Rule 32 Task Force

Meeting Agenda

Friday, March 23, 2018
10:00 a.m. to 2:00 p.m.

State Courts Building * 1501 West Washington * Conference Room 230 * Phoenix, AZ

Item no. 1	**Call to Order** **Introductory remarks**	*Hon. Joseph Welty, Chair*
Item no. 2	**Review of Administrative Orders nos. 2018-07 and 2018-18** **Approval of Rules for Conducting Task Force Business**	*Judge Welty*
Item no. 3	**Roundtable discussion of issues and concerns regarding Rule 32, including but not limited to** - **Issues and concerns identified in the meeting materials** - **Recommendations for procedural and substantive changes, and other ways to improve the process** - **Distinctions, if any, between Rule 32 proceedings in general and limited jurisdiction courts**	*All*
Item no. 4	**Roadmap** - **Overview** - **Schedule of future meeting dates**	*Judge Welty*
Item no. 5	**Call to the Public** **Adjourn**	*Judge Welty*

The Chairs 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.

Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ESTABLISHMENT OF THE	)	Administrative Order
TASK FORCE ON RULE 32 OF THE	)	No. 2018 - 07
ARIZONA RULES OF CRIMINAL	)	
PROCEDURE AND APPOINTMENT	)	
OF MEMBERS	)	
	)	

By entry of Administrative Order No. 2015-123, this Court established a Task Force for restyling the Arizona Rules of Criminal Procedure. That Task Force subsequently filed, and this Court adopted, a restyled set of Rules of Criminal Procedure, R-17-0002. However, that Task Force advised the Court that Rule 32 provisions concerning petitions for post-conviction relief might benefit from substantive changes that went beyond the restyling revisions.

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

IT IS ORDERED that:

1. ESTABLISHMENT: The Task Force on Rule 32 of the Arizona Rules of Criminal Procedure is established.

2. PURPOSE: The Task Force shall review Rule 32 of the Arizona Rules of Criminal Procedure and identify possible substantive changes that improve upon the objectives of Rule 32 and the post-conviction relief process. The Task Force shall seek input from various interested persons and entities with the goal of submitting a rule petition by January 10, 2019, with respect to any proposed rule changes.

3. MEMBERSHIP: The individuals listed in Appendix A are appointed as members of the Task Force for a term beginning immediately and ending December 31, 2019. The Chief Justice may appoint additional members as may be necessary.

4. MEETINGS: Task Force meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.

5. STAFF: The Administrative Office of the Courts shall provide staff for the Task Force and shall assist the Task Force in developing recommendations and preparing any necessary reports and petitions.

Dated this 24th day of January 2018.

SCOTT BALES
Chief Justice

Membership List
Task Force on Rule 32 of the Arizona Rules of Criminal Procedure

Chair

Judge Joseph Welty
Superior Court in Maricopa County

Members

Judge James Beene
Court of Appeals, Division One

Judge Kent Cattani
Court of Appeals, Division One

Judge Peter Eckerstrom
Court of Appeals, Division Two

Judge Kellie Johnson
Superior Court in Pima County

Hon. Mark Moran
Superior Court in Coconino County

Judge Sam Myers
Superior Court in Maricopa County

Judge James Sampanes
Phoenix Municipal Court

Judge Danielle Viola
Superior Court in Maricopa County

Tim Agan
Arizona Justice Project

David Euchner
Pima County Public Defender's Office

Jennifer Garcia
Federal Public Defender's Office

Lacey Gard
Office of the Arizona Attorney General

Karen Kemper
Office of the Maricopa County Attorney

Prof. Jason Kreag
Rogers College of Law

Dan Levey
Arizona Crime Victim Rights Law Group

David Rodriguez
Pinal County Attorney's Office

Mikel Steinfield
Office of the Maricopa County Public Defender

Staff

Beth Beckmann
Chief Staff Attorney, Division Two

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
APPOINTMENT OF MEMBERS TO	)	Administrative Order
THE TASK FORCE ON RULE 32 OF	)	No. 2018 - 18
THE ARIZONA RULES OF CRIMINAL	)	(Affecting Administrative
PROCEDURE	)	Order No. 2018-07)
	)	

By entry of Administrative Order No. 2018-07, this Court established a Task Force on Rule 32 of the Arizona Rules of Criminal Procedure and appointed its members. The Court was thereafter informed that two of those members, Judge Mark Moran and Karen Kemper, were no longer available to serve on the Task Force. Therefore, after due consideration,

IT IS ORDERED that the following individuals are appointed to the Task Force on Rule 32 of the Arizona Rules of Criminal Procedure for terms beginning upon entry of this Order and ending December 31, 2019:

Hon. Cathleen Brown Nichols
Superior Court in Coconino County

Hon. Rick A. Williams
Superior Court in Mohave County

Michael Mitchell
Office of the Maricopa County Attorney

Dated this 7th day of March 2018.

SCOTT BALES
Chief Justice

Rule 32 Task Force
Rules for Conducting Task Force Business

1. Quorum

The minimum number of members to conduct business and act on any item is ten.

2. Decision-Making

Task Force decisions will be considered upon a motion that is properly seconded and following discussion on the motion. Task Force decisions will be made by majority vote of the members attending the meeting. A numerical vote will be recorded unless the decision is unanimous. The chair will vote only to break a tie.

3. Responsibility of Members and Proxy Policy

Members are encouraged to actively participate in Task Force meetings, as members are selected for their expertise. However, Task Force members may send a proxy to attend meetings when necessary. A member should give twenty-four hours' notice to Task Force staff concerning the attendance of a proxy.

- A proxy has all the responsibilities of a member, including voting power. A proxy must review the agenda issues, be prepared for a meeting, and brief the member on the meeting within a reasonable time thereafter.

- Another Task Force member may not serve as a proxy.

- A proxy is included in the count of members present to determine a quorum.

- A member may not use a proxy for more than three meetings without approval of the Task Force chair.

4. Call to the Public

As provided in A.C.J.A. § 1-202, every meeting agenda will include a "Call to the Public" before the meeting is adjourned. The chair will announce the opportunity for public comment regardless of whether a member of the public is attending the meeting or has expressed any desire to comment. The chair may impose reasonable time, place, and manner limitations upon members of the public who respond to the call, including setting time limits, banning repetition, and prohibiting profanity and disruptive behavior.

Excerpt from the November 18, 2016 meeting minutes of the Criminal Rules Task Force

Rule 32 ("post-conviction relief"): Judge Cattani, who presented this rule, noted that Rule 32.1 ("scope of remedy") preserved the format of the current rule, notwithstanding that the format deviates from Task Force restyling conventions, because case law frequently cites the rule by its current section and subpart designations. A paragraph at the beginning of this draft rule clarifies the meaning of an "of-right" petition. The workgroup recommended retaining some of the current comments to this rule, with modifications, because self-represented filers often use this rule and they would find these comments informative. Members changed "State of Arizona constitution" to "Arizona constitution." A member commented that the Task Force rule petition should suggest that the Court establish another group to review the substance of Rule 32; this review would be beyond the scope of the Task Force. The Chair generally agreed with the comment, except he believes the Task Force should communicate this suggestion to the Court other than through the rule petition.

In Rule 32.2 ("preclusion of remedy"), a member proposed deleting from section (b) ("exceptions") a requirement that the defendant include the specific exception. After discussion, the members retained the requirement, but added after "specific exception" the words "to preclusion." In Rule 32.3 ("nature of a post-conviction proceeding and relation to other remedies"), another member proposed adding to the end of section (b) ("habeas corpus") the words "unless the court finds that Rule 32 is inadequate to protect the defendant's rights." A judge member opposed this addition because it would be a significant substantive change, and members declined to include those words. Rule 32.4 ("filing of notice and petition, etc.") includes a requirement in the "notice" provisions of section (a) that the clerk make "blank notice forms" available. Members agreed that the word "blank" was unnecessary and they deleted it. In subpart (a)(2)(D), members changed "within [number of] days" to "no later than [number of days]."

Rule 32.4(b) concerns "appointment of counsel." The current rule refers to "the list described in A.R.S. § 13-4041." Members first agreed to delete a reference to a "list," and after further discussion, they changed the concluding phrase of draft Rule 32.4(b)(1) to provide, "who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041." They added a reference to Rule 6.5 in the first sentence of subpart (b)(1) preceding the reference to Rule 6.8. In subpart (b)(2), they deleted from the title the words "rule 32 of-right and" so it refers simply to "noncapital cases." (Of-right petitions are a subset of noncapital cases.) Judge Cattani discussed the restyling of section (c) ("time for filing a petition for post-conviction relief") and section (d) ("duty of counsel"). Rule 32.4(d)(2) described that duty when counsel in an of-right proceeding finds no colorable claims. Members discussed an oversight mechanism to help assure that of-right counsel is effective; one

alternative they discussed was that in this situation, the of-right attorney could submit an *"Anders"* type brief. One member believes that a post-conviction proceeding differs from an appeal because the original trial court judge hears most of-right petitions and already knows the background and posture of the case. However, a judge member noted that the court often assigns an of-right petition to a judge who did not previously have the case. After discussion, members agreed to add to the "counsel's notice" provision of Rule 32.4(d)(2)(A) a new sentence that states, "The notice should include a summary of the facts and procedural history of the case." This is comparable to the *Anders* requirement, and it will help to assure that assigned counsel has familiarity with the matter. A member proposed also including a requirement for an avowal by of-right counsel that they met with their client, but other members declined to include this ethical requirement in the criminal rule.

Rule 32.5 ("contents of a petition for post-conviction relief") includes modified page limits to account for the proposed 13-point font. The title of Rule 32.6 is "response and reply; amendments; review." Members discussed the "review and further proceedings" provisions of section (d). The current rule requires the court to review pleadings within 20 days after the reply was due. The draft rule extends this time to 60 days in a capital case. An extension of these limits is available in both capital and noncapital cases for "good cause," but generally, 60 days is the outside limit. Another provision in section (d) requires the court, if it does not summarily dismiss the petition, to set a "hearing" within 30 days. Some interpret "hearing" to mean an evidentiary hearing, but this was not the interpretation of the Task Force. To avoid ambiguity, they modified the provision to require that the court set "a status conference or hearing" within 30 days.

Rule 32.7 ("informal conference") allows the court to hold an informal conference at any time "to expedite a proceeding" under Rule 32. A member suggested deleting the quoted words because the court might hold a conference for other reasons, but members agreed to retain this phrase. In Rule 32.8 ("evidentiary hearing"), members discussed a provision in Rule 32.8(b) ("evidence"), which states, "the defendant may be called to testify at the hearing." The implication is that the State may call the defendant as a witness. The consensus was that the defendant, if called, could still assert a self-incrimination privilege with regard to the underlying crime. However, because an ineffective assistance claim waives the attorney-client privilege, a defendant who declines to answer questions concerning ineffective assistance may face the consequence of losing the claim. Members accordingly agreed to retain the provision that allows calling the defendant at the hearing. Members also discussed section (d) ("timing"), and a requirement that the court must rule within 10 days after the hearing ends. Members agreed to delete the phrase "in extraordinary circumstances," although it is in the current

rule, because the provision goes on to specify those circumstances ("if the volume of the evidence or the complexity of the issues require additional time.")

Rule 32.9 ("review"), section (c) ("petition and cross-petition for review") includes provisions concerning page limits. A member proposed changing these to word limits because attorneys file the majority of these petitions. However, page limits are easier for self-represented defendants and clerks to count. The compromise was to amend the draft to allow for a specified number of words if the document is typewritten and a specified number of pages if it is handwritten. Another requirement of this draft rule directs parties to cite supporting legal authority "if known." Members agreed that the "if known" clause was appropriately included and it would not discourage a self-represented litigant who might not have access to legal materials from filing a petition. Draft section (c) includes a new subpart (7) regarding amicus curiae. Draft Rule 32.9 includes a new section (i) ("notice to the victim"). Members made grammatical improvements throughout Rule 32.9.

The workgroup added the words "in capital cases" to the current title of Rule 32.10, which clarifies this rule applies only to a review of an intellectual disability determination in those types of cases. In Rule 32.11 ("extension of time; victim notice and service"), members reorganized and revised subpart (b)(2) regarding service through the prosecutor. Rule 32.11 in general duplicates portions of Rule 39, but the members agreed to retain this part of Rule 32 because it is in the current rule. One member observed that the Rule 32.11(d) "factors" are apparent and suggested deleting this section, but members did not want to raise victims' concerns by deleting this section and they kept it in the draft. Members made grammatical edits to Rule 32.12 ("post-conviction deoxyribonucleic acid testing"). A provision in section (d) ("court orders") requires the court to find that the evidence is still in existence "and is in a condition that allows conducting of DNA testing." A member observed that the court would not be able to make this second finding until a lab actually did the test, and he suggested deleting that portion of the rule. Members agreed with the suggestion. With regard to a testing lab, members also deleted the words "that meets the standards of the DNA advisory board" and substituted "accredited laboratory." Members discussed deleting the last sentence of section (f) ("preservation of evidence"), which concerns sanctions, but they decided to retain it. Members had no further comments on Rule 32.

Excerpt from Appendix B of the Reply in R-17-0002 (the rule petition filed by the Criminal Rules Task Force) explaining its proposed changes to Rule 32

Rule 32. Post-Conviction Relief

In a separate written submission to the Chief Justice, the Task Force will be proposing that a committee be established to consider a comprehensive substantive redrafting of this rule. Task Force members believe that the current rule suffers from serious substantive deficiencies, but they also agree that an attempt to rewrite the rule to address those deficiencies would go far beyond the Task Force's mission to restyle and clarify the current rule. Nonetheless, the Task Force is proposing some substantive changes to the rule, but they are supported by a consensus of the Task Force members and are not likely to be controversial.

Rule 32.1. Scope of Remedy

The Task Force proposes various stylistic changes to this rule, but no substantive changes are intended. The Task Force has deviated from its conventions in restyling this rule—especially the use of lettered subheadings—to avoid having to renumber the subparts in the current rule that are frequently cited in court filings and in Arizona and federal case law. Also, the proposed rule clarifies the phrase "of-right petition" and specifies the procedural matters that are subject to "of-right" relief as that term is used throughout Rule 32.

Rule 32.2. Preclusion of Remedy

Current Rule 32.2 requires a notice of post-conviction relief to specify the exception to the preclusion rule that is being relied on and to explain why the claim was not raised in a previous petition or in a timely manner. The rule goes on to say that the notice fails to comply with this requirement, it "shall" be summarily dismissed. The Task Force proposes replacing the word "shall" in proposed Rule 32.2(b) with the word "may." In the Task Force's opinion, this rule is intended to give a court discretion to permit a notice to be amended or clarified (rather than requiring its dismissal) if a petitioner fails to fully comply with the rule. The Task Force's other proposed changes to this rule are stylistic.

Rule 32.3. Nature of a Post-Conviction Proceeding and Relation to Other Remedies

The Task Force proposes various stylistic changes to this rule, but no substantive changes are intended.

Rule 32.4. Filing of Notice and Petition, and Other Initial Proceedings

The Task Force proposes reorganizing and renumbering the subparts of this rule. The Task Force's other proposed changes are stylistic with the following exceptions:

(a) Proposed Rule 32.4(b)(1), which is mostly a restyled version of current Rule 32.4(c), more particularly specifies the requirements of appointed capital counsel as those who meet the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041.

(b) Proposed Rule 32.4(d)(2), which is mostly a restyled version of the fifth paragraph of current Rule 32.4(c), addresses counsel's duty in an of-right proceeding where no colorable claims are found. The Task Force proposes adding a requirement that counsel's "notice of no colorable claim" include a summary of the facts and the procedural history of the case. This is comparable to what is required of counsel in an *Anders* appeal and will help ensure that counsel has complied with the duty to thoroughly review the matter.

In response to comments submitted after the filing of the Task Force's initial petition, the Task Force modified proposed amended Rule 32.4(a)(4)(A) to add the phrase "or the Supreme Court" to the rule's first sentence to reflect the fact that in a capital case, a notice of a post-conviction relief is filed by the Supreme Court clerk rather than the defendant.

Also in response to a comment, the Task Force modified proposed amended Rule 32.4(b)(2), which governs the appointment of counsel in noncapital cases. As initially drafted, the proposed rule provided for the appointment to be made "[n]o later than 15 days after the timely filing of a notice of a defendant's first Rule 32 proceeding or in any of-right proceeding. In contrast, current Rule 32.4(c)(2) provides that counsel is appoint within 15 days of the filing of a "timely or first notice in a Rule 32 proceeding." Because this change may have unintended consequences and because the "timely or first" provision has been the subject of appellate decisions, the Task Force decided to go back to language closer to the current rule. As revised, it says "[n]o later than 15 days after the ~~timely~~ filing of a notice of a defendant's *timely or* first Rule 32 proceeding~~ or in any of-right proceeding~~."

In response to a comment submitted during the second comment period, the Task Force modified proposed amended Rule 32.4(c)(1)(C) and (c)(2)(B) to provide that an appellate court may modify certain deadlines only "after considering the rights of the victim." As revised;

(a) Rule 32.4(c)(1), which governs time extensions in capital cases, would still provide that for good cause, a court may grant a capital defendant one 60-day extension in which to file a petition. The second sentence of the rule, however, would

provide that "[f]or good cause and after considering the rights of the victim, the court may grant additional 30-day extensions for good cause."

(b) Rule 32.4(c)(2)(B), which governs time extensions in noncapital cases, would provide that "[f]or good cause and after considering the rights of the victim, the court may grant a defendant in a noncapital case a 30-day extension to file the petition."

Rule 32.5. Contents of a Petition for Post-Conviction Relief

The Task Force's proposed changes to this rule are stylistic with ~~two~~ three exceptions:

(a) Proposed Rule 32.5(b) slightly increases the page limitation for a petition and response to twenty-eight pages, and for a reply to eleven pages, to account for the proposed increase from 12-point typeface for text, which is currently permitted under the local rules of Maricopa and Pima counties, to 13-point typeface as required in proposed Rule 1.6(b)(1)(B). A similar adjustment is made to the length of petitions involving the death penalty—under the proposed rule, the petition and response would be limited to forty-four pages, and the reply to twenty-two pages.

(b) Currently, Rule 32.5 requires a petition to be accompanied by a declaration by the defendant attesting that under penalty of perjury, the information in the petition is true to the best of the defendant's knowledge and belief. Proposed Rule 32.5(c) would modify this by requiring such a declaration only if the defendant is self-represented. In the Task Force's opinion, the declaration serves no purpose if a defendant is represented by counsel.

