



DIVISION ONE
FILED: 03/01/2024
AMY M. WOOD,
CLERK
BY: JT

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN THE MATTER OF:)
)
POLICIES CONCERNING THE TIMELY) ADMINISTRATIVE ORDER
DESIGNATION AND FILING OF) 2024-02 (REPLACING
TRANSCRIPTS IN CRIMINAL APPEALS) ADMINISTRATIVE ORDER 2019-02
)
_____)

This administrative order replaces Administrative Order 2019-02, which addressed the preparation of transcripts in criminal appeals.

Appellants' rights to due process require the Court of Appeals to timely resolve criminal appeals, and, by rule, the Court must give precedence to criminal appeals. Arizona Rule of Criminal Procedure ("Rule") 31.1(b). The timely resolution of criminal appeals also promotes victims' rights under the Arizona Constitution. The Court wishes to minimize undue delay that results from multiple extensions of time for preparation of transcripts while allowing court reporters who demonstrate good cause for an extension adequate time to prepare and file transcripts.

Under Rules 31.8(b)(1), (c) and (d), in every criminal appeal, except one in which the death penalty has been imposed, certified transcripts of specified proceedings in the superior court must be prepared and filed with the Court of Appeals. The transcript is due 45 days from the date the notice of appeal was filed. *See* Ariz. R. Crim. P. 31.8(d)(1) and 31.9(c).

A court reporter may not be able to meet this deadline for many reasons. First, a court reporter simply may not have adequate time to prepare certified transcripts.

Though the record presumptively includes transcripts of the proceedings specified in Rule 31.8(b)(1)(B), the rules allow an appellant 30 days from the filing of the notice of appeal to file a designation of record, which requests a certified transcript of additional proceedings or excludes any portion of the proceedings the appellant deems unnecessary. *See* Ariz. R. Crim. P. 31.8(b)(2)(A). Because a court reporter may not be paid for transcripts of proceedings an appellant may exclude, a court reporter typically will not begin preparing transcripts for an appeal before the court reporter receives a designation of record. A court reporter, thus, may have only 15 days between receipt of the designation and the deadline to file the transcripts. Depending on the circumstances, including length of the proceedings and the court reporter's other workload, timely filing of the transcripts may be difficult or impossible when the court reporter receives the designation of record at or near the 30-day deadline.

Second, the preparation of a certified transcript may be delayed because an appellant may not make timely financial arrangements to pay for the certified transcript. A non-indigent appellant must arrange with the court reporter to pay for the certified transcript within five days after filing the notice of appeal. *See* Ariz. R. Crim. P. 31.8(c)(5). And an appellant's indigency status may change after the appellant files the notice of appeal, leaving uncertainty about whether the appellant must pay for the transcript or is entitled to a transcript prepared at public expense. This payment issue may delay when the court reporter begins preparing the transcript.

Third, the clerk of the superior court occasionally may be unable to provide the notice of appeal to the court reporter within 8 days. *See* Ariz. R. Crim. P. 31.2(e)(1)(E).

This delay also can reduce the time the court reporter has available to prepare the transcript.

Fourth, the court reporter may need more time because of unexpectedly heavy workload, illness, or other life circumstances.

The Court historically has granted extensions for good cause shown. *See* Ariz. R. Crim. P. 31.9(c)(2) (authorizing 20-day extension for good cause shown); *see also* Ariz. R. Crim. P. 31.3(a) (“For good cause, an appellate court, on motion or on its own, may suspend any provision of this rule in a particular case, and may order such proceedings as the court directs.”). Including the reason additional time is necessary in an extension request allows the Court to determine whether the request is based on good cause. This explanation also helps the Court’s overall assessment whether subsequent extension requests are based on new and unforeseen circumstances, constituting good cause.

Most court reporters generally do not need more than one extension. When the Court grants a second extension, it states that if the court reporter does not file the transcript by the new deadline, the court reporter must appear and show cause why the Court should not impose sanctions. This hearing is an opportunity for the court reporter to explain the circumstances causing the delay and allows the Court to work with the court reporter to establish an appropriate deadline.

Upon consideration, to promote due process and the interests of all parties in the timely resolution of criminal appeals, and consistent with Rule 31.3 (a):

IT IS ORDERED that the Court adopts the following policy regarding extensions for filing transcripts in criminal appeals:

1. The Court will grant a court reporter an initial extension of 30 days for the filing of a transcript upon a showing of good cause, if the reporter files the request at least one day before the date the transcript is due. A court reporter's avowal that the court reporter's workload does not allow sufficient time to prepare the transcript by the deadline normally will be sufficient to establish good cause for a first extension.

2. If the reason for a first extension request is that the timing of the receipt of the designation of record or notice of appeal does not allow sufficient time to prepare the transcript by the deadline, the court reporter should attach to the request copies of the designation or notice of appeal.

3. If the reason for a first extension request is that the appellant has not made financial arrangements for preparation of the transcript and their indigency status has changed or was not apparent from the initial notice of appeal packet, the court reporter should state the date on which the superior court found appellant indigent.

4. The Court will grant a request for any subsequent extension only upon a showing of extraordinary circumstances.

5. If a court reporter fails to file a transcript by the original due date, or by the due date specified in an order granting an extension, the reporter must appear and show cause why the Court should not impose sanctions.

IT IS FURTHER ORDERED that to advance the Court's goals of timely resolving criminal appeals and minimizing undue delay, the Court continues the following policies:

1. After a court reporter has filed transcripts with the Court, the court reporter

must comply with Rule 31.8(d)(2)-(4) within three days.

2 Any request for transcripts, whether by designation under Rule 31.8(b)(2) or by motion to supplement, must identify the date of the proceeding, the judicial officer who presided, and the court reporter who was present.

3 Any request for additional transcripts must be served on each identified court reporter.

_____/s/_____
David B. Gass
Chief Judge, Division One
Arizona Court of Appeals