor must notify the defendant and the court if the prosecutor receives notice under (e)(2)(A).

(C) Effect. After notice is provided under (e)(2)(B), only the representative designated under (e)(2)(A) may assert the victim's rights on behalf of the legal entity.

(D) Changes in Designation. The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

**(f) Waiver.** A victim may waive the rights and privileges enumerated in this rule. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under this rule.

**(g) Court Enforcement of Victim Notice Requirements.**

(1) *Court's Duty to Inquire.* At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.

(2) *If the Victim Has Been Notified.* If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (d)(1).

(3) *If the Victim Has Not Been Notified.* If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

**(h) Appointment of Victim's Representative.** Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

**From: Staff**

**To: CRV**

**Date: March 19, 2021**

**Re: Draft Rule 1.3**

**Introduction.** AVCV's rule petition number R-20-0031 proposed a new Rule 1.10, which the petition contended would "place exercising the right to be heard in a more prominent place." (Petition at page 15, lines 20-22.)

Staff drafted a new Rule 1.3 as another option for the committee's consideration. Staff submits that Rule 1.3 has the following benefits.

**(1) Rule 1.3 is prominent.** If the purpose of Rule 1.10 is to relocate certain victims' rights provisions in a "more prominent place," staff believes that putting those rights at the very end of Rule 1 – after lengthy provisions in Rules 1.5, 1.6, and 1.7 concerning "interactive audiovisual systems," "form of documents," and "filing and service of documents" – does not adequately achieve that goal. Rule 1.3, by comparison, would be in a "more prominent place." Draft Rule 1.3 would come directly after Rules 1.1 ("scope") and 1.2 ("purpose and construction"). (Rules 1.1 and 1.2 are short provisions; combined, they are only 3 sentences.) Simply put, Rule 1.3 would be significantly more conspicuous than Rule 1.10. (In conjunction with proposed new Rule 1.3, staff would renumber existing Rule 1.3 ("computation of time") as Rule 1.10.)

**(2) Rule 1.3 is concise.** Proposed Rule 1.10 imports a large number of provisions that are currently contained in Rule 39. As such, Rule 1.10 is a lengthy and detailed rule.

Draft Rule 1.3 is comparatively more concise. This more concise rule also accomplishes these objectives.

- (a)** It clarifies that a victim is not a party, but rather, is a participant with specified rights. This would eliminate the need for AVCV's proposed amendment to Rule 1.2(a)(3).
- (b)** It adds in subpart (b)(4) a victim's right to notice of a preliminary hearing, which is not included in the current rules but is included in AVCV's proposed amendments to Rule 5. Rule 1.3, subpart (b)(3), also adds a reference to victims'

rights under Rule 8.1(e), which is another amendment proposed by AVCV's petition.

- (c) It includes section (f), which summarizes in a single section the duties of the court, one of which – to provide appropriate safeguards – is statutory but is not contained in the current rules.
- (d) It is formatted so that a victim's rights are readily visible and comprehensible. It also uses relatively simple language. Accordingly, it is user-friendly for victims who are unrepresented by counsel.

**(3) Rule 1.3 is a user roadmap.** Rule 1.3 serves as an introduction to victims' rights. As an introductory rule, Rule 1.3 contains multiple cross-references to other rules, where the reader can find more detailed provisions. Rule 1.3, unlike Rule 1.10, serves as an overview and a guide to pertinent rules in lieu of replacing them.

Rule 1.3's enumeration of proceedings in which the victim has a right to notice and to be heard contains specific references to the rule governing the underlying proceeding (e.g., the right to be heard at the initial appearance includes a reference to Rule 4.) These cross-references could be added to the corresponding list in Rule 39, but Rule 39 appears at the end of the Criminal Rules (in a Part IX titled "Miscellaneous.") The purpose of having these cross-references in Rule 1.3 is to draw attention to these provisions in a single location at the beginning of the rules, rather than at the end.

**(4) Rule 1.3 would not conflict with other rules.** Draft Rule 1.3, like proposed Rule 1.10, would leave Rule 39 in place. However, Rule 1.3 does so without the need to include a provision, as AVCV's proposed amendment to Rule 39 does, concerning the potential of conflicting rules. Rule 1.3 does not include such a provision because Rule 1.3 does not require amendments to various other criminal rules.