(c) The Task Force proposes one additional change in response to comments submitted after the filing of the Task Force's initial petition. Currently, Rule 32.5 provides that if a petitioner files a non-complying petition, it must be returned to the defendant with an order specifying how the petition fails to comply with the rules. The current rule then goes on to say that the defendant has 30 days "after defendant's *receipt* of the non-conforming petition" to file a petition that complies with the rules. (Emphasis added.) Because there is no way for the court to know when the defendant receives the non-conforming petition, proposed amended Rule 32.5(e) measures the time for compliance from the date the order is "*entered*," i.e., filed. But in response to concerns that this change shortens the compliance time conferred by the current rule, the Task Force also proposes increasing the time for compliance from 30 days to 40 days.

Rule 32.6. Response and Reply; Amendments; Review

The Task Force's proposed changes to this rule are stylistic with two exceptions:

(a) The first exception relates to the deadline by which a court must dispose of a fully briefed petition for post-conviction relief:

(1) Currently, Rule 32.6(c) requires the court to "review the petition within twenty days after the defendant's reply was due" and determine which claims are procedurally precluded. If no remaining claim "presents a material issue of fact or law which would entitle the defendant to relief," the court "shall dismiss the petition." If the court does not dismiss the petition, it "shall set a hearing within thirty days on those claims that present a material issue of fact or law."

(2) The majority of the Task Force members interprets this rule as requiring that a court rule on whether the post-conviction petition must be summarily dismissed within twenty days after the due date of the defendant's reply. A majority of the Task Force was deeply concerned that the twenty-day deadline is unrealistic in complex fact-intensive noncapital cases and in all capital cases.

(3) To address this issue, the Task Force's proposes in proposed Rule 32.6(d)(1) that a court may exceed the twenty-day deadline in a noncapital matter if there is good cause to do so. It also increases the time period for the summary dismissal of a capital matter to sixty days, and permits the court to extend that deadline if good cause exists to do so.

(4) The Task Force recognizes that its proposed changes in the deadline, as well as its proposed "good cause" time extensions, are inconsistent with the statutory deadlines set forth in A.R.S. § 13-4236(C). But the Task Force believes that these timing provisions are procedural in nature and that the Supreme Court has the authority to establish such rules even if they are inconsistent with statutory deadlines. Should these amendments be approved, the Task Force recommends that the legislature be encouraged to amend the corresponding statutes.

(b) The second exception relates to what kind of hearing must be scheduled if a petition is not summarily dismissed and when it must be held:

(1) Currently, the rule says merely that the court "shall set a hearing within thirty days on those claims present a material issue of fact or law." It is unclear, however, whether that hearing must address the merits of those claims or instead may be a status conference to determine how case should proceed to resolve those claims.

(2) Proposed Rule 32.6(d)(2) clarifies the rule by explicitly providing that the court may set either a hearing on the merits or a status conference to discuss how to proceed. The proposal reflects current practice—courts typically hold a

status conference before holding an evidentiary hearing to identify the issues that must be addressed, resolve discovery disputes, and to work out logistics.

In response to a comment submitted during the second comment period, the Task Force modified proposed amended Rule 32.6(a), which governs when the State must file a response to a petition for post-conviction relief. The rule would still provide that for good cause, a court may grant the State one 30-day extension in which to file a response. But the rule would go on to say that a court may grant the State additional extensions on a showing of extraordinary circumstances (which is in the current rule) and "after considering the rights of the victim" (which is new).

Rule 32.7. Informal Conference

The Task Force proposes various stylistic changes to this rule, but no substantive changes are intended.

Rule 32.8. Evidentiary Hearing

Currently, if a court conducts an evidentiary hearing, Rule 32.8(d) requires the court to rule no later than ten days after the hearing's end "except in extraordinary circumstances where the volume of the evidence or the complexity of the issues require additional time." The Task Force proposes removing the words "in extraordinary circumstances" because the text of the rule itself clearly identifies the circumstances that would permit a court to exceed the ten-day deadline. As revised, proposed Rule 32.8(d)(1) provides that a court must adhere to the ten-day deadline "except if the volume of the evidence or the complexity of the issues require additional time." The Task Force's other proposed changes to this rule are stylistic.

Rule 32.9. Review

The Task Force's proposed changes to this rule are stylistic with the following exceptions:

(a) Proposed Rule 32.9(c) incorporates by reference many of the formatting and time computation rules set forth in Rule 31 and, because petitions for review and related briefs are either filed or scanned electronically, it also dispenses with requiring the filing of multiple copies of a brief.

(b) Currently, Rule 32.9(c) imposes page limitations on the length of petitions, responses, and replies. Proposed Rules 32.9(c)(4)(A) and (c)(6)(B) retain page limitations if a brief is handwritten, but imposes word limitations if a brief is typed—6000 words for a petition or response, and 3000 words for a reply.

(c) Currently, Rule 32.9 is silent on whether an amicus curiae brief may be filed, and, if so, the procedures that must be followed to file one. Proposed Rule

32.9(c)(7) addresses this issue, incorporating by reference the provisions in proposed Rule 31 governing filing and responding to amicus curiae briefs. The proposed rule reflects current practice.

(d) Currently, the last sentence of Rule 32.9(f) provides that the State must notify the victim of an appellate court's disposition. The Task Force proposes placing the requirement in its own separate subsection—proposed Rule 32.9(i)—so the requirement stands out in the rule, making compliance more likely.

In response to comments submitted after the filing of the Task Force's initial petition, the Task Force modified Rule 32.9(c)(3) to provide that if a motion for an extension of time is filed, the court must decide the motion "promptly."

Rule 32.10. Review of an Intellectual Disability Determination in Capital Cases

The Task Force proposes revising the title of the current rule to clarify that it applies only to capital cases. The Task Force's other proposed changes to this rule are stylistic.

Rule 32.11. Extensions of Time; Victim Notice and Service

Currently, in a capital case, Rule 32.11 requires that a party seeking a time extension must provide notice to the victim. The rule, however, does not explicitly allow the victim to file a response to the request. Proposed Rule 32.11(c) corrects this oversight, providing that "[a] victim may file a response to the request no later than 10 days after it is served." This proposed amendment is derived from A.R.S. § 13-4234.01(A). The Task Force's other proposed changes to this rule are stylistic.

Rule 32.12. Post-Conviction Deoxyribonucleic Acid Testing

The Task Force's proposed changes to this rule are stylistic with the following exceptions:

(a) The Task Force proposes amending current Rule 32.12(d)(1)(B) to remove the requirement that before ordering testing, a court must find that the evidence to be tested is in a condition that allows DNA testing to be conducted. Significant recent advances in the science of DNA testing make it possible to subject very small samples of biological material to testing. As such, it is often difficult to know whether an evidence sample is in a condition that allows testing, without first conducting such testing. Thus, in the Task Force's opinion, the requirement to determine the condition of the evidence makes little sense, and it proposes eliminating the requirement in proposed Rule 32.12(d)(1).

(b) Currently, if a court determines that a DNA sample should be tested, Rule 32.12(d) requires the court to select "a laboratory that meets the standards of the DNA advisory board." The phrase "DNA advisory board" does not accurately describe the entities that accredit testing laboratories. Instead, in proposed Rule 32.12(d)(3), the Task

Force proposes providing simply that the court designate an "accredited laboratory" to conduct the testing, which more accurately reflects the certification requirement for testing laboratories.

Rule 32. Post-Conviction Relief

Rule 32.1. Scope of Remedy

Petition for Relief. Subject to Rules 32.2 and 32.4(a)(2), a defendant convicted of, or sentenced for, a criminal offense may file a notice of post-conviction relief, without paying any fee, to request appropriate relief under this rule.

Of-Right Petition. A defendant who pled guilty or no contest, or who admitted a probation violation, or who had an automatic probation violation based on a plea of guilty or no contest, may file an of-right notice of post-conviction relief. After the court's final order or mandate in a Rule 32 of-right proceeding, the defendant also may file an of-right notice challenging the effectiveness of Rule 32 counsel in the first of-right proceeding.

Grounds for Relief. Grounds for relief are:

(a) the defendant's conviction was obtained or the sentence was imposed in violation of the United States or Arizona constitutions;

(b) the court did not have jurisdiction to render a judgment or to impose a sentence on the defendant;

(c) the sentence imposed exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(d) the defendant continues to be in custody after his or her sentence expired;

(e) newly discovered material facts probably exist and those facts probably would have changed the verdict or sentence.

Newly discovered material facts exist if:

(1) the facts were discovered after the trial or sentencing;

(2) the defendant exercised due diligence in discovering these facts; and

(3) the newly discovered facts are material and not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony that was of critical significance such that the evidence probably would have changed the verdict or sentence.

(f) the failure to file a notice of post-conviction relief of-right or a notice of appeal within the required time was not the defendant's fault;

(g) there has been a significant change in the law that, if applied to the defendant's case, would probably overturn the defendant's conviction or sentence; or

(h) the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty beyond a reasonable doubt, or that the death penalty would not have been imposed.

COMMENT

Rule 32.1(a). Most traditional collateral attacks are encompassed within this provision. Claims of denial of counsel, of incompetency of counsel, and of violation of other rights based on the federal or Arizona constitutions are included.

Rule 32.1(b). This provision retains the basic attack on jurisdiction universally recognized as a ground for collateral attack.

Rule 32.1(c). This provision is intended to allow an attack on a sentence even though the petitioner does not contest the validity of the underlying conviction.

Rule 32.1(d). This provision is not intended to include attacks on the conditions of imprisonment or on correctional practices or prison rules. It is intended to include claims of more traditional types—*e.g.*, miscalculation of sentence, questions of computation of good time—which result in the defendant remaining in custody when he should be free. Appeals from the conviction and imposition of probation must be filed no later than 20 days of the entry of judgment and sentence. *See* Rules 26.1, 26.16(a), and 31.2.

Rule 32.1(f). This provision includes the situation in which the defendant fails to appeal because the trial court, despite the requirements of Rule 26.11(a)(1), did not advise him

of his appeal rights, and the situation in which the defendant intended to appeal and thought timely appeal had been filed by his attorney when in reality it had not.

Rule 32.1(h). This claim is independent of a claim under Rule 32.1(e). A defendant who establishes a claim of newly discovered evidence does not need to comply with the requirements of Rule 32.1(h).

Rule 32.2. Preclusion of Remedy

(a) Preclusion. A defendant is precluded from relief under Rule 32 based on any ground:

(1) still raisable on direct appeal under Rule 31 or in a post-trial motion under Rule 24;

(2) finally adjudicated on the merits in an appeal or in any previous collateral proceeding; or

(3) waived at trial, on appeal, or in any previous collateral proceeding.

(b) Exceptions. Rule 32.2(a) does not apply to claims for relief based on Rule 32.1(d) through (h). A claim under Rule 32.1(d) through (h) that defendant raises in a successive or untimely post-conviction notice must include the specific exception to preclusion and explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not identify a specific exception or provide reasons why defendant did not raise the claim in a previous petition or in a timely manner, the court may summarily dismiss the notice.

(c) Standard of Proof. The State must plead and prove any ground of preclusion by a preponderance of the evidence. A court may determine that an issue is precluded even if the State does not raise preclusion.

Rule 32.3. Nature of a Post-Conviction Proceeding and Relation to Other Remedies

(a) Generally. A post-conviction proceeding is part of the original criminal action and is not a separate action. It displaces and incorporates all trial court post-trial remedies except those obtainable by post-trial motions and habeas corpus.

(b) Habeas Corpus. If a court having jurisdiction over a defendant's person receives an application for a writ of habeas corpus raising any claim that attacks the validity of the defendant's conviction or sentence, and if that court is not the court that convicted or sentenced the defendant, it must transfer the application to the court where the defendant was convicted or sentenced. The court to which the application is transferred must treat the application as a Rule 32 petition for post-conviction relief, and the court and all parties must apply Rule 32's procedures.

COMMENT

This rule provides that all Rule 32 proceedings are to be treated as criminal actions. The characterization of the proceeding as criminal assures compensation for appointed counsel and the applicability of criminal standards for admissibility of evidence at an evidentiary hearing except as otherwise provided.

Rule 32 does not restrict the scope of the writ of habeas corpus under Ariz. Const. art. 2, § 14. *See* A.R.S. §§ 13-4121 et seq. (statutes governing habeas corpus). The rule is intended to provide a standard procedure for accomplishing the objectives of all constitutional, statutory, or common law post-trial writs and remedies except a writ of habeas corpus.

Rule 32.4. Filing of Notice and Petition, and Other Initial Proceedings

(a) Notice of Post-Conviction Relief.

(1) ***Filing.*** A defendant starts a post-conviction proceeding by filing a notice of post-conviction relief in the court where the defendant was convicted. The court must make "notice" forms available for defendants' use.

(2) ***Time for Filing.***

(A) *Generally.* In filing a notice, a defendant must follow the deadlines set forth in this rule. These deadlines do not apply to claims under Rule 32.1(d) through (h).

(B) *Time for Filing a Notice in a Capital Case.* In a capital case, the Supreme Court clerk must expeditiously file a notice of post-conviction relief with the trial court upon the issuance of the mandate affirming the defendant's conviction and sentence on direct appeal.

(C) *Time for Filing a Notice in an Of-Right Proceeding.* In a Rule 32 of-right proceeding, a defendant must file the notice no later than 90 days after the entry of judgment and sentence. A defendant may raise an of-right claim of ineffective assistance of Rule 32 counsel in a successive Rule 32 notice if it is filed no later than 30 days after the final order or mandate in the defendant's of-right petition for post-conviction relief.

(D) *Time for Filing a Notice in Other Noncapital Cases.* In all other noncapital cases, a defendant must file a notice no later than 90 days after the entry of judgment and sentence or no later than 30 days after the issuance of the order and mandate in the direct appeal, whichever is later.

(3) ***Content of the Notice.*** The notice must contain the caption of the original criminal case or cases to which it pertains and the other information shown in Rule 41, Form 24(b).

(4) ***Duty of the Clerk upon Receiving a Notice.***

(A) *Generally.* Upon receiving a notice from a defendant or the Supreme Court, the superior court clerk must file it in the record of each original case to which it pertains. Unless the court summarily dismisses the notice, the clerk must promptly send copies of the notice to the defendant, defense counsel, the prosecuting attorney's office, and the Attorney General. If the conviction occurred in a limited jurisdiction court, the clerk for the limited jurisdiction court must send a copy of the notice to the prosecuting attorney who represented the State at trial, and to a defense counsel or a defendant, if self-represented. In either court, the clerk must note in the record the date and manner of sending copies of the notice.

(B) *Notice to an Appellate Court.* If an appeal of the defendant's conviction or sentence is pending, the clerk must send a copy of the notice of post-conviction relief to the appropriate appellate court no later than 5 days of its filing, and must note in the record the date and manner of sending the copy.

(5) ***Duty of the State upon Receiving a Notice.*** Upon receiving a copy of a notice, the State must notify any victim who has requested notification of post-conviction proceedings.

(b) Appointment of Counsel.

(1) ***Capital Cases.*** After the Supreme Court has affirmed a capital defendant's conviction and sentence, it must appoint counsel who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041. Alternatively, the Supreme Court may authorize the presiding judge of the county where the case originated to appoint counsel. If the presiding judge makes an appointment, the court must file a copy of the appointment order with the Supreme Court. If a capital defendant files a successive notice, the presiding judge must appoint the defendant's previous post-conviction counsel, unless the defendant waives counsel or there is good cause to appoint another qualified attorney who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041.

(2) ***Noncapital Cases.*** No later than 15 days after the filing of a notice of a defendant's timely or first Rule 32 proceeding, the presiding judge must appoint counsel for the defendant if: (A) the defendant requests it; and (B) the judge has previously determined that the defendant is indigent or the defendant has

completed an affidavit of indigency. Upon the filing of all other notices in a noncapital case, the presiding judge may appoint counsel for an indigent defendant if requested.

(c) Time for Filing a Petition for Post-Conviction Relief.

(1) ***Capital Cases.***

(A) *Filing Deadline for First Petition.* 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. For good cause and after considering the rights of the victim, the court may grant additional 30-day extensions for good cause.

(D) *Notice of Status.* The defendant must file a notice in the Supreme Court advising the Court of the status of the proceeding if a petition is not filed:

(i) within 12 months after counsel is appointed; or

(ii) if the defendant is proceeding without counsel, within 12 months after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

The defendant must file a status report in the Supreme Court every 60 days until a petition is filed.

(2) ***Noncapital Cases.***

(A) *Filing Deadline.* In a noncapital case, appointed counsel must file a petition no later than 60 days after the date of appointment. A defendant without counsel 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, 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.

(d) Duty of Counsel; Extension of Time for the Defendant.

(1) ***Duty.*** In a Rule 32 proceeding, counsel must investigate the defendant's case for any and all colorable claims.

(2) ***If Counsel Finds No Colorable Claims.***

(A) *Counsel's Notice.* In an of-right proceeding, if counsel determines there are no colorable claims, counsel must file a notice advising the court of this determination. The notice should include a summary of the facts and procedural history of the case, including appropriate citations to the record. The notice also must identify the specific materials that counsel reviewed, the date when counsel provided the record to the defendant, and the contents of the record provided. After counsel files a notice, counsel's role is limited to acting as advisory counsel until the trial court's final determination in the Rule 32 proceeding unless the court orders otherwise.

(B) *Defendant's Pro Se Petition.* Upon receipt of counsel's notice, the court must allow the defendant to file a petition on his or her own behalf, and extend the time for filing a petition by 45 days from the date counsel filed the notice. The court may grant additional extensions only on a showing of extraordinary circumstances.

(e) Transcript Preparation.

(1) ***Requests for Transcripts.*** If the trial court proceedings were not transcribed, the defendant may request that certified transcripts be prepared. The court or clerk must provide a form for the defendant to make this request.

(2) ***Order.*** The court must promptly review the defendant's request and order the preparation of only those transcripts it deems necessary for resolving issues the defendant will raise in the petition.

(3) ***Deadline.*** Certified transcripts must be prepared and filed no later than 60 days after the entry of the order granting the request.

(4) ***Cost.*** If the defendant is indigent, the transcripts must be prepared at county expense.

(5) ***Extending the Deadline for Filing a Petition.*** If a defendant requests the preparation of certified transcripts, the defendant's deadline for filing a petition under (c) is extended by the time between the request and either the transcripts' final preparation or the court's denial of the request.

(f) Assignment of a Judge. The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. If the sentencing judge's testimony will be relevant, the case must be reassigned to another judge.

(g) Stay of Execution of a Death Sentence on a Successive Petition. Once the defendant has received a sentence of death and the Supreme Court has fixed the time for executing the sentence, the trial court may not grant a stay of execution if the defendant files a successive petition. In those circumstances, the defendant must file an application for a stay with the Supreme Court, and the application must show with particularity any claims that are not precluded under Rule 32.2. If the Supreme Court grants a stay, the Supreme Court clerk must notify the defendant, the Attorney General, and the Director of the State Department of Corrections.

