

RULES OF THE ARIZONA SUPREME COURT

Rule 28. Procedure for Adoption, Amendment or Repeal of Rules

Preamble

It is the policy of the Arizona Supreme Court to establish an effective process for the adoption, amendment, and repeal of rules of procedure for the courts of this state which will provide for public notice and opportunity for comment from the members of the legal profession and the public on proposals to adopt, amend, or repeal rules, utilizing available technology. To carry out this policy, the court has established appropriate procedures, an interactive court rules website, and an annual rule-making cycle to implement its constitutional authority under Article 6, Section 5 of the Arizona Constitution, as hereinafter set forth.

(A) Petition for Adoption, Amendment, or Repeal of Rule; Deadline for Filing.

(1) *Deadline for and Method of Filing.* Any person, association or public agency interested in the adoption, amendment, or repeal of a court rule may file a petition to adopt, amend, or repeal a rule. Such petition shall be filed on or before January 10 in any given year in order to be considered and acted upon by the court at its annual rules conference the following September.

(a) *Paper Filing.* A written paper petition shall be filed with the Clerk of the Supreme Court and shall consist of an original and six (6) copies, in addition to one copy of the petition and supporting documentation in Microsoft Word format on a CD, disk, or other compatible electronic medium.

(b) *Electronic Filing.* A petition may be filed electronically by registering at the Court Rules Forum website, accessible at <http://www.supreme.state.az.us>, and submitting the petition as attachments in both PDF and Microsoft Word format. The PDF version of the electronically filed petition shall be considered the official record. The electronic petition shall comply with the length and formatting requirements of Rule 28(A)(2), and with the requirements of Rule 124, Rules of the Supreme Court. An electronically filed petition constitutes the filing of the original written and signed paper under the rules governing practice and procedure in the courts of this state. Any person filing a petition electronically shall be deemed to have consented to receive electronic service from another party and also to have consented to receive minute entries, orders, and notices from the court electronically.

(2) *Form and Contents of Petition.* The petition shall state the grounds for the adoption, amendment or repeal of the rule, include a draft of the proposed new or amended rule, and may be accompanied by supporting documentation. The petition and supporting documentation shall not exceed 20 pages, exclusive of pages containing a draft of the proposed new or amended rule. The form, method of preparation, and filing of the petition and supporting documentation shall substantially conform, insofar as practicable, to the requirements of Rule 6(c), ARCAP.

(3) *Court Review of Petition.* After the filing of a petition, the court shall review the petition and any supporting documentation and determine whether to open the matter for public comment in the manner provided in Rule 28(c), refer it to an appropriate committee for further study and report, or reject it for lack of need, merit, or substance.

(4) *Notice to Petitioner.* If the court denies the petition for lack of need, merit, or substance, the clerk shall promptly notify the petitioner of the decision of the court. If the court refers the petition to a committee for study and report, the clerk shall notify the petitioner of the referral and shall include the name and address of the chairperson of the committee. The petitioner shall be entitled to submit written comment, either on paper or electronically, and appear before the committee. Notices shall be mailed or sent electronically, in accordance with Rule 28(A)(1)(b) and Rule 124 of these rules.

(B) Proposed Rule Changes by the Supreme Court. The court, on its own motion, may propose the adoption, amendment, or repeal of a rule. The proposed rule change, together with any documentation, shall be filed with the clerk, who shall thereafter open the matter for comment in the manner provided in Rule 28(C).

(C) Opening the Rule Change Petition for Comment. Whenever a petition for a rule change is required by the court or by these rules to be opened for comment, the clerk shall prepare a request for comment stating that the court invites written comment on the merits of the petition and indicating the place for filing such comments and the expiration date for filing such comments. Such comments may be filed on paper with the clerk, or may be filed electronically, as specified in Rule 28(D). Copies of the petition and the request for comment shall be sent by the clerk, on or before December 20 of each year, by mail or electronically, or as otherwise directed by the court, to the following: Governor, State of Arizona Speaker, Arizona House of Representatives President, Arizona State Senate Attorney General of Arizona Director of the Arizona Legislative Council Dean, Arizona State University Law School Dean, University of Arizona Law School Administrative Director of the Courts Clerk, Court of Appeals, Division One Clerk, Court of Appeals, Division Two Each Superior Court Presiding Judge Each Chief Judge of the Court of Appeals Executive Director of the State Bar President of the Justice of the Peace Association President of the Municipal Judges Association President of the Arizona Attorneys for Criminal Justice Executive Director of the Arizona Prosecuting Attorneys Advisory Council Executive Director of the Victim's Services Division, Office of the Attorney General of Arizona Chairperson of the Arizona Coalition for Victim Services Presidents of all Organized Local Bar Associations President of the Superior Court Clerk's Association Executive Director of the Arizona Trial Lawyers Association Executive Director of the Phoenix Association of Defense Counsel President of the Tucson Defense Bar Association Editor, Arizona Attorney (State Bar) Editor, Maricopa Lawyer Editor, The Writ (Pima Bar Association) Code-Co County Law Libraries In addition, the clerk shall send copies of the petition and request for comment to such other persons or organizations as may be designated by the court and provide copies of the petition and request for comment to the members of the news media. The court shall also make copies of the petition and request for comment available on the Court Rules Forum website.

(D) Comment on Proposed Rule Changes.

(1) *Deadline for and Method of Filing; Form.* The form and method of preparation of written paper comments concerning the merits of a petition for rule change shall substantially conform, insofar as practicable, to the requirements of Rule 6(c), ARCAP, and shall not exceed 20 pages. Comments shall be filed, in either traditional paper format or electronic format, on or before May 20 of each year, unless a different date is specified in the request for comments.