**(5) Rule 1.3 would facilitate training.** Rule 39 would remain fully intact. Leaving Rule 39 intact would facilitate training and education, a benefit of retaining this comprehensive rule that was noted at previous committee meetings.

**Conclusion.** Staff acknowledges that draft Rule 1.3 does not accomplish the goal of inserting victims' rights provisions in the rules in which those rights apply. Notwithstanding, staff asks CRV members to consider whether draft Rule 1.3 has the advantages outlined in this memo and whether it is an appropriate alternative to the rule amendments proposed by R-20-0031. Rule 1.3 could also be further modified.

### **Rule 1.3. Victim Participation in Criminal Proceedings**

#### **(a) Meaning of Terms**

- (1) ***Criminal Proceeding.*** A “criminal proceeding” has the meaning provided in Rule 39(a)(1).
- (2) ***Parties.*** The “parties” in a criminal case are identified in Rule 1.4(d).
- (3) ***Victim.*** “Victim” has the meaning provided in Rule 1.4(b).

**(b) Victim’s Rights.** A victim is not a party in a criminal proceeding. However, a victim has the right to participate in a criminal proceeding as provided by this rule and Rule 39, and as specifically provided in other rules. A victim’s right to participate includes but is not limited to the following:

- (1) ***The Right to Fair Treatment.*** A victim has the right to be treated fairly and respectfully during a criminal proceeding, as provided in Rule 39(b)(1).
- (2) ***The Right to be Present.*** A victim has the right to be present at all criminal proceedings, as provided in Rule 39(b)(4).
- (3) ***The Rights to Notice and to be Heard.*** A victim has the rights, as provided in Rule 39(b)(7), to reasonable notice and to be heard at any of the following proceedings:
  - (A) an initial appearance under Rule 4;
  - (B) any hearing concerning the defendant’s post-arrest release or release conditions, including but not limited to a hearing under Rule 7;
  - (C) a proposed suspension of Rule 8 pursuant to Rule 8.1(e), or a continuance of the trial date pursuant to Rule 8.5;
  - (D) the court’s consideration of a plea agreement pursuant to Rule 17.4, or a telephonic plea pursuant to Rule 17.1;
  - (E) the defendant’s sentencing pursuant to Rule 26.10;
  - (F) the modification of any term, condition, or regulation of probation pursuant to Rule 27.3, if the modification will substantially (“could” substantially?) affect the victim’s safety, the defendant’s contact with the victim, or restitution;
  - (G) early termination of probation pursuant to Rule 27.4, a probation revocation disposition pursuant to Rule 27.8; or a transfer of probation jurisdiction pursuant to Rule 27.2; [see further Rule 27.10] or

(H) a hearing concerning the defendant's post-conviction release.

(4) ***The Right to Notice of a Preliminary Hearing.*** A victim has the right to reasonable notice of a preliminary hearing that is set pursuant to Rule 5.

(5) ***The Right to Confer with the Prosecutor.*** A victim has a right to confer with the prosecutor about a decision not to file or to dismiss charges, and about the defendant's pre-conviction release, pretrial resolution of the case, and trial, as provided in Rule 39(b)(6).

(6) ***Rights Regarding Restitution.*** A victim has the right to present information and make argument to the court, personally or through counsel, at any proceeding to determine restitution.

(c) **Victim's Exercise of the Right to be Heard.** A victim may exercise the right to be heard in the manner provided by Rule 39(c).

(d) **Victim's Right to the Prosecutor's Assistance.** Pursuant to Rule 39(d), a victim has the right to the prosecutor's assistance in asserting the rights enumerated in this rule or Rule 39, or as otherwise provided by law.

(e) **Victim's Right to Representation by Counsel.**

(1) Pursuant to Rule 39(d), a victim has the right to be represented by personal counsel of the victim's choice in asserting any of the rights enumerated in this rule or Rule 39, or as otherwise provided by law.

(2) If a victim's counsel files a notice of appearance, every party must endorse the victim's counsel on each document the party files with the court.

(3) A victim's counsel is presumptively permitted to sit before the bar when a victim's constitutional or statutory rights are directly at issue in a court proceeding. [from *E.H. v Slayton*, 8/4/2020]

(4) When a victim's counsel is present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights.