COMMENT

Rule 32.4(a). If a petition is filed while an appeal is pending, the appellate court, under Rule 31.3(b), may stay the appeal until the petition is adjudicated. Any appeal from the decision on the petition will then be joined with the appeal from the judgment or sentence. *See* Rule 31.4(b) (requiring consolidation unless good cause exists not to do so).

Rule 32.5. Contents of a Petition for Post-Conviction Relief

(a) 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.

(b) Length of Petition. In Rule 32 of-right and noncapital cases, the petition must not exceed 28 pages. The State's response must not exceed 28 pages, and defendant's reply, if any, must not exceed 11 pages. In capital cases, the petition must not exceed 80 pages. The State's response must not exceed 80 pages, and defendant's reply must not exceed 40 pages.

(c) 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. The declaration must identify facts that are within the defendant's personal knowledge separately from other factual allegations.

(d) Attachments. The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the petition's allegations.

(e) 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 32.6. Response and Reply; Amendments; Review

(a) State's Response. The State must file its response no later than 45 days after the defendant files the petition. The court may grant the State a 30-day extension to file its response for good cause, and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim. 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.

(b) Defendant's Reply. No later than 15 days after a response is served, the defendant may file a reply. The court may for good cause grant an extension of time.

(c) Amending the Petition. After the filing of a post-conviction relief petition, the court may permit amendments only for good cause.

(d) Review and Further Proceedings.

(1) ***Summary Disposition.*** If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition.

(2) ***Setting a Hearing.*** If the court does not summarily dismiss the petition, it must set a status conference or hearing within 30 days on those claims that present a material issue of fact. The court also may set a hearing on those claims that present only a material issue of law.

(3) ***Notice to Victim.*** If a hearing is ordered, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.

Rule 32.7. Informal Conference

(a) Generally. At any time, the court may hold an informal conference to expedite a proceeding for post-conviction relief.

(b) Capital Cases. In a capital case, the court must hold an informal conference no later than 90 days after counsel is appointed on the first notice of a petition for post-conviction relief.

(c) The Defendant's Presence. The defendant need not be present at an informal conference if defense counsel is present.

Rule 32.8. Evidentiary Hearing

(a) Rights Attendant to the Hearing; Location; Record. The defendant is entitled to a hearing to determine issues of material fact, and has the right to be present and to subpoena witnesses for the hearing. The court may order the hearing to be held at the defendant's place of confinement if facilities are available and after giving at least 15 days' notice to the officer in charge of the confinement facility. In superior court proceedings, the court must make a verbatim record.

(b) Evidence. The Arizona Rules of Evidence applicable to criminal proceedings apply at the hearing, except that the defendant may be called to testify.

(c) Burden of Proof. The defendant has the burden of proving factual allegations by a preponderance of the evidence. If the defendant proves a constitutional violation, the State has the burden of proving beyond a reasonable doubt that the violation was harmless.

(d) Decision.

(1) ***Findings and Conclusions.*** The court must make specific findings of fact and expressly state its conclusions of law relating to each issue presented.

(2) ***Decision in the Defendant's Favor.*** If the court finds in the defendant's favor, it must enter appropriate orders concerning:

(A) the conviction, sentence, or detention;

(B) any further proceedings, including a new trial and conditions of release; and

(C) other matters that may be necessary and proper.

(e) Transcript. On a party's request, the court must order the preparation of a certified transcript of the evidentiary hearing. The request must be made within the time allowed for filing a petition for review. If the defendant is indigent, preparation of the evidentiary hearing transcript will be at county expense.

Rule 32.9. Review

(a) Filing of a Motion for Rehearing.

(1) ***Timing and Content.*** No later than 15 days after entry of the trial court's final decision on a petition, any party aggrieved by the decision may file a motion for rehearing. The motion must state in detail the grounds of the court's alleged errors.

(2) ***Response and Reply.*** An opposing party may not file a response to a motion for rehearing unless the court requests one, but the court may not grant a motion for rehearing without requesting and considering a response. If a response is filed, the moving party may file a reply no later than 10 days after the response is served.

(3) ***Effect on Appellate Rights.*** Filing of a motion for rehearing is not a prerequisite to filing a petition for review under (c).

(b) Disposition if Motion Granted. If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing, or grant a new hearing and then either amend or reaffirm its previous ruling. In either case, it must state its reasons for amending a previous ruling. The State must notify the victim of any action taken by the court if the victim has requested notification.

(c) Petition and Cross-Petition for Review.

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

(A) *Petition.* No later than 30 days after the entry of the trial court's final decision on a petition or a motion for rehearing, an aggrieved party may petition the appropriate appellate court for review of the decision.

(B) *Cross-Petition.* The opposing party may file a cross-petition for review no later than 15 days after a petition for review is served.

(C) *Place for Filing.* The parties must file the petition for review, cross-petition, and all responsive filings with the appellate court and not the trial court.

(D) *Computation of Time and Modifying Deadlines.* Rule 31.3(d) governs the computation of any appellate court deadline in this rule, and an appellate court may modify any deadline in accordance with Rule 31.3(e).

(2) ***Notice of Filing and Additional Record Designation.*** No later than 3 days after a petition or cross-petition for review is filed, the petitioner and cross-petitioner must file with the trial court a "notice of filing." The notice of filing may

Rule 32.9. Review

(a) Filing of a Motion for Rehearing.

(1) ***Timing and Content.*** No later than 15 days after entry of the trial court's final decision on a petition, any party aggrieved by the decision may file a motion for rehearing. The motion must state in detail the grounds of the court's alleged errors.

(2) ***Response and Reply.*** An opposing party may not file a response to a motion for rehearing unless the court requests one, but the court may not grant a motion for rehearing without requesting and considering a response. If a response is filed, the moving party may file a reply no later than 10 days after the response is served.

(3) ***Effect on Appellate Rights.*** Filing of a motion for rehearing is not a prerequisite to filing a petition for review under (c).

(b) Disposition if Motion Granted. If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing, or grant a new hearing and then either amend or reaffirm its previous ruling. In either case, it must state its reasons for amending a previous ruling. The State must notify the victim of any action taken by the court if the victim has requested notification.

(c) Petition and Cross-Petition for Review.

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

(A) *Petition.* No later than 30 days after the entry of the trial court's final decision on a petition or a motion for rehearing, an aggrieved party may petition the appropriate appellate court for review of the decision.

(B) *Cross-Petition.* The opposing party may file a cross-petition for review no later than 15 days after a petition for review is served.

(C) *Place for Filing.* The parties must file the petition for review, cross-petition, and all responsive filings with the appellate court and not the trial court.

(D) *Computation of Time and Modifying Deadlines.* Rule 31.3(d) governs the computation of any appellate court deadline in this rule, and an appellate court may modify any deadline in accordance with Rule 31.3(e).

(2) ***Notice of Filing and Additional Record Designation.*** No later than 3 days after a petition or cross-petition for review is filed, the petitioner and cross-petitioner must file with the trial court a "notice of filing." The notice of filing may

designate additional items for the record described in (e). These items may include additional certified transcripts of trial court proceedings prepared under Rule 32.4(e), or that were otherwise available to the trial court and the parties, and are material to the issues raised in the petition for review.

(3) ***Motions.*** Motions for extensions of time to file petitions or cross-petitions for review must be filed with the trial court, which must decide the motions promptly. The parties must file all other motions in the appellate court.

(4) ***Form and Contents of a Petition or Cross-Petition for Review.***

(A) *Form and Length.* Petitions and cross-petitions for review, along with other documents filed with the appellate clerk, must comply with the formatting requirements of Rule 31.6(b). The petition or cross-petition must contain a caption with the name of the appellate court, the title of the case, a space for the appellate court case number, the trial court case number, and a brief descriptive title. The caption must designate the parties as they appear in the trial court's caption. The petition or cross-petition must not exceed 6,000 words if typed or 22 pages if handwritten, exclusive of an appendix and copies of the trial court's rulings.

(B) *Contents.* A petition or cross-petition for review must contain:

(i) copies of the trial court's rulings entered under Rules 32.6(d), 32.8(d) and 32.9(b);

(ii) a statement of issues the trial court decided that the defendant is presenting for appellate review;

(iii) a statement of material facts concerning the issues presented for review, including specific references to the record for each material fact; and

(iv) reasons why the appellate court should grant the petition, including citations to supporting legal authority, if known.

(C) *Effect of a Motion for Rehearing.* The filing of a motion for rehearing under (a) does not limit the issues a party may raise in a petition or cross-petition for review.

(D) *Waiver.* A party's failure to raise any issue that could be raised in the petition or cross-petition for review constitutes a waiver of appellate review of that issue.

(5) ***Appendix Accompanying Petition or Cross-Petition.***

(A) *Generally.* Unless otherwise ordered, a petition or cross-petition may be accompanied by an appendix. The petition or cross-petition must not incorporate any document by reference, except the appendix. An appendix that exceeds 15 pages in length, exclusive of the trial court's rulings, must be submitted separately from the petition or cross-petition.

(B) *Capital Cases.* In capital cases, the parties must submit an appendix that supports all of the petition's references to the trial court record, with copies of supporting portions of the record.

(C) *Noncapital Cases.* In non-capital cases, an appendix is not required, but the petition must contain specific references to the record to support all material factual statements.

(6) ***Service; Response; Reply.***

(A) *Service.* A party filing a petition, cross-petition, appendix, response, reply, or a related filing must serve a copy of the filing on all other parties. The serving party must file a certificate of service complying with Rule 1.7(c)(3), identifying who was served and the date and manner of service.

(B) *Response.* No later than 30 days after a petition or cross-petition is served, a party opposing the petition or cross-petition may file a response. The response must not exceed 6,000 words if typed and 22 pages if handwritten, exclusive of an appendix, and must comply with the form requirements in (c)(4)(A). An appendix to a response must comply with the form and substantive requirements in (c)(5).

(C) *Reply.* No later than 10 days after a response is served, a party may file a reply. The reply is limited to matters addressed in the response and may not exceed 3,000 words if typed and 11 pages if handwritten. It also must comply with the form requirements in (c)(4)(A), and may not include an appendix.

(7) ***Amicus Curiae.*** Rules 31.13(a)(7) and 31.15 govern filing and responding to an amicus curiae brief.

(d) Stay Pending Review. The State's filing of a motion for rehearing or a petition for review of an order granting a new trial automatically stays the order until appellate review is completed. For any relief the trial court grants to a defendant other than a new trial, granting a stay pending further review is within the discretion of the trial court or the appellate court.

(e) Transmitting the Record to the Appellate Court.

(1) ***In Noncapital Cases.*** No later than 45 days after receiving a notice of filing under (c)(2), the trial court clerk must transmit the record, including the trial court file and transcripts filed in the trial court, to the appellate court.

(2) ***In Capital Cases.*** The trial court clerk may transmit the record of post-conviction proceedings to the appellate court only if the appellate court requests it. The record includes copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings, all minute entries and orders issued in the post-conviction proceedings, transcripts filed in the trial court, and any exhibits admitted by the trial court in the post-conviction proceedings.

(f) Disposition. The appellate court may grant review of the petition and may order oral argument. Upon granting review, the court may grant or deny relief and issue other orders it deems necessary and proper.

(g) Reconsideration or Review of an Appellate Court Decision. The provisions in Rules 31.20 and 31.21 relating to motions for reconsideration and petitions for review in criminal appeals govern motions for reconsideration and petitions for review of an appellate court decision entered under (f).

(h) Return of the Record. After a petition for review is resolved, the appellate clerk must return the record to the trial court clerk for retention.

(i) Notice to the Victim. Upon the victim's request, the State must notify the victim of any action taken by the appellate court.

Rule 32.10. Review of an Intellectual Disability Determination in Capital Cases

No later than 10 days after the trial court makes a finding on intellectual disability, the State or the defendant may file with the Court of Appeals a petition for special action challenging the finding. The Rules of Procedure for Special Actions govern the special action, except the Court of Appeals must accept jurisdiction and decide any issue raised.

Rule 32.11. Extensions of Time; Victim Notice and Service

(a) Notice to the Victim. If the victim in a capital case has filed a notice of appearance under A.R.S. § 13-4234.01, a party requesting an extension of time to file a brief must serve or otherwise provide notice of the request to the victim.

(b) Manner and Timing of Service or Notice.

(1) ***Victim's Choice of the Manner of Service.*** The victim may specify in the notice of appearance whether the service of the request should be to the victim or whether it should go to another person, including the prosecutor, and whether service of the notice should be electronic, by telephone, or by regular mail. Service must be made in the manner specified in the victim's notice of appearance or, if no method is specified, by regular mail. If the victim has requested direct notification, the party requesting an extension of time must serve the victim with notice no later than 24 hours after filing the request.

(2) ***Service Through the Prosecutor.*** If the victim has not specified a method of service or if the victim has requested service through the prosecutor, the party requesting the extension of time must serve the prosecutor's office handling the post-conviction proceeding. If the prosecutor has the duty to notify the victim on behalf of the defendant, the prosecutor must do so no later than 24 hours after receiving the request.

(c) Victim's Response. A victim may file a response to the request no later than 10 days after it is served.

(d) Factors. In ruling on any request for an extension of time to file a brief, the court must consider the rights of the defendant and the victim to a prompt and final conclusion of the case.

Rule 32.12. Post-Conviction Deoxyribonucleic Acid Testing

(a) Generally. Any person who has been convicted and sentenced for a felony offense may petition the court at any time for forensic deoxyribonucleic acid (DNA) testing of any evidence:

(1) in the possession or control of the court or the State;

(2) related to the investigation or prosecution that resulted in the judgment of conviction; and

(3) that may contain biological evidence.

(b) Manner of Filing; Response. The defendant must file the petition under the same criminal cause number as the felony conviction, and the clerk must distribute it in the manner provided in Rule 32.4(a)(4). The State must respond to the petition no later than 45 days after it is served.

(c) Appointment of Counsel. The court may appoint counsel for an indigent defendant at any time during proceedings under this rule.

(d) Court Orders.

(1) ***Mandatory Testing.*** After considering the petition and the State's response, the court must order DNA testing if the court finds that:

(A) a reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing;

(B) the evidence is still in existence; and

(C) the evidence was not previously subjected to DNA testing, or the evidence was not subjected to the type of DNA testing that defendant now requests and the requested testing may resolve an issue not resolved by previous testing.

(2) ***Discretionary Testing.*** After considering the petition and the State's response, the court may order DNA testing if the court finds that (d)(1)(B) and (C) apply, and that a reasonable probability exists that either:

(A) the defendant's verdict or sentence would have been more favorable if the results of DNA testing had been available at the trial leading to the judgment of conviction; or

(B) DNA testing will produce exculpatory evidence.

(3) ***Laboratory; Costs.*** If the court orders testing under (d)(1) or (2), the court must select an accredited laboratory to conduct the testing. The court may require the defendant to pay the costs of testing.

(4) ***Other Orders.*** The court may enter any other appropriate orders, including orders requiring elimination samples from third parties and designating:

(A) the type of DNA analysis to be used;

(B) the procedures to be followed during the testing; and

(C) the preservation of some of the sample for replicating the testing.

(e) Test Results.

(1) ***Earlier Testing.*** If the State or defense counsel has previously subjected evidence to DNA testing, the court may order the party to provide all other parties and the court with access to the laboratory reports prepared in connection with that testing, including underlying data and laboratory notes.

(2) ***Testing Under this Rule.*** If the court orders DNA testing under this rule, the court must order the production to all parties of any laboratory reports prepared

in connection with the testing and may order the production of any underlying data and laboratory notes.

(f) **Preservation of Evidence.** If a defendant files a petition under this rule, the court must order the State to preserve during the pendency of the proceeding all evidence in the State's possession or control that could be subjected to DNA testing. The State must prepare an inventory of the evidence and submit a copy of the inventory to the defendant and the court. If evidence is destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt, for a knowing violation.

(g) **Unfavorable Test Results.** If the results of the post-conviction DNA testing are not favorable to the defendant, the court must dismiss without a hearing any DNA-related claims asserted under Rule 32.1. The court may make further orders as it deems appropriate, including orders:

(1) notifying the Board of Executive Clemency or a probation department;

(2) requesting to add the defendant's sample to the federal combined DNA index system offender database; or

(3) notifying the victim or the victim's family.

(h) **Favorable Test Results.** Notwithstanding any other provision of law that would bar a hearing as untimely, the court must order a hearing and make any further orders that are required by statute or the Arizona Rules of Criminal Procedure if the results of the post-conviction DNA testing are favorable to the defendant. If there are no material issues of fact, the hearing need not be an evidentiary hearing, but the court must give the parties an opportunity to argue why the defendant should or should not be entitled to relief under Rule 32.1 as a matter of law.

Rule 32.1. Scope of Remedy
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.1

Rule 32.1. Scope of Remedy

Currentness

Petition for Relief. Subject to Rules 32.2 and 32.4(a)(2), a defendant convicted of, or sentenced for, a criminal offense may file a notice of post-conviction relief, without paying any fee, to request appropriate relief under this rule.

Of-Right Petition. A defendant who pled guilty or no contest, or who admitted a probation violation, or who had an automatic probation violation based on a plea of guilty or no contest, may file an of-right notice of post-conviction relief. After the court's final order or mandate in a Rule 32 of-right proceeding, the defendant also may file an of-right notice challenging the effectiveness of Rule 32 counsel in the first of-right proceeding.

Grounds for Relief. Grounds for relief are:

(a) the defendant's conviction was obtained or the sentence was imposed in violation of the United States or Arizona constitutions;

(b) the court did not have jurisdiction to render a judgment or to impose a sentence on the defendant;

(c) the sentence imposed exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(d) the defendant continues to be in custody after his or her sentence expired;

(e) newly discovered material facts probably exist and those facts probably would have changed the verdict or sentence.

Newly discovered material facts exist if:

(1) the facts were discovered after the trial or sentencing;

(2) the defendant exercised due diligence in discovering these facts; and

(3) the newly discovered facts are material and not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony that was of critical significance such that the evidence probably would have changed the verdict or sentence.

(f) the failure to file a notice of post-conviction relief of-right or a notice of appeal within the required time was not the defendant's fault;

(g) there has been a significant change in the law that, if applied to the defendant's case, would probably overturn the defendant's conviction or sentence; or

(h) the defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty beyond a reasonable doubt, or that the death penalty would not have been imposed.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

COMMENT

Rule 32.1(a). Most traditional collateral attacks are encompassed within this provision. Claims of denial of counsel, of incompetency of counsel, and of violation of other rights based on the federal or Arizona constitutions are included.

Rule 32.1(b). This provision retains the basic attack on jurisdiction universally recognized as a ground for collateral attack.

Rule 32.1(c). This provision is intended to allow an attack on a sentence even though the petitioner does not contest the validity of the underlying conviction.