(a) *Paper Filing.* A paper comment shall be filed with the clerk and shall consist of an original and six copies, in addition to one copy of the written comments and any supporting documentation in Microsoft Word format on a CD, disk, or other compatible electronic medium.

(b) *Electronic Filing.* A comment may be filed electronically by registering at the Court Rules Forum website, accessible at <http://www.supreme.state.az.us>. The PDF version, if any, of an electronically filed comment shall be considered the official record. An electronically filed comment constitutes the filing of the original written and signed paper under the rules governing practice and procedure in the courts of this state. Any person filing a comment electronically shall be deemed to have consented to receive minute entries, orders, and notices from the court electronically.

(i) *Formal Comment.* A comment may be submitted as attachments in both PDF and Microsoft Word format on the Court Rules Forum website. If so submitted, the comment shall comply with the length and formatting requirements of Rule 28(D)(1), and with the requirements of Rule 124, Rules of the Supreme Court.

(ii) *Informal Comment.* Alternatively, an informal comment may be submitted by inserting the text of the comment directly into the appropriate box at the comment site, as indicated on the Court Rules Forum Instructions page, with or without PDF and Microsoft Word attachments. An informal comment need not comply with the requirement in Rule 124(f) regarding paragraph numbering.

(2) *Service of Comment on Petitioner; Deadline for Reply.* A copy of the comment shall be served upon the petitioner, which service may be made by electronic means if the petition was filed electronically. The petitioner shall have until June 30, or if an expiration date other than May 20 is specified, 30 days after the expiration of the comment period, to reply to any comments. After the expiration of the time allowed for comment and reply, the clerk shall submit to the court the comments and replies that have been filed.

(E) Request for Public Hearing. At any time prior to the expiration of the time allowed for comment on a petition for rule change, the court, on its own motion or at the request of the petitioner or any interested person or organization, may order that a public hearing be held on the proposed rule change. The court shall determine the method and manner of holding such hearing or hearings. The hearing may be conducted before the court en banc, or before one or more members of the court assigned to conduct the hearing, before a master appointed to conduct the hearing or before a committee designated by the court.

(F) Consideration of Rule Change by the Court; Effective Date of Rules; Notice. (1) In September of each year, after the time for public comment has expired and after the conclusion of any public hearings, the court shall consider the matters presented and shall act upon the proposed rule by adopting, modifying or repealing it, or by refusing to adopt, modify or repeal it. (2) Unless another effective date is set forth in the court's order, all new rules and amendments that the court adopts in September shall be effective as of January 1 following the date of the court's action. (3) The clerk shall notify the petitioner, those persons and organizations listed in Rule 28(C), and those persons and organizations who submitted comment on the petition for rule change of the action taken by the court. Notices shall be mailed or sent electronically, in accordance with this rule and Rule 124, Rules of the Supreme Court.

(G) Emergency or Expedited Adoption of Rule. (1) If a rule change petition presents an urgent matter for which compelling circumstances render the annual rule processing cycle inadequate, a request to consider a rule change petition on an expedited basis may be filed with the petition. (2) If the court determines that immediate action is necessary for the

adoption or amendment of a rule, the court shall take the action required by the circumstances. Any rule adopted by the court pursuant to this section shall be opened for public comment in the manner provided in Rule 28(C), and comment may be made in the manner provided in Rule 28(D).

Comment

Prior to the adoption of Rule 28 the process for making changes to court rules was not formalized. Suggestions for rule changes came from various groups, particularly the State Bar of Arizona. In adopting Rule 28 the court did not intend to limit or discourage any group from continuing to make suggestions on this subject. The purpose of Rule 28 is to formalize the procedure for receiving and considering proposals for rule changes.

It is not the intention of the court to change the process followed by the State Bar in developing proposed rule changes. The practice of state bar committees developing and submitting suggested changes in the rules to the Board of Governors should continue. Any proposals for rule changes approved by the Board of Governors will, however, be submitted to the court in the manner prescribed by Rule 28.

The procedure outlined in Rule 28 applies to court rules which have general application. Rule 28 does not apply to requests for changes in local rules of practice.

The officials and agencies listed in the rule are not the only ones who will receive copies of the petitions. The clerk, at the direction of the court, will also send copies of the petitions for rule changes to many other organizations who are known to have either a general or special interest in the subject matter of a proposed rule. It is anticipated that the list of organizations receiving such petitions will be expanded to include new organizations which may be formed in the future.

The clerk, in addition to providing copies of petitions for rule changes to the news media, will send copies of such petitions to the editors of all official publications of the state and local bar associations.

Comment to 2005 Amendment

The 2005 amendments implement an annual cycle for processing rule change petitions, whereby the court will consider petitions for rule change only one time per year. An exception is made for emergency matters or other compelling circumstances, including legislative enactments or statutory amendments, urgently needed administrative reforms, or matters affecting litigants' due process, fair trial, or other constitutional rights that require immediate adoption or amendment of the rules. The new schedule is intended to simplify the rule-making process and to eliminate confusion caused by frequent rule changes and varying effective dates. Under the annual schedule, rule change petitions filed by November 20* will be circulated by December 20 for public comment. Comments to the petitions will be due by May 20, and the petitioner's reply to comments will be due June 30. Thereafter, the court will consider the petitions and comments in September. Any new rules or amendments adopted in September will be effective January 1 of the following year. These amendments shall be applicable to all rule change petitions filed after December 9, 2005.

* Note: Rule 28(A) was amended to require petitions to be filed by January 10.