(f) **Court Duties.**

(1) Pursuant to A.R.S. § 13-4438 and Rule 39(b)(2), the court must prominently post or read a statement of the victim's rights.

(2) Pursuant to Rule 39(g), the court has a duty to enforce victim notice requirements.

- (3) Pursuant to A.R.S. § 13-4431, before, during, and immediately after any court proceeding, the court must provide appropriate safeguards to minimize the contact that occurs between the victim—including the victim's immediate family, and the victim's witnesses—and the defendant, the defendant's immediate family, and defense witnesses.

Rule #	Comment	Complete?
1.2	Members agreed to revise 1.2(a) (“generally”) and to adopt a new 1.2(b) (“construction of victims’ rights.”) Proposed Rule 1.2(c) (“limitations on victims’ rights”) was duplicated in AVCV’s draft of Rule 1.4, and staff removed the duplicate provisions in Rule 1.4. However, at the May 21 meeting, members did not reach consensus on where the content of 1.2(c) should be located, or the sequence of its subparts.	No
1.3	Minor change was adopted.	Yes
1.4	1.4 now includes definitions relocated from Rule 39.	Yes
1.5	Minor change was adopted.	Yes
1.7	Minor changes were adopted.	Yes
1.8	Minor changes were adopted. Staff subsequently added a phrase that cross-references a new Rule 6.3(a)(3) (see below), and members’ approval of this addition is pending.	No
1.9	Staff was directed on May 21 to draft new text. Consideration of the new text is pending. Staff also added a new but related provision to Rule 1.10, subpart (b)(6).	No
--	<b>Break point:</b> end of the April 16 meeting	--
--	<b>Note:</b> At the May 21 meeting, members began using a document that integrated the AVCV amendments and the amendments proposed in the Rassas/Twist table.	--
1.10	1.10 is a new rule that incorporates current Rule 39(c) through (h). At the May 21 meeting, members deferred consideration of 1.10. (Staff also recently added a new subpart (b)(6); see the comment to Rule 1.9.)	No
4.1	Staff was directed on May 21 to draft new text. Consideration of the new text is pending.	No
4.2	A minor change was adopted. <b>Note:</b> A pending rule petition, R-21-0022, could affect portions of <b>Rules 4, 6, and 7.</b>	Yes
5.1	Minor changes were adopted.	Yes
5.4	Minor changes were adopted.	Yes
5.8	After the May 21 meeting, staff added Judge Starr’s verbally proposed language to Rule 5.8(a)(3), which members favored but which was not approved in written form. *	Yes *

6.3	At the May 21 meeting, members modified and then approved the changes to section (c) on withdrawal. After the May 21 meeting, and in conjunction with staff's revisions to 1.8 noted above, staff added a subpart (a)(3) that would require victim's counsel to file a notice of appearance before representing a victim in court. Consideration of that new subpart is pending.	No
--	<b>Break point:</b> end of the May 21 meeting	--
6.7	A potentially controversial provision would require the court--when appointing an investigator, expert, or mitigation specialist--to consider the victim's right to speedy trial and impose deadlines on the appointed individual.	No
--	<b>Note:</b> Members discussed <b>Rules 7, 8, and 15</b> at the March 19 meeting, but they took no action on these three rules. See the March 19 meeting minutes.	--
7.2	Members did not reach consensus on the proposed amendments at the March 19 minutes. Staff believes that the proposed amendments might be correct, but they also might be redundant.	No
7.3	Members discussed edits to the "no contact" provision on March 19 but they did not make any changes.	No
7.4	This rule includes a staff note regarding the content of the proposed amendment. At the March 19 discussion, there were different versions of this rule in the AVCV appendix and the Rassas/Twist table, but those versions have now been integrated.	No
7.5	This rule was not discussed on March 19. Question: is the word "victim," which would be added, already encompassed in the current phrase "the community?" See the following excerpt from the 4/17/17 minutes of the Criminal Rules Task Force: "... the rule already refers to 'any other person or the community,' which includes the victim." (These minutes were included in the 1/26/21 CRV meeting packet.)	No
7.6	See the discussion of the issue regarding bond forfeitures in the March 19 meeting minutes.	No
8.1	Brief discussion of this rule on March 19, no resolution	No
8.2	Same comment as 8.1.	No
8.5	Same comment as 8.1. A staff note indicates that the AVCV version omitted a sentence in the current rule, and that sentence would appear to obviate the need for the proposed amendment.	No