Rule 32.1(d). This provision is not intended to include attacks on the conditions of imprisonment or on correctional practices or prison rules. It is intended to include claims of more traditional types--*e.g.*, miscalculation of sentence, questions of computation of good time--which result in the defendant remaining in custody when he should be free. Appeals from the conviction and imposition of probation must be filed no later than 20 days of the entry of judgment and sentence. *See* Rules 26.1, 26.16(a), and 31.2.

Rule 32.1(f). This provision includes the situation in which the defendant fails to appeal because the trial court, despite the requirements of Rule 26.11(a)(1), did not advise him of his appeal rights, and the situation in which the defendant intended to appeal and thought timely appeal had been filed by his attorney when in reality it had not.

Rule 32.1(h). This claim is independent of a claim under Rule 32.1(e). A defendant who establishes a claim of newly discovered evidence does not need to comply with the requirements of Rule 32.1(h).

HISTORICAL AND STATUTORY NOTES

Former Rule 32.1, relating to scope of remedy, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.1, AZ ST RCRP Rule 32.1
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.2. Preclusion of Remedy
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.2

Rule 32.2. Preclusion of Remedy

Currentness

(a) Preclusion. A defendant is precluded from relief under Rule 32 based on any ground:

(1) still raisable on direct appeal under Rule 31 or in a post-trial motion under Rule 24;

(2) finally adjudicated on the merits in an appeal or in any previous collateral proceeding; or

(3) waived at trial, on appeal, or in any previous collateral proceeding.

(b) Exceptions. Rule 32.2(a) does not apply to claims for relief based on Rule 32.1(d) through (h). A claim under Rule 32.1(d) through (h) that defendant raises in a successive or untimely post-conviction notice must include the specific exception to preclusion and explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not identify a specific exception or provide reasons why defendant did not raise the claim in a previous petition or in a timely manner, the court may summarily dismiss the notice.

(c) Standard of Proof. The State must plead and prove any ground of preclusion by a preponderance of the evidence. A court may determine that an issue is precluded even if the State does not raise preclusion.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES
Former Rule 32.2, relating to preclusion of remedy, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.2, AZ ST RCRP Rule 32.2
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.3. Nature of a Post-Conviction Proceeding and Relation to Other Remedies
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.3

Rule 32.3. Nature of a Post-Conviction Proceeding and Relation to Other Remedies

Currentness

(a) Generally. A post-conviction proceeding is part of the original criminal action and is not a separate action. It displaces and incorporates all trial court post-trial remedies except those obtainable by post-trial motions and habeas corpus.

(b) Habeas Corpus. If a court having jurisdiction over a defendant's person receives an application for a writ of habeas corpus raising any claim that attacks the validity of the defendant's conviction or sentence, and if that court is not the court that convicted or sentenced the defendant, it must transfer the application to the court where the defendant was convicted or sentenced. The court to which the application is transferred must treat the application as a Rule 32 petition for post-conviction relief, and the court and all parties must apply Rule 32's procedures.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

COMMENT

This rule provides that all Rule 32 proceedings are to be treated as criminal actions. The characterization of the proceeding as criminal assures compensation for appointed counsel and the applicability of criminal standards for admissibility of evidence at an evidentiary hearing except as otherwise provided.

Rule 32 does not restrict the scope of the writ of habeas corpus under Ariz. Const. art. 2, § 14. *See* A.R.S. §§ 13-4121 et seq. (statutes governing habeas corpus). The rule is intended to provide a standard procedure for accomplishing the objectives of all constitutional, statutory, or common law post-trial writs and remedies except a writ of habeas corpus.

HISTORICAL AND STATUTORY NOTES

Former Rule 32.3, relating to nature of proceeding and relation to other remedies, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.3, AZ ST RCRP Rule 32.3
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.4. Filing of Notice and Petition, and Other Initial Proceedings
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.4

Rule 32.4. Filing of Notice and Petition, and Other Initial Proceedings

Currentness

(a) Notice of Post-Conviction Relief.

(1) *Filing.* A defendant starts a post-conviction proceeding by filing a notice of post-conviction relief in the court where the defendant was convicted. The court must make "notice" forms available for defendants' use.

(2) *Time for Filing.*

(A) Generally. In filing a notice, a defendant must follow the deadlines set forth in this rule. These deadlines do not apply to claims under Rule 32.1(d) through (h).

(B) Time for Filing a Notice in a Capital Case. In a capital case, the Supreme Court clerk must expeditiously file a notice of post-conviction relief with the trial court upon the issuance of the mandate affirming the defendant's conviction and sentence on direct appeal.

(C) Time for Filing a Notice in an Of-Right Proceeding. In a Rule 32 of-right proceeding, a defendant must file the notice no later than 90 days after the entry of judgment and sentence. A defendant may raise an of-right claim of ineffective assistance of Rule 32 counsel in a successive Rule 32 notice if it is filed no later than 30 days after the final order or mandate in the defendant's of-right petition for post-conviction relief.

(D) Time for Filing a Notice in Other Noncapital Cases. In all other noncapital cases, a defendant must file a notice no later than 90 days after the entry of judgment and sentence or no later than 30 days after the issuance of the order and mandate in the direct appeal, whichever is later.

(3) *Content of the Notice.* The notice must contain the caption of the original criminal case or cases to which it pertains and the other information shown in Rule 41, Form 24(b).

(4) *Duty of the Clerk upon Receiving a Notice.*

(A) Generally. Upon receiving a notice from a defendant or the Supreme Court, the superior court clerk must file it in the record of each original case to which it pertains. Unless the court summarily dismisses the notice, the clerk must promptly send copies of the notice to the defendant, defense counsel, the prosecuting attorney's office, and the Attorney General. If the conviction occurred in a limited jurisdiction court, the clerk for the limited jurisdiction court must send a copy of the notice to the prosecuting attorney who represented the State at trial, and to a defense counsel or a defendant, if self-represented. In either court, the clerk must note in the record the date and manner of sending copies of the notice.

(B) Notice to an Appellate Court. If an appeal of the defendant's conviction or sentence is pending, the clerk must send a copy of the notice of post-conviction relief to the appropriate appellate court no later than 5 days of its filing, and must note in the record the date and manner of sending the copy.

(5) *Duty of the State upon Receiving a Notice.* Upon receiving a copy of a notice, the State must notify any victim who has requested notification of post-conviction proceedings.

(b) Appointment of Counsel.

(1) *Capital Cases.* After the Supreme Court has affirmed a capital defendant's conviction and sentence, it must appoint counsel who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041. Alternatively, the Supreme Court may authorize the presiding judge of the county where the case originated to appoint counsel. If the presiding judge makes an appointment, the court must file a copy of the appointment order with the Supreme Court. If a capital defendant files a successive notice, the presiding judge must appoint the

defendant's previous post-conviction counsel, unless the defendant waives counsel or there is good cause to appoint another qualified attorney who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041.

(2) *Noncapital Cases.* No later than 15 days after the filing of a notice of a defendant's timely or first Rule 32 proceeding, the presiding judge must appoint counsel for the defendant if: (A) the defendant requests it; and (B) the judge has previously determined that the defendant is indigent or the defendant has completed an affidavit of indigency. Upon the filing of all other notices in a noncapital case, the presiding judge may appoint counsel for an indigent defendant if requested.

(c) Time for Filing a Petition for Post-Conviction Relief.

(1) *Capital Cases.*

(A) Filing Deadline for First Petition. 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. For good cause and after considering the rights of the victim, the court may grant additional 30-day extensions for good cause.

(D) Notice of Status. The defendant must file a notice in the Supreme Court advising the Court of the status of the proceeding if a petition is not filed:

(i) within 12 months after counsel is appointed; or

(ii) if the defendant is proceeding without counsel, within 12 months after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

The defendant must file a status report in the Supreme Court every 60 days until a petition is filed.

(2) *Noncapital Cases.*

(A) Filing Deadline. In a noncapital case, appointed counsel must file a petition no later than 60 days after the date of appointment. A defendant without counsel 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, 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.

(d) Duty of Counsel; Extension of Time for the Defendant.

(1) *Duty.* In a Rule 32 proceeding, counsel must investigate the defendant's case for any and all colorable claims.

(2) *If Counsel Finds No Colorable Claims.*

(A) Counsel's Notice. In an of-right proceeding, if counsel determines there are no colorable claims, counsel must file a notice advising the court of this determination. The notice should include a summary of the facts and procedural history of the case, including appropriate citations to the record. The notice also must identify the specific materials that counsel reviewed, the date when counsel provided the record to the defendant, and the contents of the record provided. After counsel files a notice, counsel's role is limited to acting as advisory counsel until the trial court's final determination in the Rule 32 proceeding unless the court orders otherwise.

(B) Defendant's Pro Se Petition. Upon receipt of counsel's notice, the court must allow the defendant to file a petition on his or her own behalf, and extend the time for filing a petition by 45 days from the date counsel filed the notice. The court may grant additional extensions only on a showing of extraordinary circumstances.

(e) Transcript Preparation.

(1) *Requests for Transcripts.* If the trial court proceedings were not transcribed, the defendant may request that certified transcripts be prepared. The court or clerk must provide a form for the defendant to make this request.

(2) *Order.* The court must promptly review the defendant's request and order the preparation of only those transcripts it deems necessary for resolving issues the defendant will raise in the petition.

(3) *Deadline.* Certified transcripts must be prepared and filed no later than 60 days after the entry of the order granting the request.

(4) *Cost.* If the defendant is indigent, the transcripts must be prepared at county expense.

(5) *Extending the Deadline for Filing a Petition.* If a defendant requests the preparation of certified transcripts, the defendant's deadline for filing a petition under (c) is extended by the time between the request and either the transcripts' final preparation or the court's denial of the request.

(f) Assignment of a Judge. The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. If the sentencing judge's testimony will be relevant, the case must be reassigned to another judge.

(g) Stay of Execution of a Death Sentence on a Successive Petition. Once the defendant has received a sentence of death and the Supreme Court has fixed the time for executing the sentence, the trial court may not grant a stay of execution if the defendant files a successive petition. In those circumstances, the defendant must file an application for a stay with the Supreme Court, and the application must show with particularity any claims that are not precluded under Rule 32.2. If the Supreme Court grants a stay, the Supreme Court clerk must notify the defendant, the Attorney General, and the Director of the State Department of Corrections.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

COMMENT

Rule 32.4(a). If a petition is filed while an appeal is pending, the appellate court, under Rule 31.3(b), may stay the appeal until the petition is adjudicated. Any appeal from the decision on the petition will then be joined with the appeal from the judgment or sentence. *See* Rule 31.4(b) (requiring consolidation unless good cause exists not to do so).

HISTORICAL AND STATUTORY NOTES

Former Rule 32.4, relating to commencement of proceedings, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.4, AZ ST RCRP Rule 32.4
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.5. Contents of a Petition for Post-Conviction Relief
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.5

Rule 32.5. Contents of a Petition for Post-Conviction Relief

Currentness

(a) 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.

(b) Length of Petition. In Rule 32 of-right and noncapital cases, the petition must not exceed 28 pages. The State's response must not exceed 28 pages, and defendant's reply, if any, must not exceed 11 pages. In capital cases, the petition must not exceed 80 pages. The State's response must not exceed 80 pages, and defendant's reply must not exceed 40 pages.

(c) 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. The declaration must identify facts that are within the defendant's personal knowledge separately from other factual allegations.

(d) Attachments. The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the petition's allegations.

(e) 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.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES
Former Rule 32.5, relating to contents of petition, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.5, AZ ST RCRP Rule 32.5
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.6. Response and Reply; Amendments; Review
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.6

Rule 32.6. Response and Reply; Amendments; Review

Currentness

(a) State's Response. The State must file its response no later than 45 days after the defendant files the petition. The court may grant the State a 30-day extension to file its response for good cause, and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim. 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.

(b) Defendant's Reply. No later than 15 days after a response is served, the defendant may file a reply. The court may for good cause grant an extension of time.

(c) Amending the Petition. After the filing of a post-conviction relief petition, the court may permit amendments only for good cause.

(d) Review and Further Proceedings.

(1) *Summary Disposition.* If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition.

(2) *Setting a Hearing.* If the court does not summarily dismiss the petition, it must set a status conference or hearing within 30 days on those claims that present a material issue of fact. The court also may set a hearing on those claims that present only a material issue of law.

(3) *Notice to Victim.* If a hearing is ordered, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 32.6, relating to additional pleadings, summary disposition, and amendments, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.6, AZ ST RCRP Rule 32.6
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.7. Informal Conference
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.7

Rule 32.7. Informal Conference

Currentness

(a) Generally. At any time, the court may hold an informal conference to expedite a proceeding for post-conviction relief.

(b) Capital Cases. In a capital case, the court must hold an informal conference no later than 90 days after counsel is appointed on the first notice of a petition for post-conviction relief.

(c) The Defendant's Presence. The defendant need not be present at an informal conference if defense counsel is present.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 32.7, relating to informal conference, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.7, AZ ST RCRP Rule 32.7
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.8. Evidentiary Hearing
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.8

Rule 32.8. Evidentiary Hearing

Currentness

(a) Rights Attendant to the Hearing; Location; Record. The defendant is entitled to a hearing to determine issues of material fact, and has the right to be present and to subpoena witnesses for the hearing. The court may order the hearing to be held at the defendant's place of confinement if facilities are available and after giving at least 15 days' notice to the officer in charge of the confinement facility. In superior court proceedings, the court must make a verbatim record.

(b) Evidence. The Arizona Rules of Evidence applicable to criminal proceedings apply at the hearing, except that the defendant may be called to testify.

(c) Burden of Proof. The defendant has the burden of proving factual allegations by a preponderance of the evidence. If the defendant proves a constitutional violation, the State has the burden of proving beyond a reasonable doubt that the violation was harmless.

(d) Decision.

(1) *Findings and Conclusions.* The court must make specific findings of fact and expressly state its conclusions of law relating to each issue presented.

(2) *Decision in the Defendant's Favor.* If the court finds in the defendant's favor, it must enter appropriate orders concerning:

(A) the conviction, sentence, or detention;

(B) any further proceedings, including a new trial and conditions of release; and

(C) other matters that may be necessary and proper.

(e) Transcript. On a party's request, the court must order the preparation of a certified transcript of the evidentiary hearing. The request must be made within the time allowed for filing a petition for review. If the defendant is indigent, preparation of the evidentiary hearing transcript will be at county expense.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 32.8, relating to evidentiary hearing, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.8, AZ ST RCRP Rule 32.8
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.9. Review
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.9

Rule 32.9. Review

Currentness

(a) Filing of a Motion for Rehearing.

(1) *Timing and Content.* No later than 15 days after entry of the trial court's final decision on a petition, any party aggrieved by the decision may file a motion for rehearing. The motion must state in detail the grounds of the court's alleged errors.

(2) *Response and Reply.* An opposing party may not file a response to a motion for rehearing unless the court requests one, but the court may not grant a motion for rehearing without requesting and considering a response. If a response is filed, the moving party may file a reply no later than 10 days after the response is served.

(3) *Effect on Appellate Rights.* Filing of a motion for rehearing is not a prerequisite to filing a petition for review under (c).

(b) Disposition if Motion Granted. If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing, or grant a new hearing and then either amend or reaffirm its previous ruling. In either case, it must state its reasons for amending a previous ruling. The State must notify the victim of any action taken by the court if the victim has requested notification.

(c) Petition and Cross-Petition for Review.

(1) *Time and Place for Filing.*

(A) Petition. No later than 30 days after the entry of the trial court's final decision on a petition or a motion for rehearing, an aggrieved party may petition the appropriate appellate court for review of the decision.

(B) Cross-Petition. The opposing party may file a cross-petition for review no later than 15 days after a petition for review is served.

(C) Place for Filing. The parties must file the petition for review, cross-petition, and all responsive filings with the appellate court and not the trial court.

(D) Computation of Time and Modifying Deadlines. Rule 31.3(d) governs the computation of any appellate court deadline in this rule, and an appellate court may modify any deadline in accordance with Rule 31.3(e).

(2) *Notice of Filing and Additional Record Designation.* No later than 3 days after a petition or cross-petition for review is filed, the petitioner and cross-petitioner must file with the trial court a "notice of filing." The notice of filing may designate additional items for the record described in (e). These items may include additional certified transcripts of trial court proceedings prepared under Rule 32.4 (e), or that were otherwise available to the trial court and the parties, and are material to the issues raised in the petition for review.

(3) *Motions.* Motions for extensions of time to file petitions or cross-petitions for review must be filed with the trial court, which must decide the motions promptly. The parties must file all other motions in the appellate court.

(4) *Form and Contents of a Petition or Cross-Petition for Review.*

(A) Form and Length. Petitions and cross-petitions for review, along with other documents filed with the appellate clerk, must comply with the formatting requirements of Rule 31.6(b). The petition or cross-petition must contain a caption with the name of the appellate court, the title of the case, a space for the appellate court case number, the trial court case number, and a brief descriptive title. The caption must designate the parties as they appear in the trial court's caption. The petition or cross-petition must not exceed 6,000 words if typed or 22 pages if handwritten, exclusive of an appendix and copies of the trial court's rulings.

(B) Contents. A petition or cross-petition for review must contain:

(i) copies of the trial court's rulings entered under Rules 32.6(d), 32.8(d) and 32.9(b);

(ii) a statement of issues the trial court decided that the defendant is presenting for appellate review;

(iii) a statement of material facts concerning the issues presented for review, including specific references to the record for each material fact; and

(iv) reasons why the appellate court should grant the petition, including citations to supporting legal authority, if known.

(C) Effect of a Motion for Rehearing. The filing of a motion for rehearing under (a) does not limit the issues a party may raise in a petition or cross-petition for review.

(D) Waiver. A party's failure to raise any issue that could be raised in the petition or cross-petition for review constitutes a waiver of appellate review of that issue.

(5) *Appendix Accompanying Petition or Cross-Petition.*

(A) Generally. Unless otherwise ordered, a petition or cross-petition may be accompanied by an appendix. The petition or cross-petition must not incorporate any document by reference, except the appendix. An appendix that exceeds 15 pages in length, exclusive of the trial court's rulings, must be submitted separately from the petition or cross-petition.

(B) Capital Cases. In capital cases, the parties must submit an appendix that supports all of the petition's references to the trial court record, with copies of supporting portions of the record.

(C) Noncapital Cases. In non-capital cases, an appendix is not required, but the petition must contain specific references to the record to support all material factual statements.

(6) *Service; Response; Reply.*

(A) Service. A party filing a petition, cross-petition, appendix, response, reply, or a related filing must serve a copy of the filing on all other parties. The serving party must file a certificate of service complying with Rule 1.7(c)(3), identifying who was served and the date and manner of service.

(B) Response. No later than 30 days after a petition or cross-petition is served, a party opposing the petition or cross-petition may file a response. The response must not exceed 6,000 words if typed and 22 pages if handwritten, exclusive of an appendix, and must comply with the form requirements in (c)(4)(A). An appendix to a response must comply with the form and substantive requirements in (c)(5).

(C) Reply. No later than 10 days after a response is served, a party may file a reply. The reply is limited to matters addressed in the response and may not exceed 3,000 words if typed and 11 pages if handwritten. It also must comply with the form requirements in (c)(4)(A), and may not include an appendix.

(7) *Amicus Curiae.* Rules 31.13(a)(7) and 31.15 govern filing and responding to an amicus curiae brief.

(d) Stay Pending Review. The State's filing of a motion for rehearing or a petition for review of an order granting a new trial automatically stays the order until appellate review is completed. For any relief the trial court grants to a defendant other than a new trial, granting a stay pending further review is within the discretion of the trial court or the appellate court.

(e) Transmitting the Record to the Appellate Court.

(1) *In Noncapital Cases.* No later than 45 days after receiving a notice of filing under (c)(2), the trial court clerk must transmit the record, including the trial court file and transcripts filed in the trial court, to the appellate court.

(2) *In Capital Cases.* The trial court clerk may transmit the record of post-conviction proceedings to the appellate court only if the appellate court requests it. The record includes copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings, all minute entries and orders issued in the post-conviction proceedings, transcripts filed in the trial court, and any exhibits admitted by the trial court in the post-conviction proceedings.

(f) Disposition. The appellate court may grant review of the petition and may order oral argument. Upon granting review, the court may grant or deny relief and issue other orders it deems necessary and proper.

(g) Reconsideration or Review of an Appellate Court Decision. The provisions in Rules 31.20 and 31.21 relating to motions for reconsideration and petitions for review in criminal appeals govern motions for reconsideration and petitions for review of an appellate court decision entered under (f).

(h) Return of the Record. After a petition for review is resolved, the appellate clerk must return the record to the trial court clerk for retention.

(i) Notice to the Victim. Upon the victim's request, the State must notify the victim of any action taken by the appellate court.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 32.9, relating to review, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.9, AZ ST RCRP Rule 32.9
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.10. Review of an Intellectual Disability Determination in Capital Cases
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.10

Rule 32.10. Review of an Intellectual Disability Determination in Capital Cases

Currentness

No later than 10 days after the trial court makes a finding on intellectual disability, the State or the defendant may file with the Court of Appeals a petition for special action challenging the finding. The Rules of Procedure for Special Actions govern the special action, except the Court of Appeals must accept jurisdiction and decide any issue raised.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 32.10, relating to review of intellectual disability determination, was abrogated effective Jan. 1, 2018. See, now, this rule.

Former Rule 32.10, was deleted effective Dec. 1, 1992, nunc pro tunc effective Sept. 30, 1992.

16A A. R. S. Rules Crim. Proc., Rule 32.10, AZ ST RCRP Rule 32.10
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.11. Extensions of Time; Victim Notice and Service
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.11

Rule 32.11. Extensions of Time; Victim Notice and Service

Currentness

(a) Notice to the Victim. If the victim in a capital case has filed a notice of appearance under A.R.S. § 13-4234.01, a party requesting an extension of time to file a brief must serve or otherwise provide notice of the request to the victim.

(b) Manner and Timing of Service or Notice.

(1) *Victim's Choice of the Manner of Service.* The victim may specify in the notice of appearance whether the service of the request should be to the victim or whether it should go to another person, including the prosecutor, and whether service of the notice should be electronic, by telephone, or by regular mail. Service must be made in the manner specified in the victim's notice of appearance or, if no method is specified, by regular mail. If the victim has requested direct notification, the party requesting an extension of time must serve the victim with notice no later than 24 hours after filing the request.

(2) *Service Through the Prosecutor.* If the victim has not specified a method of service or if the victim has requested service through the prosecutor, the party requesting the extension of time must serve the prosecutor's office handling the post-conviction proceeding. If the prosecutor has the duty to notify the victim on behalf of the defendant, the prosecutor must do so no later than 24 hours after receiving the request.

(c) Victim's Response. A victim may file a response to the request no later than 10 days after it is served.

(d) Factors. In ruling on any request for an extension of time to file a brief, the court must consider the rights of the defendant and the victim to a prompt and final conclusion of the case.

Credits
Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES
Former Rule 32.11, relating to extension of time and notification of victims, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 32.11, AZ ST RCRP Rule 32.11
Current with amendments received through 11/1/17

END OF DOCUMENT

Rule 32.12. Post-Conviction Deoxyribonucleic Acid Testing
Arizona Revised Statutes Annotated
Rules of Criminal Procedure

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
IV. Pretrial Procedures
Rule 32. Post-Conviction Relief (Refs & Annos)

16A A.R.S. Rules Crim.Proc., Rule 32.12

Rule 32.12. Post-Conviction Deoxyribonucleic Acid Testing

Currentness

(a) Generally. Any person who has been convicted and sentenced for a felony offense may petition the court at any time for forensic deoxyribonucleic acid (DNA) testing of any evidence:

(1) in the possession or control of the court or the State;

(2) related to the investigation or prosecution that resulted in the judgment of conviction; and

(3) that may contain biological evidence.

(b) Manner of Filing; Response. The defendant must file the petition under the same criminal cause number as the felony conviction, and the clerk must distribute it in the manner provided in Rule 32.4(a)(4). The State must respond to the petition no later than 45 days after it is served.

(c) Appointment of Counsel. The court may appoint counsel for an indigent defendant at any time during proceedings under this rule.

(d) Court Orders.

(1) *Mandatory Testing.* After considering the petition and the State's response, the court must order DNA testing if the court finds that:

(A) a reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing;

(B) the evidence is still in existence; and

(C) the evidence was not previously subjected to DNA testing, or the evidence was not subjected to the type of DNA testing that defendant now requests and the requested testing may resolve an issue not resolved by previous testing.

(2) *Discretionary Testing.* After considering the petition and the State's response, the court may order DNA testing if the court finds that (d)(1)(B) and (C) apply, and that a reasonable probability exists that either:

(A) the defendant's verdict or sentence would have been more favorable if the results of DNA testing had been available at the trial leading to the judgment of conviction; or

(B) DNA testing will produce exculpatory evidence.

(3) *Laboratory; Costs.* If the court orders testing under (d)(1) or (2), the court must select an accredited laboratory to conduct the testing. The court may require the defendant to pay the costs of testing.

(4) *Other Orders.* The court may enter any other appropriate orders, including orders requiring elimination samples from third parties and designating:

(A) the type of DNA analysis to be used;

(B) the procedures to be followed during the testing; and

(C) the preservation of some of the sample for replicating the testing.

(e) Test Results.

(1) *Earlier Testing.* If the State or defense counsel has previously subjected evidence to DNA testing, the court may order the party to provide all other parties and the court with access to the laboratory reports prepared in connection with that testing, including underlying data and laboratory notes.

(2) *Testing Under this Rule.* If the court orders DNA testing under this rule, the court must order the production to all parties of any laboratory reports prepared in connection with the testing and may order the production of any underlying data and laboratory notes.

(f) Preservation of Evidence. If a defendant files a petition under this rule, the court must order the State to preserve during the pendency of the proceeding all evidence in the State's possession or control that could be subjected to DNA testing. The State must prepare an inventory of the evidence and submit a copy of the inventory to the defendant and the court. If evidence is destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt, for a knowing violation.

(g) Unfavorable Test Results. If the results of the post-conviction DNA testing are not favorable to the defendant, the court must dismiss without a hearing any DNA-related claims asserted under Rule 32.1. The court may make further orders as it deems appropriate, including orders:

(1) notifying the Board of Executive Clemency or a probation department;

(2) requesting to add the defendant's sample to the federal combined DNA index system offender database; or

(3) notifying the victim or the victim's family.

(h) Favorable Test Results. Notwithstanding any other provision of law that would bar a hearing as untimely, the court must order a hearing and make any further orders that are required by statute or the Arizona Rules of Criminal Procedure if the results of the post-conviction DNA testing are favorable to the defendant. If there are no material issues of fact, the hearing need not be an evidentiary hearing, but the court must give the parties an opportunity to argue why the defendant should or should not be entitled to relief under Rule 32.1 as a matter of law.

Credits

Added by Aug. 31, 2017, effective Jan. 1, 2018.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 32.12, relating to post-conviction deoxyribonucleic acid testing, was abrogated effective Jan. 1, 2018.

16A A. R. S. Rules Crim. Proc., Rule 32.12, AZ ST RCRP Rule 32.12
Current with amendments received through 11/1/17

END OF DOCUMENT

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
V. Miscellaneous
Rule 41. Forms
Forms

16A A.R.S. Rules Crim.Proc., Form 24(b)

Form 24(b). Notice of Post-Conviction Relief

Currentness

_____ **COURT** _____ **County, Arizona**

STATE OF ARIZONA Plaintiff	[CASE/COMPLAINT NO.]
-vs-	**NOTICE OF POST-CONVICTION RELIEF**
Defendant (FIRST, MI, LAST)	

NOTICE OF POST-CONVICTION RELIEF

Instructions: When the notice is complete, file it with the clerk of the superior court of the county in which the conviction

occurred.

A person unable to pay costs of this proceeding and to obtain the services of a lawyer without substantial personal or family hardship should indicate this by requesting counsel in Question 8 of this notice and execute the affidavit of indigency on page 3. In the event an attorney is not appointed, a Request for Preparation of Post-Conviction Relief Record form must be filed by the defendant if some portion of the record is needed and has not previously been obtained.

No issue which has already been raised and decided on appeal or in a previous petition for post-conviction relief may be used as a basis for a successive petition for post-conviction relief.

1. Defendant's Name: .....

   Defendant's prison number (if any): .....

2. Defendant's address: .....

3. (A) Defendant was convicted of the following crimes: .....

   .....

   (B) Defendant was sentenced on _____, 20 ___, to a term of , commencing on _____, 20 ___, following a: .....

   [ ] Trial by jury

[ ] Trial to Judge without a Jury

[ ] Plea of Guilty

[ ] Plea of No Contest

[ ] Probation Revocation Admission

[ ] Probation Revocation Violation Hearing in the Superior Court in _____ County with judicial officer _____ presiding.

(C) The file number of the case was CR--_____.

4. Defendant has taken the following actions to secure relief from his convictions or sentences:

(A) Direct Appeal: [ ] Yes [ ] No

(B) Previous Rule 32 Proceedings: [ ] Yes [ ] No

5. Defendant was represented by the following lawyers at: (provide name of counsel and counsel's address, if known)

Trial or change of plea: .....

Sentencing hearing: .....

Appeal (if any): .....

Previous Rule 32 proceedings (if any): .....

6. Is the defendant raising a claim of ineffective assistance of counsel? [ ] Yes [ ] No

7. Defendant is presently represented by a lawyer? [ ] Yes [ ] No

If yes, provide name and address: .....

.....

8. If you are not currently represented by a lawyer, do you want the court to appoint a lawyer for this proceeding? [ ] Yes [ ] No

9 **Respond to this section only if this is an untimely notice or the defendant has filed a previous Rule 32 petition in this case.**

(A) Is a claim pursuant to Rule 32.1(d), (e), (f), (g) or (h) being raised in this petition? [ ] Yes [ ] No

(B) If yes, state the specific exception:

[ ] The defendant is being held in custody after the sentence imposed has expired.

[ ] Newly discovered material facts exist which probably would have changed the verdict or sentence.

[ ] The defendant's failure to file a timely notice of post-conviction relief or notice of appeal was without fault on the defendant's part.

[ ] There has been a significant change in the law that would probably overturn the conviction or sentence.

[ ] Facts exist which establish by clear and convincing evidence that the defendant is actually innocent.

(C) State the facts that support the claim and the reasons for not raising the claim in the previous petition or in a timely manner:

I am requesting post-conviction relief. I understand that I must include in my petition every ground for relief which is known and which has not been raised and decided previously. I also understand that failure to raise any known ground for relief in my petition will prohibit me from raising it at any future date.

_____ .....

Date Defendant

AFFIDAVIT OF INDIGENCY

I have requested the appointment of a lawyer to represent me in post conviction proceedings. I swear under oath and penalty of perjury that I am indigent and because of my poverty I am financially unable to pay for the cost of a lawyer to represent me without incurring substantial hardship to myself or my family.

....

Date Defendant

State of Arizona) Subscribed and sworn to or affirmed before me on:

)ss.

County of) .....

Date

My Commission Expires .....

Notary Public

Form 24(b)

Credits

Added Sept. 5, 2007, effective Jan. 1, 2008.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

16A A. R. S. Rules Crim. Proc., Form 24(b), AZ ST RCRP Form 24(b)
Current with amendments received through 11/1/17

End of Document

Arizona Revised Statutes Annotated
Rules of Criminal Procedure (Refs & Annos)
V. Miscellaneous
Rule 41. Forms
Forms

16A A.R.S. Rules Crim.Proc., Form 25

Form 25. Petition for Post-Conviction Relief

Currentness

_____ **COURT** _____ **County, Arizona**

.....

STATE OF ARIZONA Plaintiff [CASE/COMPLAINT NO.]

-vs- **PETITION FOR**

POST-CONVICTION

.....

RELIEF

Defendant (FIRST, MI, LAST)

.....

PETITION FOR POST-CONVICTION RELIEF

Instructions: **In order for this petition to receive consideration by the court, you should first file Form 24(b).**

Each applicable question in Form 25 must be answered fully but concisely in legible handwriting or by typing. When necessary, an answer to a particular question may be completed on the reverse side of the page or on an additional blank page, making clear to which question such continued answer refers.

Any false statement of fact made and sworn to under oath in this petition could serve as the basis for prosecution and conviction for perjury. Therefore, exercise care to assure that all answers are true and correct.

NO ISSUE WHICH HAS ALREADY BEEN RAISED AND DECIDED ON APPEAL OR IN A PREVIOUS PETITION MAY BE USED AS A BASIS FOR THIS PETITION.

TAKE CARE TO INCLUDE EVERY GROUND FOR RELIEF WHICH IS KNOWN AND WHICH HAS NOT BEEN RAISED AND DECIDED PREVIOUSLY, SINCE FAILURE TO RAISE ANY SUCH GROUND IN THIS PETITION WILL BAR ITS BEING RAISED LATER.

When the petition is complete, mail it to the clerk of the court in which conviction occurred.

1. Petitioner's Name: .....

   Petitioner's prison number (if any): .....

2. Petitioner is now: [ ] On Parole [ ] On Probation [ ] Confined in

3. Petitioner is eligible for relief because of:

[ ] The introduction at trial of evidence obtained pursuant to an unlawful arrest.

[ ] The introduction at trial of evidence obtained by an unconstitutional search and seizure.

[ ] The introduction at trial of an identification obtained in violation of constitutional rights.

[ ] The introduction at trial of a coerced confession.

[ ] The introduction at trial of a statement obtained in the absence of a lawyer at a time when representation is constitutionally required.

[ ] Any other infringement of the right against self-incrimination.

[ ] The denial of the constitutional right to representation by a competent lawyer at every critical stage of the proceeding.

[ ] The unconstitutional suppression of evidence by the state.

[ ] The unconstitutional use by the state of perjured testimony.

[ ] An unlawfully induced plea of guilty or no contest.

[ ] Violation of the right not to be placed twice in jeopardy for the same offense.

[ ] The abridgement of any other right guaranteed by the constitution or the laws of this state, or the constitution of the United States, including a right that was not recognized as existing at the time of the trial if retrospective application of that right is required.

[ ] The existence of newly-discovered material which require the court to vacate the conviction or sentence.

[Specify when petitioner learned of these facts for the first time, and show how they would have affected the trial.]

.....

.....

[ ] The lack of jurisdiction of the court which entered the conviction or sentence.

[ ] The use by the state in determining sentence of a prior conviction obtained in violation of the United States or Arizona constitutions.

[ ] Sentence imposed other than in accordance with the sentencing procedures established by rule and statute.

[ ] Being held beyond the term of sentence or after parole or probation has been unlawfully revoked.

[ ] The failure of the judge at sentencing to advise petitioner of his right to appeal and the procedures for doing so.

[ ] The failure of petitioner's attorney to file a timely notice of appeal after being instructed to do so.

[ ] The obstruction by state officials of the right to appeal.

[ ] Any other ground within the scope of Rule 32, Rules of Criminal Procedure (please specify):

.....

.....

4. The facts in support of the alleged error(s) upon which this petition is based are contained in Attachment A.

[State facts clearly and fully; citations or discussions of authorities need not be included].

.....

.....

5. Supporting Exhibits:

A. The following exhibits are attached in support of the petition:

Affidavits [Exhibit(s) # _____]

Records [Exhibit(s) # _____]

Other supporting evidence [Exhibit(s) # _____]

B. No affidavits, records or other supporting evidence are attached because

.....

6. Petitioner has taken the following actions to secure relief from his convictions or sentences:

A. Direct Appeal: [ ] Yes [ ] No (If yes, name the courts to which appeals were taken, date, number, and result.)

.....

.....

B. Previous Rule 32 Proceedings: [ ] Yes [ ] No (If yes, name the court in which such petitions were filed, dates, numbers, and results, including all appeals from decisions on such petitions.)

.....

.....

C. Previous Habeas Corpus or Special Action Proceedings in the Courts of Arizona: [ ] Yes [ ] No (If yes, name the courts in which such petitions were filed, dates, numbers, and results, including all appeals from decisions on such petitions.)

.....

.....

D. Habeas Corpus or Other Petitions in Federal Courts: [ ] Yes [ ] No (If yes, name the districts in which petitions

were filed, dates, court numbers--civil action or miscellaneous, and results, including all appeals from decisions on such petitions.)

.....

.....

.....

7. The issues which are raised in this petition have not been finally decided nor raised before because: (State facts.)

.....

.....

.....

8. Because of the foregoing reasons, the relief which the petitioner desires is:

A. [ ] Release from custody and discharge.

B. [ ] A new trial.

C. [ ] Correction of sentence.

D. [ ] The right to file a delayed appeal.

E. [ ] Other relief (specify):

.....

.....

I declare under penalty of perjury that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

....

Date Defendant

Form 25

Credits

Added Sept. 5, 2007, effective Jan. 1, 2008. Amended Aug. 30, 2012, effective Jan. 1, 2013; Nov. 14, 2013, effective Jan. 1, 2014.