10.2	The proposed amendment would require service of a notice of change of judge on victim's counsel. However, the previous amendments to 1.7(c) would seem to make this unnecessary.	No
10.3	The proposed amendment would give the victim a right to be heard on a change of the location of trial. Although that might be a good practice. would this be a substantive change?	No
15.1	At the March 19 meeting, "the Chair expressed caution concerning this amendment because case law has addressed what is protected; a pending Supreme Court opinion also might be pertinent."	No
15.2	Members reviewed this provision on March 19, but they did not comment.	No
15.3	The March 19 minutes noted awkward language in 15.3(a) and potential cross-references. Members discussed but did not reconcile different views on the proposed amendments to 15.3(g).	No
15.6	Different views, no consensus.	No
16.3	AVCV added text, but the Rassas/Twist table deleted it.	No
16.4	Same comment as 16.3 with regard to 16.4(a) and (d). A proposed new 16.4(f) might be better located elsewhere.	No
17.1	As noted in staff's annotations to the rules, Rule 17.1(f) was substantially amended by R-20-0031. The R-20-0031 amendments add a new subpart that says, "Victim's Rights. In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom." This amendment may obviate the need for the AVCV's amendment.	No
18.1	The proposed provision, which gives a victim a right to confer with the prosecutor before a trial, derives from Rule 39(b)(6)(D). However, the current provision says "trial," whereas the AVCV's proposed provision is in a rule on trial by jury. (Rule 18 governs "trial by jury," and Rule 19 concerns "trial.")	No
19.7	The proposed new rule concerning a facility dog borrows from A.R.S. § 13-4442. Would a reference to the statute therefore be sufficient?	No
19.8	Minor format issue (there is a section (a) but no section (b).) The amendment derives from 39(b)(10).	No
24.3	Proposed change is minor (substitutes "victims' rights" for a reference to Rule 39.)	No
26.4	Derives from 39(b)(15) and probably isn't controversial.	No

26.7	This proposed amendment derives from 39(b)(7)(E) and 39(c)(4). It probably isn't controversial but the way the amendment is phrased might be misleading. (I.e., the phrasing does not artfully connect a victim's right to be heard and the right to introduce evidence.) The proposed amendment also duplicates what is in proposed Rule 1.10(a)(4) and (b)(4). The proposed amendment to 26.7 on a presentencing hearing probably should be considered in conjunction with the amendment to 26.10, regarding sentencing.	No
26.10	See the comment to 26.7.	No
26.17	This is an entirely new rule. The Rassas/Twist table indicates sources for the proposed provisions in current Rule 39, although that might be a matter of interpretation.	No
27.3	Proposed amendment is wordy.	No
27.4	AVCV added text, but the Rassas/Twist table removed it.	No
27.7	Question: does "victim" in this amendment refer to the victim of the original offense or the victim of a probation violation?	No
27.8	Same question as 27.8.	No
27.10	The proposed amendment is minor (it would delete a reference to Rule 39).	No
31.3	AVCV added text, but the Rassas/Twist table removed it.	No
32.7	The current rule requires the court to consider the rights of a victim on a motion to extend time in a capital case. The proposed amendment adds "including the right to a prompt and final conclusion after conviction and sentence."	No
32.9	See comment to 32.7.	No
33.7	See comment to 32.7.	No
33.9	See comment to 32.7.	No
39	Members have not yet determined whether they will recommend the deletion of Rule 39, and if so whether the deletion will be complete or partial, or whether they will retain Rule 39 in its current form.	No

**Summary as of June 15:**

- 8** Number of rules discussed and completed at the April and May meetings  
**5** Number of rules discussed but not completed at the April and May meetings  
**12** Number of rules discussed but not completed at the March meeting (Rules 7, 8, and 15)  
**26** Number of rules not yet discussed or completed

<b>Total number of rules</b>	<b>51</b>
<b>Rules completed</b>	<b>8</b>
<b>Rules pending completion</b>	<b>43</b>
<b><i>October 1, 2021: CRV report and recommendations are due</i></b>	