<Promulgated August 31, 2017>

<Effective January 1, 2018>

16A A. R. S. Rules Crim. Proc., Form 25, AZ ST RCRP Form 25
Current with amendments received through 11/1/17

RULE 32 SUPREME COURT TASK FORCE

Postconviction Relief Statutes and Corresponding Sections of Rule 32

Statute:	Corresponding Rule:
§ 13-4231 Scope of Post-Conviction Relief § 13-4231(A) Subject to restrictions of §13-4232 (preclusion), person convicted of or sentenced for a criminal offense may seek relief on following grounds: 1. Conviction or sentence violates federal or state constitution 2. Court lacked jurisdiction 3. Sentence exceeded maximum allowed by law or not in accordance with sentence authorized by law 4. Person is being held after sentence expired 5. Newly discovered material facts probably exist that probably would have changed verdict or sentence (statute defines newly discovered and includes due diligence requirement) 6. Failure to timely appeal from judgment or sentence or both within	**Rule 32.1. Scope of Remedy** **Petition for Relief.** Subject to Rules 32.2 and 32.4(a)(2), defendant convicted of or sentenced for criminal offense may file a notice of post-conviction relief, to request appropriate relief under this rule. **Of-Right Petition.** A defendant who pled guilty or no contest, or who admitted a probation violation, or who had an automatic probation violation based on a plea of guilty or no contest, may file an of-right notice of post-conviction relief. After the court's final order or mandate in a Rule 32 of-right proceeding, the defendant also may file an of-right notice challenging the effectiveness of Rule 32 counsel in the first of-right proceeding. **Grounds for Relief.** Grounds for relief are: (a) Conviction or sentence violates federal or state constitution; (b) Court lacked jurisdiction; (c) Sentence imposed exceeds maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law; (d) Defendant in custody after sentence expired; (e) Newly discovered material facts probably exist that probably would have changed the verdict or sentence. (Rule defines newly discovered and includes due diligence requirement);

prescribed time was without fault on his part 7. There has been a significant change in the law that if determined to apply to defendant's case would probably overturn conviction or sentence	(f) Failure to file a notice of post-conviction relief of-right or a notice of appeal within the required time was not the defendant's fault; (g) There has been a significant change in the law that, if applied to the defendant's case, would probably overturn the defendant's conviction or sentence; or (h) The defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty beyond a reasonable doubt, or that the death penalty would not have been imposed.
§ 13-4232 Preclusion of post-conviction relief; exceptions; proof A. Defendant is precluded from relief under this article based on any ground • Still raisable on direct appeal or on a post-trial motion • Finally adjudicated on the merits on appeal or in any previous collateral proceeding • That was waived at trial or in any previous collateral proceeding B. This section does not apply to claims for relief pursuant to § 13-4231(4), (5), (6) or (7). If a claim under § 13-4231(4) through (7) is to be raised in a successive or untimely petition, the notice shall set forth the substance of the claim and the reasons for not raising the claim in the previous petition or in a timely manner. If the notice does not state meritorious reasons substantiating the claim and why the claim was not stated in the previous petition or in a timely manner, the proceeding shall be summarily dismissed.	**Rule 32.2. Preclusion of Remedy** **(a) Preclusion.** A defendant is precluded from relief under Rule 32 based on any ground: (1) still raisable on direct appeal under Rule 31 or in a post-trial motion under Rule 24; (2) finally adjudicated on the merits in an appeal or in any previous collateral proceeding; or (3) waived at trial, on appeal, or in any previous collateral proceeding. **(b) Exceptions.** Rule 32.2(a) does not apply to claims for relief based on Rule 32.1(d) through (h). A claim under Rule 32.1(d) through (h) that defendant raises in a successive or untimely post-conviction notice must include the specific exception to preclusion and explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not identify a specific exception or provide reasons why defendant did not raise the claim in a previous petition or in a timely

C. Except for summary dismissals pursuant to subsection B, state shall plead and prove any ground of preclusion by a preponderance of the evidence. Though state has burden to plead and prove grounds of preclusion, any court on review of the record may determine and hold that an issue is precluded regardless of the state's failure to raise the preclusion issue.	manner, the court may summarily dismiss the notice. **(c) Standard of Proof.** The State must plead and prove any ground of preclusion by a preponderance of the evidence. A court may determine that an issue is precluded even if the State does not raise preclusion.
§ 13-4233 Nature of proceeding and relation to other remedies A proceeding pursuant to this article is a part of the original criminal action and is not a separate action. It displaces and incorporates all trial court post-trial remedies except post-trial motions and habeas corpus. If a defendant applies for a writ of habeas corpus in a court having jurisdiction of his person attacking the validity of his conviction or sentence, that court pursuant to this article shall transfer the cause to the court where the defendant was convicted or sentenced and that court shall treat it as a petition for relief under this article and the procedures of this article apply.	**Rule 32.3. Nature of a Post-Conviction Proceeding and Relation to Other Remedies** **(a) Generally.** A post-conviction proceeding is part of the original criminal action and is not a separate action. It displaces and incorporates all trial court post-trial remedies except those obtainable by post-trial motions and habeas corpus. **(b) Habeas Corpus.** If a court having jurisdiction over a defendant's person receives an application for a writ of habeas corpus raising any claim that attacks the validity of the defendant's conviction or sentence, and if that court is not the court that convicted or sentenced the defendant, it must transfer the application to the court where the defendant was convicted or sentenced. The court to which the application is transferred must treat the application as a Rule 32 petition for post-conviction relief, and the court and all parties must apply Rule 32's procedures.
§ 13-4234; Commencement of proceedings; notice; appointment of counsel for capital defendants; assignment of judge; stay A. A proceeding is commenced by timely filing a notice of postconviction relief with the clerk of the court in which the conviction occurred. The clerk of the	**Rule 32.4. Filing of Notice and Petition, and Other Initial Proceedings** **(a) Notice of Post-Conviction Relief.** (1) Filing. A defendant starts a post-conviction proceeding by filing a notice of post-conviction relief in the court where the

trial court shall provide notice forms for commencement of first and successive postconviction relief proceedings. The notice shall bear the caption of the original criminal action to which it pertains. The notice in successive postconviction relief proceedings shall comply with § 13-4232, subsection B. On receipt of the notice, the clerk of the trial court shall file a copy of the notice in the case file of each original action and promptly send copies to the defendant, the defendant's attorney, if known, the county attorney and the attorney general, noting the date and manner of sending the copies in the record. The state shall notify the victim on request. B. If an appeal of the defendant's conviction or sentence, or both, is pending, the clerk, within five days after the filing of the notice for postconviction relief, shall send a copy of the notice to the appropriate appellate court, noting the date and manner of sending the copy in the record. C. In noncapital cases, the notice shall be filed within ninety days after the judgment and sentence are entered or within thirty days after the order and mandate affirming the judgment and sentence is issued on direct appeal, whichever is later. A defendant has sixty days from the filing of the notice in which to file a petition. On the filing of a successive notice, a defendant has thirty days from the filing of the notice in which to file a petition. D. In capital cases, on the issuance of a mandate affirming the defendant's conviction and sentence on direct	defendant was convicted. The court must make "notice" forms available for defendants' use. (2) Time for Filing. (A) Generally. In filing a notice, a defendant must follow the deadlines set forth in this rule. These deadlines do not apply to claims under Rule 32.1(d) through (h). (B) Time for Filing a Notice in a Capital Case. In a capital case, the Supreme Court clerk must expeditiously file a notice of post-conviction relief with the trial court upon the issuance of the mandate affirming the defendant's conviction and sentence on direct appeal. (C) Time for Filing a Notice in an Of-Right Proceeding. In a Rule 32 of-right proceeding, a defendant must file the notice no later than 90 days after the entry of judgment and sentence. A defendant may raise an of-right claim of ineffective assistance of Rule 32 counsel in a successive Rule 32 notice if it is filed no later than 30 days after the final order or mandate in the defendant's of-right petition for post-conviction relief. (D) Time for Filing a Notice in Other Noncapital Cases. In all other noncapital cases, a defendant must file a notice no later than 90 days after the entry of judgment and sentence or no later than 30 days after the issuance of the order and mandate in the direct appeal, whichever is later. (3) Content of the Notice. The notice must contain the caption of the original criminal case or cases to which it pertains and the

appeal, the clerk of the supreme court expeditiously shall file a notice of postconviction relief with the trial court. On the first notice in capital cases, a defendant has sixty days from the filing of the notice in which to file a petition. The supreme court shall appoint counsel pursuant to § 13-4041, subsection B. All indigent state prisoners under a capital sentence are entitled to the appointment of counsel to represent them in state postconviction proceedings. A competent indigent defendant may reject the offer of counsel with an understanding of its legal consequence. On successive notice in capital cases, the trial court shall appoint the previous postconviction relief counsel of the capital defendant unless counsel is waived pursuant to § 13-4041, subsection D or good cause exists to appoint another qualified attorney pursuant to § 13-4041, subsection B. On the filing of a successive notice, a capital defendant or an appointed attorney has thirty days from the filing of the notice in which to file a petition. E. A defendant who has pled guilty and who is precluded from filing a direct appeal pursuant to § 13-4033 may be granted an additional thirty day extension of time in which to file the petition if the defendant's counsel refuses to raise issues and leaves the defendant insufficient time to file a petition within the time limits. F. On a specific and detailed showing of good cause, a defendant in a noncapital case may be granted up to a sixty day extension of time in which to file the petition. On a specific and	other information shown in Rule 41, Form 24(b). (4) Duty of the Clerk upon Receiving a Notice. (A) Generally. Upon receiving a notice from a defendant or the Supreme Court, the superior court clerk must file it in the record of each original case to which it pertains. Unless the court summarily dismisses the notice, the clerk must promptly send copies of the notice to the defendant, defense counsel, the prosecuting attorney's office, and the Attorney General. If the conviction occurred in a limited jurisdiction court, the clerk for the limited jurisdiction court must send a copy of the notice to the prosecuting attorney who represented the State at trial, and to a defense counsel or a defendant, if self-represented. In either court, the clerk must note in the record the date and manner of sending copies of the notice. (B) Notice to an Appellate Court. If an appeal of the defendant's conviction or sentence is pending, the clerk must send a copy of the notice of post-conviction relief to the appropriate appellate court no later than 5 days of its filing, and must note in the record the date and manner of sending the copy. (5) Duty of the State upon Receiving a Notice. Upon receiving a copy of a notice, the State must notify any victim who has requested notification of post-conviction proceedings. **(b) Appointment of Counsel.** (1) Capital Cases. After the Supreme Court has affirmed a capital defendant's

detailed showing of good cause, a defendant in a capital case may be granted one thirty day extension of time in which to file the petition. G. The time limits are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice. H. If the record of the trial proceeding has not been transcribed, the defendant may request on a form provided by the clerk of the superior court that the record be prepared. The court shall order that those portions of the record be prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the record is a county expense if the defendant is indigent. The time for filing the petition is tolled from the time a request for the record is made until the record is prepared or the request is denied. I. The proceeding shall be assigned to the sentencing judge if it is possible. If it appears that the sentencing judge's testimony is relevant, the sentencing judge shall transfer the case to another judge. J. If the defendant has received a sentence of death and the supreme court has fixed the time for execution of the sentence, a stay of execution shall not be granted on the filing of a second or subsequent petition except on separate application for a stay to the supreme court setting forth with particularity those issues raised which are not precluded under § 13-4232. The warrant shall not be stayed to allow for the filing of a petition.	conviction and sentence, it must appoint counsel who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041. Alternatively, the Supreme Court may authorize the presiding judge of the county where the case originated to appoint counsel. If the presiding judge makes an appointment, the court must file a copy of the appointment order with the Supreme Court. If a capital defendant files a successive notice, the presiding judge must appoint the defendant's previous post-conviction counsel, unless the defendant waives counsel or there is good cause to appoint another qualified attorney who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041. (2) Noncapital Cases. No later than 15 days after the filing of a notice of a defendant's timely or first Rule 32 proceeding, the presiding judge must appoint counsel for the defendant if: (A) the defendant requests it; and (B) the judge has previously determined that the defendant is indigent or the defendant has completed an affidavit of indigency. Upon the filing of all other notices in a noncapital case, the presiding judge may appoint counsel for an indigent defendant if requested. **(c) Time for Filing a Petition for Post-Conviction Relief.** (1) Capital Cases. (A) Filing Deadline for First Petition. 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. For good cause and after considering the rights of the victim, the court may grant additional 30-day extensions for good cause. (D) Notice of Status. The defendant must file a notice in the Supreme Court advising the Court of the status of the proceeding if a petition is not filed: (i) within 12 months after counsel is appointed; or (ii) if the defendant is proceeding without counsel, within 12 months after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later. The defendant must file a status report in the Supreme Court every 60 days until a petition is filed. (2) Noncapital Cases. (A) Filing Deadline. In a noncapital case, appointed counsel must file a petition no later than 60 days after the date of appointment. A defendant without counsel 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, 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. **(d) Duty of Counsel; Extension of Time for the Defendant.** (1) Duty. In a Rule 32 proceeding, counsel must investigate the defendant's case for any and all colorable claims. (2) If Counsel Finds No Colorable Claims. (A) Counsel's Notice. In an of-right proceeding, if counsel determines there are no colorable claims, counsel must file a notice advising the court of this determination. The notice should include a summary of the facts and procedural history of the case, including appropriate citations to the record. The notice also must identify the specific materials that counsel reviewed, the date when counsel provided the record to the defendant, and the contents of the record provided. After counsel files a notice, counsel's role is limited to acting as advisory counsel until the trial court's final determination in the Rule 32 proceeding unless the court orders otherwise. (B) Defendant's Pro Se Petition. Upon receipt of counsel's notice, the court must allow the defendant to file a petition on his or her own behalf, and extend the time for filing a petition by 45 days from the date counsel filed the notice. The court may grant additional extensions only on a showing of extraordinary circumstances. **(e) Transcript Preparation.**

	(1) Requests for Transcripts. If the trial court proceedings were not transcribed, the defendant may request that certified transcripts be prepared. The court or clerk must provide a form for the defendant to make this request. (2) Order. The court must promptly review the defendant's request and order the preparation of only those transcripts it deems necessary for resolving issues the defendant will raise in the petition. (3) Deadline. Certified transcripts must be prepared and filed no later than 60 days after the entry of the order granting the request. (4) Cost. If the defendant is indigent, the transcripts must be prepared at county expense. (5) Extending the Deadline for Filing a Petition. If a defendant requests the preparation of certified transcripts, the defendant's deadline for filing a petition under (c) is extended by the time between the request and either the transcripts' final preparation or the court's denial of the request. **(f) Assignment of a Judge.** The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. If the sentencing judge's testimony will be relevant, the case must be reassigned to another judge. **(g) Stay of Execution of a Death Sentence on a Successive Petition.** Once the defendant has received a sentence of death and the Supreme Court has fixed the time for executing the sentence, the trial court

	may not grant a stay of execution if the defendant files a successive petition. In those circumstances, the defendant must file an application for a stay with the Supreme Court, and the application must show with particularity any claims that are not precluded under Rule 32.2. If the Supreme Court grants a stay, the Supreme Court clerk must notify the defendant, the Attorney General, and the Director of the State Department of Corrections.
§ 13-4235. Contents of petition. The defendant shall include every ground known to the defendant for vacating, reducing, correcting or otherwise changing all judgments or sentences imposed and shall verify under oath that the petition contains all such grounds. Facts within the defendant's personal knowledge shall be noted separately from other allegations of fact and shall be under oath. Affidavits, records or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it. Legal citations and memoranda of points and authorities are required. Petitions which are incomplete shall be returned by the court to the defendant for completion. If the court does not receive the completed petition within thirty days after the defendant receives the incomplete petition, the court shall dismiss the proceeding with prejudice.	**Rule 32.5 Contents of a Petition for Post-Conviction Relief** **(a) 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. **(b) Length of Petition.** In Rule 32 of-right and noncapital cases, the petition must not exceed 28 pages. The State's response must not exceed 28 pages, and defendant's reply, if any, must not exceed 11 pages. In capital cases, the petition must not exceed 80 pages. The State's response must not exceed 80 pages, and defendant's reply must not exceed 40 pages. **(c) 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. The declaration must identify facts that are within the defendant's personal knowledge separately from other factual allegations. **(d) Attachments.** The defendant must attach to the petition any affidavits, records,

	or other evidence currently available to the defendant supporting the petition's allegations. **(e) 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.
§ 13-4236. Additional pleadings; summary disposition; amendments A. Forty-five days after the filing of the petition, the state shall file with the court a response. Affidavits, the record and other evidence that are available to the state and that contradict the allegations of the petition shall be attached to the response. On a showing of good cause, the state may be granted a thirty day extension in which to file a response. Additional extensions shall be granted only in extraordinary circumstances. B. Within fifteen days after receipt of the response, the defendant may file a reply. Extensions shall be granted only in extraordinary circumstances. C. The court shall review the petition within twenty days after the defendant's reply is due. On reviewing the petition, response, reply, files and records, and disregarding defects of form, the court shall identify all procedurally precluded claims under this article. If after identifying all precluded claims the court determines that no material	**Rule 32.6. Response and reply; Amendments; Review** **(a) State's Response.** The State must file its response no later than 45 days after the defendant files the petition. The court may grant the State a 30-day extension to file its response for good cause, and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim. 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. **(b) Defendant's Reply.** No later than 15 days after a response is served, the defendant may file a reply. The court may for good cause grant an extension of time. **(c) Amending the Petition.** After the filing of a post-conviction relief petition, the court may permit amendments only for good cause.

issue of fact or law exists which would entitle the defendant to relief under this article and that no purpose would be served by any further proceedings, the court shall order the petition dismissed. If the court does not order the petition dismissed, the court shall set a hearing within thirty days on those claims that present a material issue of fact or law. If a hearing is ordered, the state shall notify the victim on request of the time and place of the hearing. D. After the filing of a post-conviction relief petition, amendments are not permitted except by leave of the court on a showing of extraordinary circumstances.	**(d) Review and Further Proceedings.** (1) Summary Disposition. If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition. (2) Setting a Hearing. If the court does not summarily dismiss the petition, it must set a status conference or hearing within 30 days on those claims that present a material issue of fact. The court also may set a hearing on those claims that present only a material issue of law. (3) Notice to Victim. If a hearing is ordered, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.
§ 13-4237. Informal conference. The court at any time may hold an informal conference to expedite the proceeding, at which the defendant need not be present if he is represented by counsel who is present.	**Rule 32.7. Informal Conference** **(a) Generally.** At any time, the court may hold an informal conference to expedite a proceeding for post-conviction relief. **(b) Capital Cases.** In a capital case, the court must hold an informal conference no later than 90 days after counsel is appointed on the first notice of a petition for post-conviction relief. **(c) The Defendant's Presence.** The defendant need not be present at an informal conference if defense counsel is present.

§ 13-4238. Evidentiary hearing.	**Rule 32.8. Evidentiary Hearing**
A. The defendant is entitled to a hearing to determine issues of material fact, with the right to be present and to subpoena witnesses. If facilities are available, the court may, in its discretion, order the hearing to be held at the place of confinement, giving at least fifteen days' notice to the officer in charge of the confinement facility. A verbatim record of the hearing shall be made. B. The rules of evidence applicable in criminal proceedings shall apply, except that the defendant may be called to testify at the hearing. C. The defendant has the burden of proving the allegations of fact by a preponderance of the evidence. If a constitutional defect is proven, the state has the burden of proving that the defect was harmless beyond a reasonable doubt. D. The court shall rule within ten days after the hearing ends. If the court finds in favor of the defendant, it shall enter an appropriate order with respect to the conviction, sentence or detention, any further proceedings, including a new trial and conditions of release, and other matters that may be necessary and proper. The court shall make specific findings of fact and state expressly its conclusions of law relating to each issue presented.	**(a) Rights Attendant to the Hearing; Location; Record.** The defendant is entitled to a hearing to determine issues of material fact, and has the right to be present and to subpoena witnesses for the hearing. The court may order the hearing to be held at the defendant's place of confinement if facilities are available and after giving at least 15 days' notice to the officer in charge of the confinement facility. In superior court proceedings, the court must make a verbatim record. **(b) Evidence.** The Arizona Rules of Evidence applicable to criminal proceedings apply at the hearing, except that the defendant may be called to testify. **(c) Burden of Proof.** The defendant has the burden of proving factual allegations by a preponderance of the evidence. If the defendant proves a constitutional violation, the State has the burden of proving beyond a reasonable doubt that the violation was harmless. **(d) Decision.** (1) Findings and Conclusions. The court must make specific findings of fact and expressly state its conclusions of law relating to each issue presented. (2) Decision in the Defendant's Favor. If the court finds in the defendant's favor, it must enter appropriate orders concerning: (A) the conviction, sentence, or detention;

	(B) any further proceedings, including a new trial and conditions of release; and (C) other matters that may be necessary and proper. **(e) Transcript.** On a party's request, the court must order the preparation of a certified transcript of the evidentiary hearing. The request must be made within the time allowed for filing a petition for review. If the defendant is indigent, preparation of the evidentiary hearing transcript will be at county expense.
§ 13-4239. Review. A. Any party aggrieved by a final decision of the trial court in these proceedings may, within fifteen days after the ruling of the court, move the court for a rehearing setting forth in detail the grounds for believing that the court erred. A response shall be filed within fifteen days after service of the motion on the adverse party. A reply, if any, shall be filed within ten days after service of the response. The filing of a motion for rehearing in the trial court is not a prerequisite to the filing of a petition for review pursuant to subsection C. B. If the motion for rehearing is granted, the court may either amend its previous ruling without a hearing or grant a new hearing and then either amend or reaffirm its previous ruling. If the court amends its previous ruling, the court shall set forth its reasons for amending the previous ruling. The state shall notify the victim on request of any action that is taken by the court. C. Within thirty days after the final decision of the trial court on the petition for post-conviction relief or motion for rehearing, an	**Rule 32.9. Review** **(a) Filing of a Motion for Rehearing.** (1) Timing and Content. No later than 15 days after entry of the trial court's final decision on a petition, any party aggrieved by the decision may file a motion for rehearing. The motion must state in detail the grounds of the court's alleged errors. (2) Response and Reply. An opposing party may not file a response to a motion for rehearing unless the court requests one, but the court may not grant a motion for rehearing without requesting and considering a response. If a response is filed, the moving party may file a reply no later than 10 days after the response is served. (3) Effect on Appellate Rights. Filing of a motion for rehearing is not a prerequisite to filing a petition for review under (c). **(b) Disposition if Motion Granted.** If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing, or grant a new hearing and then either amend or reaffirm its previous ruling.

aggrieved party may petition the appellate court for review of the trial court's actions. A cross-petition for review may be filed with the clerk of the trial court within fifteen days after service of a petition for review. The petition or cross-petition shall be filed with the clerk of the trial court and shall set forth in detail the grounds for believing that the court erred. The filing of a motion for rehearing pursuant to subsection A does not limit the issues that may be raised in the petition or cross-petition for review. The failure to raise an issue that could be raised in the petition or cross-petition for review constitutes a waiver of appellate review of that issue. A response shall be filed within fifteen days and a reply shall be filed within ten days. D. The form, contents and service for a post-conviction relief petition and cross-petition shall be as prescribed by rule 32.9 of the rules of criminal procedure. E. A motion for rehearing or a petition for review that is filed pursuant to this section shall stay an order of the trial court issued in the post-conviction relief proceedings until final review is completed unless the trial court specifically orders otherwise. The state shall notify the victim on request of any action taken. F. Within thirty days after the expiration of the time for filing the last reply, the record, including the trial court file, the reporter's transcript, the original and all copies of the petition and cross-petition for review, responses and replies shall be transmitted to the appellate court. G. The appellate court may grant review and may order oral argument on the petition if	In either case, it must state its reasons for amending a previous ruling. The State must notify the victim of any action taken by the court if the victim has requested notification. **(c) Petition and Cross-Petition for Review.** (1) Time and Place for Filing. (A) Petition. No later than 30 days after the entry of the trial court's final decision on a petition or a motion for rehearing, an aggrieved party may petition the appropriate appellate court for review of the decision. (B) Cross-Petition. The opposing party may file a cross-petition for review no later than 15 days after a petition for review is served. (C) Place for Filing. The parties must file the petition for review, cross-petition, and all responsive filings with the appellate court and not the trial court. (D) Computation of Time and Modifying Deadlines. Rule 31.3(d) governs the computation of any appellate court deadline in this rule, and an appellate court may modify any deadline in accordance with Rule 31.3(e). (2) Notice of Filing and Additional Record Designation. No later than 3 days after a petition or cross-petition for review is filed, the petitioner and cross-petitioner must file with the trial court a "notice of filing." The notice of filing may designate additional items for the record described in (e). These items may include additional certified transcripts of trial court proceedings prepared under Rule 32.4(e), or that were

deemed necessary and may issue such orders and grant such relief as it deems necessary and proper. The state shall notify the victim on request of any action taken by the appellate court. H. The provisions that govern the filing of motions for reconsideration and petitions for review in criminal appeals that are set forth in rules 31.18 and 31.19, Arizona rules of criminal procedure, apply to and govern motions for reconsideration and petitions for review pursuant to rule 32, Arizona rules of criminal procedure. I. When the matter is determined the clerk of the appellate court shall return the record to the appropriate clerk of the court for retention according to law.	otherwise available to the trial court and the parties, and are material to the issues raised in the petition for review. (3) Motions. Motions for extensions of time to file petitions or cross-petitions for review must be filed with the trial court, which must decide the motions promptly. The parties must file all other motions in the appellate court. (4) Form and Contents of a Petition or Cross-Petition for Review. (A) Form and Length. Petitions and cross-petitions for review, along with other documents filed with the appellate clerk, must comply with the formatting requirements of Rule 31.6(b). The petition or cross-petition must contain a caption with the name of the appellate court, the title of the case, a space for the appellate court case number, the trial court case number, and a brief descriptive title. The caption must designate the parties as they appear in the trial court's caption. The petition or cross-petition must not exceed 6,000 words if typed or 22 pages if handwritten, exclusive of an appendix and copies of the trial court's rulings. (B) Contents. A petition or cross-petition for review must contain: (i) copies of the trial court's rulings entered under Rules 32.6(d), 32.8(d) and 32.9(b); (ii) a statement of issues the trial court decided that the defendant is presenting for appellate review;

	(iii) a statement of material facts concerning the issues presented for review, including specific references to the record for each material fact; and (iv) reasons why the appellate court should grant the petition, including citations to supporting legal authority, if known. (C) Effect of a Motion for Rehearing. The filing of a motion for rehearing under (a) does not limit the issues a party may raise in a petition or cross-petition for review. (D) Waiver. A party's failure to raise any issue that could be raised in the petition or cross-petition for review constitutes a waiver of appellate review of that issue. (5) Appendix Accompanying Petition or Cross-Petition. (A) Generally. Unless otherwise ordered, a petition or cross-petition may be accompanied by an appendix. The petition or cross-petition must not incorporate any document by reference, except the appendix. An appendix that exceeds 15 pages in length, exclusive of the trial court's rulings, must be submitted separately from the petition or cross-petition. (B) Capital Cases. In capital cases, the parties must submit an appendix that supports all of the petition's references to the trial court record, with copies of supporting portions of the record. (C) Noncapital Cases. In non-capital cases, an appendix is not required, but the petition must contain specific references to the

	record to support all material factual statements. (6) Service; Response; Reply. (A) Service. A party filing a petition, cross-petition, appendix, response, reply, or a related filing must serve a copy of the filing on all other parties. The serving party must file a certificate of service complying with Rule 1.7(c)(3), identifying who was served and the date and manner of service. (B) Response. No later than 30 days after a petition or cross-petition is served, a party opposing the petition or cross-petition may file a response. The response must not exceed 6,000 words if typed and 22 pages if handwritten, exclusive of an appendix, and must comply with the form requirements in (c)(4)(A). An appendix to a response must comply with the form and substantive requirements in (c)(5). (C) Reply. No later than 10 days after a response is served, a party may file a reply. The reply is limited to matters addressed in the response and may not exceed 3,000 words if typed and 11 pages if handwritten. It also must comply with the form requirements in (c)(4)(A), and may not include an appendix. (7) Amicus Curiae. Rules 31.13(a)(7) and 31.15 govern filing and responding to an amicus curiae brief. **(d) Stay Pending Review.** The State's filing of a motion for rehearing or a petition for review of an order granting a new trial automatically stays the order until appellate review is completed. For any relief the trial court grants to a defendant other than a new

	trial, granting a stay pending further review is within the discretion of the trial court or the appellate court. **(e) Transmitting the Record to the Appellate Court.** (1) In Noncapital Cases. No later than 45 days after receiving a notice of filing under (c)(2), the trial court clerk must transmit the record, including the trial court file and transcripts filed in the trial court, to the appellate court. (2) In Capital Cases. The trial court clerk may transmit the record of post-conviction proceedings to the appellate court only if the appellate court requests it. The record includes copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings, all minute entries and orders issued in the post-conviction proceedings, transcripts filed in the trial court, and any exhibits admitted by the trial court in the post-conviction proceedings. **(f) Disposition.** The appellate court may grant review of the petition and may order oral argument. Upon granting review, the court may grant or deny relief and issue other orders it deems necessary and proper. (**g) Reconsideration or Review of an Appellate Court Decision.** The provisions in Rules 31.20 and 31.21 relating to motions for reconsideration and petitions for review in criminal appeals govern motions for reconsideration and petitions for review of an appellate court decision entered under (f).

	(h) Return of the Record. After a petition for review is resolved, the appellate clerk must return the record to the trial court clerk for retention. (i) Notice to the Victim. Upon the victim's request, the State must notify the victim of any action taken by the appellate court.
	Rule 32.10. Review of an Intellectual Disability Determination in Capital Cases No later than 10 days after the trial court makes a finding on intellectual disability, the State or the defendant may file with the Court of Appeals a petition for special action challenging the finding. The Rules of Procedure for Special Actions govern the special action, except the Court of Appeals must accept jurisdiction and decide any issue raised.
§ 13-4234.01. Post-conviction relief proceedings; request for extension; victim notification A. In any post-conviction relief proceeding in a capital case in which an extension of the time to file a brief is requested, the victim, after filing a notice of appearance, has a right to respond to the request for extension within ten days after the filing of the request. B. On the filing of a notice of appearance, the victim shall serve a copy on the state and the defendant. C. The victim may exercise the right to respond through the state. D. The party that requests the extension shall provide notice of the request to the victim in a manner prescribed by the court.	**Rule 32.11. Extensions of Time; Victim Notice and Service** **(a) Notice to the Victim.** If the victim in a capital case has filed a notice of appearance under A.R.S. § 13-4234.01, a party requesting an extension of time to file a brief must serve or otherwise provide notice of the request to the victim. **(b) Manner and Timing of Service or Notice.** (1) Victim's Choice of the Manner of Service. The victim may specify in the notice of appearance whether the service of the request should be to the victim or whether it should go to another person, including the prosecutor, and whether service of the notice should be electronic, by telephone, or by regular mail. Service must be made in the

E. This section does not provide any party or the victim with a right to oral argument.	manner specified in the victim's notice of appearance or, if no method is specified, by regular mail. If the victim has requested direct notification, the party requesting an extension of time must serve the victim with notice no later than 24 hours after filing the request. (2) Service Through the Prosecutor. If the victim has not specified a method of service or if the victim has requested service through the prosecutor, the party requesting the extension of time must serve the prosecutor's office handling the post-conviction proceeding. If the prosecutor has the duty to notify the victim on behalf of the defendant, the prosecutor must do so no later than 24 hours after receiving the request. **(c) Victim's Response.** A victim may file a response to the request no later than 10 days after it is served. **(d) Factors.** In ruling on any request for an extension of time to file a brief, the court must consider the rights of the defendant and the victim to a prompt and final conclusion of the case.
§ 13-4240. Postconviction deoxyribonucleic acid testing A. At any time, a person who was convicted of and sentenced for a felony offense and who meets the requirements of this section may request the forensic deoxyribonucleic acid testing of any evidence that is in the possession or control of the court or the state, that is related to the investigation or prosecution that resulted in the judgment of conviction, and that may contain biological evidence.	**Rule 32.12. Post-Conviction Deoxyribonucleic Acid Testing** **(a) Generally.** Any person who has been convicted and sentenced for a felony offense may petition the court at any time for forensic deoxyribonucleic acid (DNA) testing of any evidence: (1) in the possession or control of the court or the State;

B. After notice to the prosecutor and an opportunity to respond, the court shall order deoxyribonucleic acid testing if the court finds that all of the following apply: 1. A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through deoxyribonucleic acid testing. 2. The evidence is still in existence and is in a condition that allows deoxyribonucleic acid testing to be conducted. 3. The evidence was not previously subjected to deoxyribonucleic acid testing or was not subjected to the testing that is now requested and that may resolve an issue not previously resolved by the previous testing. C. After notice to the prosecutor and an opportunity to respond, the court may order deoxyribonucleic acid testing if the court finds that all of the following apply: 1. A reasonable probability exists that either: (a) The petitioner's verdict or sentence would have been more favorable if the results of deoxyribonucleic acid testing had been available at the trial leading to the judgment of conviction. (b) Deoxyribonucleic acid testing will produce exculpatory evidence. 2. The evidence is still in existence and is in a condition that allows deoxyribonucleic acid testing to be conducted.	(2) related to the investigation or prosecution that resulted in the judgment of conviction; and (3) that may contain biological evidence. **(b) Manner of Filing; Response.** The defendant must file the petition under the same criminal cause number as the felony conviction, and the clerk must distribute it in the manner provided in Rule 32.4(a)(4). The State must respond to the petition no later than 45 days after it is served. **(c) Appointment of Counsel.** The court may appoint counsel for an indigent defendant at any time during proceedings under this rule. **(d) Court Orders.** (1) Mandatory Testing. After considering the petition and the State's response, the court must order DNA testing if the court finds that: (A) a reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing; (B) the evidence is still in existence; and (C) the evidence was not previously subjected to DNA testing, or the evidence was not subjected to the type of DNA testing that defendant now requests and the requested testing may resolve an issue not resolved by previous testing. (2) Discretionary Testing. After considering the petition and the State's response, the court may order DNA testing if the court

3. The evidence was not previously subjected to deoxyribonucleic acid testing or was not subjected to the testing that is now requested and that may resolve an issue not previously resolved by the previous testing. D. If the court orders testing pursuant to subsection B, the court shall order the method and responsibility for payment, if necessary. If the court orders testing pursuant to subsection C, the court may require the petitioner to pay the costs of testing. E. The court may appoint counsel for an indigent petitioner at any time during any proceedings under this section. F. If the court orders testing pursuant to this section, the court shall select a laboratory that meets the standards of the deoxyribonucleic acid advisory board to conduct the testing. G. If the prosecutor or defense counsel has previously subjected evidence to deoxyribonucleic acid testing, the court may order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing, including underlying data and laboratory notes. If the court orders deoxyribonucleic acid testing pursuant to this section, the court shall order the production of any laboratory reports that are prepared in connection with the testing and may order the production of any underlying data and laboratory notes. H. If a petition is filed pursuant to this section, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's	finds that (d)(1)(B) and (C) apply, and that a reasonable probability exists that either: (A) the defendant's verdict or sentence would have been more favorable if the results of DNA testing had been available at the trial leading to the judgment of conviction; or (B) DNA testing will produce exculpatory evidence. (3) Laboratory; Costs. If the court orders testing under (d)(1) or (2), the court must select an accredited laboratory to conduct the testing. The court may require the defendant to pay the costs of testing. (4) Other Orders. The court may enter any other appropriate orders, including orders requiring elimination samples from third parties and designating: (A) the type of DNA analysis to be used; (B) the procedures to be followed during the testing; and (C) the preservation of some of the sample for replicating the testing. **(e) Test Results.** (1) Earlier Testing. If the State or defense counsel has previously subjected evidence to DNA testing, the court may order the party to provide all other parties and the court with access to the laboratory reports prepared in connection with that testing, including underlying data and laboratory notes.

possession or control that could be subjected to deoxyribonucleic acid testing. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt, for a knowing violation. I. The court may make any other orders that the court deems appropriate, including designating any of the following: 1. The type of deoxyribonucleic acid analysis to be used. 2. The procedures to be followed during the testing. 3. The preservation of some of the sample for replicating the testing. 4. Elimination samples from third parties. J. If the results of the postconviction deoxyribonucleic acid testing are not favorable to the petitioner, the court shall dismiss the petition. The court may make further orders as it deems appropriate, including any of the following: 1. Notifying the board of executive clemency or a probation department. 2. Requesting that the petitioner's sample be added to the federal combined DNA index system offender database. 3. Providing notification to the victim or family of the victim.	(2) Testing Under this Rule. If the court orders DNA testing under this rule, the court must order the production to all parties of any laboratory reports prepared in connection with the testing and may order the production of any underlying data and laboratory notes. **(f) Preservation of Evidence.** If a defendant files a petition under this rule, the court must order the State to preserve during the pendency of the proceeding all evidence in the State's possession or control that could be subjected to DNA testing. The State must prepare an inventory of the evidence and submit a copy of the inventory to the defendant and the court. If evidence is destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt, for a knowing violation. **(g) Unfavorable Test Results.** If the results of the post-conviction DNA testing are not favorable to the defendant, the court must dismiss without a hearing any DNA-related claims asserted under Rule 32.1. The court may make further orders as it deems appropriate, including orders: (1) notifying the Board of Executive Clemency or a probation department; (2) requesting to add the defendant's sample to the federal combined DNA index system offender database; or (3) notifying the victim or the victim's family. **(h) Favorable Test Results.** Notwithstanding any other provision of law that would bar a hearing as untimely, the

K. Notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the postconviction deoxyribonucleic acid testing are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to this article or the Arizona rules of criminal procedure.	court must order a hearing and make any further orders that are required by statute or the Arizona Rules of Criminal Procedure if the results of the post-conviction DNA testing are favorable to the defendant. If there are no material issues of fact, the hearing need not be an evidentiary hearing, but the court must give the parties an opportunity to argue why the defendant should or should not be entitled to relief under Rule 32.1 as a matter of law.

Some of the Differences: The Statutes and the Rule

1. § 13-4231, which sets forth the grounds for relief does not include claims of actual innocence in Rule 32.1(h).

2. § 13-4231(A)(6) provides relief for defendants who fail to appeal from judgment or sentence or both within the prescribed period through no fault of their own; Rule 32.1(f) provides relief for defendants who fail to timely appeal as well as those who fail to timely file an of-right notice.

3. § 13-4234 does not identify as a separate category of proceedings the of-right proceeding for pleading defendants.

4. § 13-4234(D) provides that in a capital case, a petition must be filed within 60 days of the filing of the first notice of PCR and within 30 days from the filing of the notice for a successive proceeding. Rule 32.4(c)(1)(A) and (B) provide the petition must be filed no later than 12 months after the first notice of PCR is filed and no later than 30 days from the filing of a successive notice.

5. § 13-4234(C) provides that in a noncapital case, a petition must be filed within 60 days of the filing of the notice and within 30 days of the filing of a successive notice. Rule 32.4(c)(2)(A) provides in a noncapital case, appointed counsel must file a petition no later than 60 days after the date of appointment and a defendant without counsel must file the petition no later than 60 days after the notice is filed or the court denies the request for appointed counsel, whichever is later. And Rule 32.4(d)(2)(B) provides that upon receipt of counsel's notice in an of-right proceeding that there are no colorable claims to raise, the court must give the defendant 45 days from the filing of the notice to file a pro se petition, granting additional extensions only on a showing of extraordinary circumstances.

6. § 13-4234(F) provides that on a "specific and detailed showing of good cause," the court may grant a defendant in a noncapital case up to a 60-day extension of time in which to file the petition and upon the same showing, a defendant in a capital case may be granted one 30- day extension. Rule 32.4(c)(1)(C), provides that, for good cause, the court may grant a capital defendant one 60-day extension in which to file a petition and for good cause and after considering the rights of the victim, additional 30-day extensions. Rule 32.4(c)(2)(B) provides the court may grant a noncapital defendant a 30-day extension for good cause after considering the rights of the victim, and may grant additional 30-day extensions only on a showing of extraordinary circumstances.

7. § 13-4234(H) provides the defendant may request transcripts and the court shall order those portions that are necessary to resolve the issues to be raised in the petition. No deadline is provided. Rule 32.4(e)(1) and (2) has similar provisions with respect to the ordering of the transcripts but Rule 32.4(e)(3) provides that the transcript must be prepared and filed no later than 60 days after the entry of the order granting the request.

8. Rule 32.4(g) provides that if the supreme court grants a stay of execution to a capital defendant, the clerk of that court must notify the defendant, the attorney General, and the Director of the State Department of Corrections. There does not appear to be a similar notice requirement in the statute.

9. § 13-4239 (E) provides that a motion for rehearing of a ruling on a PCR or a petition for review "shall stay an order of the trial court issued in the post-conviction relief proceedings until final review is completed unless the trial court specifically orders otherwise." Rule 32.9(d) provides, however, "The State's filing of a motion for rehearing or a petition for review . . . automatically stays the order until appellate review is completed," giving the trial court discretion whether to stay any relief it grants to a defendant other than a new trial.

10. § 13-4239(F) does not distinguish between capital and noncapital cases and requires the clerk of the trial court to transmit the record "within 30 days after the expiration of the time for filing the last reply." Rule 32.9(e), however, provides that in noncapital cases, no later than 45 days after the trial court receives the notice that a petition for review has been filed, required under (c)(2), the clerk is to transmit the record but in a capital case "[t]he trial court clerk may transmit the record of post-conviction proceedings to the appellate court only if the appellate court requests it."

11. § 13-4240 and Rule 32.12, which pertain to DNA testing, seem to differ on who may be required to pay for the testing. If the court finds DNA testing is required because the factors under subsection (B) have been satisfied, then (D) provides the court "shall order the method and responsibility for payment, if necessary." It is not clear but perhaps this means the county must pay. But if the court orders testing under subsection (C), which provides the court "may" rather than "shall" order testing if the specified factors have been satisfied, then under subsection (D) the court "may require the petitioner to pay the costs of testing." Rule 32.12 provides that whether the testing is mandatory under subsection (d)(1) of the rule or discretionary under (d)(2), "[t]he court may require the defendant to pay the costs of testing."

Rule 32: Issues for Discussion

1. **Defendant's competency during PCR proceedings.** In *Fitzgerald v. Myers*, 243 Ariz. 84, ¶ 1 (2017), our supreme court held "that neither § 13-4041 nor Rule 32.5 requires a trial court to determine whether a Rule 32 petitioner is competent before proceeding with and ruling on the PCR petition." The court added that a trial court may order a competency evaluation "if it is helpful or necessary for a defendant's presentation of, or the court's ruling on, certain Rule 32 claims, and if so, the court should order the evaluation as soon as practicable even if the PCR proceeding is not stayed." *Id.* Should the rule be amended to accommodate this? The *Fitzgerald* holding was based solely on the language of the rule and statute, the due process argument having been waived, and an amended rule could give the trial court the discretion to conduct Rule 11 proceedings, perhaps incorporating the Rule 11 process.

2. **The notice**. Rule 32.4(a)(3) provides: "The notice must contain the caption of the original criminal case or cases to which it pertains and the other information shown in Rule 41, Form 24(b)." In practice, there seems to be some confusion in the trial courts as to what the notice must include, particularly in the first, timely notice, which is often as bare bones as a notice of appeal. The clearer this can be, the better. Based on the contents of Form 24(b) and various provisions of the rule, it seems that in a first and any timely notice (of-right or the first timely notice by a non-pleading defendant), the defendant is not required to specify the ground the defendant intends to raise under Rule 32.1, except that the defendant is required to specify whether an IAC claim is being raised. However, if the notice is successive or untimely, the defendant must specify by checking a box, whether a claim under Rule 32.1(d), (e), (f), (g), or (h), is being raised and must state "the facts that support the claim and the reasons for not raising the claim in the previous petition or in a timely manner." Defendants are often confused by the requirement that they state the facts and reasons for not raising the claim in an earlier or timely proceeding. They seem to be uncertain as to when they must do so, in the notice or petition. If that requirement were moved to or at least referred to in Rule 32.4(a)(3), which is entitled, "Content of the Notice," it would be clear.

3. **Rule 32.2(c).** The wording of the rule is odd. It appears to mix tenses in a way that makes it arguably ambiguous, providing as follows: "The State must plead and prove any ground of preclusion by a preponderance of the evidence. A court

may determine that an issue is precluded even if the State does not raise preclusion." Perhaps the part, "even if the State does not raise preclusion," should be, "did not," "has not," or "failed to" raise it. The statute is a bit clearer, providing, "the state shall plead and prove any ground of preclusion by a preponderance of the evidence. Though the state has the burden to plead and prove grounds of preclusion, any court on review of the record may determine and hold that an issue is precluded regardless of the state's failure to raise the preclusion issue." § 13-4232(C). Additionally, is the rule contradictory or, at least, does it ultimately render the state's burden superfluous? (NOTE: The statute and the rule previously required the state to plead and prove preclusion, and case law prohibited courts from finding a claim precluded if the state did not satisfy that burden. The legislature amended the statute in 1995 to permit a court to find a claim precluded regardless of whether the state sustained its burden, 1995 Ariz. Sess. Laws, ch. 198, § 4; the rule was changed as well.). It seems contradictory or simply superfluous to require the state to plead and prove preclusion but then permit the court to sua sponte find a claim precluded, regardless of whether the state satisfies that obligation. Can we remove the state's burden or are we compelled to leave it because of the statute?

4. **More on Rule 32.2**. Something about it seems contradictory or somewhat inconsistent. It provides that preclusion does not apply to claims under 32.1(d)-(h), yet if a defendant is raising a claim that was already adjudicated, it is precluded by the rule's own language. Conceivably, then, if the rule of preclusion does not apply to claims under (d)-(h), the rule could be interpreted to permit repeated litigation of (d)-(h) claims. The rule does say that in a successive proceeding a defendant can only raise a claim that falls under (d) through (h) and must still show why the claim was not raised in a prior proceeding. That suggests a claim really can be deemed waived and therefore precluded if not raised in a prior proceeding and no good excuse is given for having failed to do so. That the defendant must state why the claim was not raised in a timely or prior proceeding still does not clarify whether, based on the plain language of the rule, a claim under (d) through (h) is precluded if "finally adjudicated on the merits in an appeal or in any previous collateral proceeding," 32.2(a)(2). Perhaps we can make all of this more precise. We could consider using the term "res judicata," or issue preclusion, particularly with respect to matters already litigated, or something like it, which is how case law (memorandum decisions, at least) has resolved the issue.

In addition, courts have wrestled with the meaning of "waived at trial," under Rule 32.2(a)(3). For an of-right defendant, does that include arguments not raised at sentencing? As a matter of practice, courts seem to address those claims made for the first time in a Rule 32 petition, even if not raised below. *Cf. State v. Vermuele*, 226 Ariz. 399, ¶¶ 5-9(App. 2011) (rejecting state's argument that defendant forfeited claims of sentencing error because she failed to raise them in trial court and had not argued on appeal alleged errors amounted to fundamental error; finding "no clear procedural opportunity to challenge the rendition of sentence before it became final").

5. **Time limits for filing a notice and petition.** A.R.S. § 13-4234(G) provides that the time limits for filing a notice and the petition "are jurisdictional and an untimely filed notice or petition shall be dismissed with prejudice." But this seems to be inaccurate insofar as it relates to the petition, given that under the rule and the statute, the court can grant multiple extensions. Can we fix this at all by amending Rule 32.4, or are we unable to do anything given the statute? Can we make it clear that at least the notice must be timely filed because that is a jurisdictional time limit, referring to the statute?

6. ***Anders*-type review**. In *State v. Chavez*, 243 Ariz. 313 (App. 2017), Division One of the court of appeals rejected the defendant's argument based on *Pacheco v Ryan*, CV-15-02264-PHX-DGC, 2016 WL 7407242 (D. Ariz. Dec. 22, 2016), that a defendant has a constitutional right to an *Anders* review by the trial court in an of-right proceeding, and concluded the trial court did not have a duty to review for arguable issues, sua sponte, nor did the court of appeals. The court relied on *Wilson v. Ellis*, 176 Ariz. 121 (1993), *Montgomery v. Sheldon*, 181 Ariz. 256, *supp. op.* 182 Ariz. 118 (1995), and *State v. Smith*, 184 Ariz. 456 (1996), and stated it would follow those authorities and the rules "without further guidance from either the Arizona Supreme Court or the United States Supreme Court." The court concluded: "In accordance with the Arizona Supreme Court's decisions and our current Arizona Rules of Criminal Procedure, we hold that the superior courts are not required to conduct *Anders* review in a Rule 32 of-right petition." *Id.* ¶ 18. Judge Cattani suggested in his special concurrence in *Chavez* that "there are compelling reasons for the Arizona Supreme Court to consider modifying the procedural rules to provide for a limited *Anders*-type review in Rule 32 of-right proceedings for pleading defendants that is similar to the review currently

provided on appeal for non-pleading defendants." *Id.*, ¶ 19. I suspect this will generate a lot of discussion.

First, would this be in conflict with the statute and if so, is there a way to craft the rule to make the two harmonious? Second, if we are going to write this into the rule, what will we require a trial judge to look at? Third, could this pose problems with the concept of preclusion of waived claims? What you could possibly end up with is the following: if the defendant or counsel finds and raises a claim that was not raised below, it would be deemed waived and precluded under Rule 32.2, but if the trial court discovers it during an *Anders*-type review, relief could be granted. In addition, what does this do to the well-established principle that a person waives all non-jurisdictional defects by entering a guilty plea? Even fundamental error is subject to the preclusive effect of Rule 32.2, including an illegal sentence. *State v. Swoopes*, 216 Ariz. 390 (App. 2007); *see also State v. Shrum*, 220 Ariz. 115 (2009) (claims of illegal sentence subject to preclusion under Rule 32.2). And case law suggests an illegal sentence is one imposed without jurisdiction, particularly *Shrum* and the court of appeals' clarification of and disagreement with *State v. Vargos-Burgos* 162 Ariz. 325 (App. 1989), in *State v. Bryant*, 219 Ariz. 514 (App. 2008). Finally, if an *Anders* review by the trial court is written into the rule, the amended rule should specify the court of appeals has no similar requirement, since it sits essentially as the supreme court.

7. **Illegal sentences, parole-eligibility and preclusion.** Related to issue No. 6 above, can and should an illegal sentence be excepted from the preclusive effect of Rule 32.2? Additionally, some individuals have recommended that the rule be amended to create a means for defendants to obtain relief, particularly when the defendant pled guilty believing he or she was parole-eligible. The sentence is illegal because parole is no longer available but the fact that the defendant was eligible for early release could have been a material basis for the guilty plea. It seems this would require a legislative fix, which is what the legislature did for juveniles in light of in light of *Miller v. Alabama*, 567 U.S. 460 (2012). *See* A.R.S. § 13-716. The parole bill as to non-juvenile offenders has apparently passed the senate and is now in the house. SB 1211. It is limited to plea agreement cases. See link: https://apps.azleg.gov/BillStatus/BillOverview/70297

8. **The *Mata* issue**. A non-pleading defendant has no constitutional right to effective Rule 32 counsel, *State v. Mata*, 185 Ariz. 319 (1996), whereas the pleading defendant

does, *State v. Petty*, 225 Ariz. 369 (App. 2010); *State v. Pruett*, 185 Ariz. 128 (App. 1995). The recent amendments to the rules defines an of-right proceeding to include the timely, successive proceeding in which such an IAC claim is asserted. But given that the right to effective representation at trial is a constitutional right of non-pleading defendants, and given, too, that *State v. Spreitz*, 202 Ariz. 1 (2002), requires IAC claims to be brought under Rule 32, can the rule be amended to permit non-pleading defendants to assert in a successive PCR the ineffectiveness of counsel in the first Rule 32 proceeding? It is the only proceeding in which that defendant can raise a claim of IAC of trial or appellate counsel. Should the rule be so amended, given the recent amendment of the of-right proceeding to include a pleading defendant's claim of IAC as to the first PCR proceeding? Doing so would have to be done with an acknowledgement of *Martinez v. Ryan*, 566 U.S. 1 (2012), but with the understanding of the tension, if not conflict, between the federal cases and state case law establishing a non-pleading defendant does not have a constitutional right to effective assistance of Rule 32 counsel. *See State v. Krum*, 183 Ariz. 288 (1995); *State v. Armstrong*, 176 Ariz. 470 (App. 1993); *see also State v. Escareno-Meraz*, 232 Ariz. 586 (App. 2013) (reasoning that *Martinez* was not based on a finding that a non-pleading defendant has a constitutional right to effective representation in an initial PCR proceeding, but an "equitable" right, and that Supreme Court limited its decision to application of procedural default in federal habeas review; rejecting defendant's argument that *Martinez* was a significant change in the law entitling him to raise claim of ineffective assistance of Rule 32 counsel). Some would argue that by creating such a remedy for non-pleading defendants, we are putting them in the same place constitutionally as pleading defendants, which makes sense in light of *Spreitz*. Or, this could simply be viewed as a rule-created remedy, rather than one that is constitutionally based.

9. **Special issues related to *State v. Diaz*, 236 Ariz. 361 (2014)**. Can or should the rule be amended to provide relief for a defendant in this situation? Could the reasoning of the court somehow be incorporated into the notion of waiver, since the court found the defendant had not waived the right to file petitions in the two previous PCR proceedings, which were dismissed for failure to file the petitions? Or is this just an anomaly and would such an amendment be creating a whole new category of claims, a substantive ground that would potentially be in conflict with the statute? Perhaps the rule should somehow prohibit or at least discourage the dismissal of a notice for appointed counsel's failure to file a petition absent at least notice to the defendant with an opportunity file a pro se petition.

10. **Newly discovered IAC claims.** Can and should the rule be amended to create a way for a defendant to raise a newly discovered claim of IAC, viewing it as a species of a claim of newly discovered evidence? Case law currently states the defendant has no means of raising an IAC that was discovered after the time for asserting a timely IAC claim. *See, e.g.*, *State v. Goldin*, 239 Ariz. 12, ¶ 15 (App. 2015) ("Neither the plain language of the rule nor case law interpreting it prior to *Diaz* supports Goldin's suggestion that because of his attorneys' ineffectiveness, his newly discovered IAC claim should be excepted from the preclusive effect of Rule 32.2 and 32.4."). Could and should this be its own kind of claim or a species of newly discovered evidence? Could the rule be amended to include language such as "facts supporting a previously undiscovered claim of ineffective assistance of trial counsel?"

A related topic of discussion would include the recognition that a claim of newly discovered evidence may be forfeited because of counsel's conduct, and the defendant may have no remedy because the claim of IAC would be precluded if not raised in a timely or prior proceeding, even if the IAC claim itself was newly discovered. Finally, on the ground of newly discovered evidence itself, perhaps the rule could be more clear on the elements, particularly the due diligence that is required, with language taken from the supreme court's decision in *State v. Amaral*, 239 Ariz. 217, ¶ 9, *cert. denied*, 137 S. Ct. 52 (2016): the defendant "must allege facts from which the court could conclude the defendant was diligent in discovering the facts and bringing them to the court's attention."

11. **Time for filing notice.** After *State v. Whitman*, 234 Ariz. 565 (2014), the criminal rules on time for filing a notice of appeal under Rule 31.2 were changed so it is clear the time runs from when sentencing occurs, that is, when sentence is orally pronounced, rather than when the judgment of sentence is entered. Rule 32.4(a) should be amended to be consistent so that when the time is running from the actual imposition of sentence, it is from the sentencing date, not when it is entered.

12. **Notice to court of appeals of pending PCR.** The rule should require counsel to be in touch with the court of appeals if there is a Rule 32 petition pending at the same time as the appeal. Status report perhaps? Notification requirement? Rule 31.2(b) permits suspension of an appeal, contrary to *Krone v. Hotham*, 181 Ariz. 364 (1995), for a Rule 24 or 32 decision, and does require appellant to notify the court

of appeals if it has suspended the appeal, but there should be more in terms of notice to the court of appeals, perhaps a status report.

13. **Rule 32.9**. With respect to the extension of time for filing petition for review, Rule 32.9(c)(1)(D) provides that Rule 31.3(d) governs the computation of any appellate court deadline, and that the appellate court "may modify any deadline in accordance with Rule 31.3(e)." Subsection (c)(3) provides that motions for extensions of time to file a petition for review or cross-petition for review must be filed with the trial court and all other motions must be filed in the appellate court. Perhaps we could make this clearer, to the extent they appear to both provide the appellate court with authority to modify any deadlines.