



Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231
TELEPHONE: (602) 542-9396

NOËL K. DESSAINT
CLERK OF THE COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

September 20, 2006

RE: RULES 4(d) & 58(b), ARIZ.R.CIV.P. et al
Arizona Supreme Court No. R-05-0030

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 11, 2006, in regard to the above-referenced cause:

ORDERED: Petition to Amend Various Rules of Procedure Relating to Minute Entries [Rules 4(d) and 58(b), Arizona Rules of Civil Procedure; Rules 7.6, 10.1, 16.3, 26.7, 32.5, 32.9, 35.5, 35.6, and 35.7, Arizona Rules of Criminal Procedure; Rule 7, Rules of Procedure for Special Actions; and Rule 12(c), Superior Court Rules Appellate Procedure - Civil] = ADOPTED as modified, effective January 1, 2007.

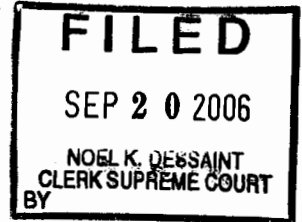
Noel K Dessaint, Clerk

TO:

Fred Newton, Chairperson, Committee on Superior Courts
Juanita Mann, President, Arizona Association of Superior Court Clerks
Andrew P Thomas, Maricopa County Attorney
Attn: Philip J MacDonnell
Final Rule Distribution List
cf

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-05-0030




ORDER AMENDING RULES 4(d) AND 58(b), ARIZONA RULES OF CIVIL PROCEDURE, RULE 7.6, 10.1, 16.3, 26.7, 32.5, 32.9, 35.5, 35.6 AND 35.7, ARIZONA RULES OF CRIMINAL PROCEDURE, RULE 7, RULES OF PROCEDURE FOR SPECIAL ACTIONS, RULE 12(c), SUPERIOR COURT RULES OF APPELLATE PROCEDURE – CIVIL, AND RULE 1(C), RULES OF PROCEDURE FOR THE JUVENILE COURT; AND DELETING RULE 74(d), RULES OF PROCEDURE FOR THE JUVENILE COURT

IT IS ORDERED amending the captioned rules as shown on the attached Appendix A,* effective on January 1 , 2007.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 20th day of September, 2006.

For the Court:


Ruth V. McGregor
Chief Justice

* Changes or additions to text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

APPENDIX A

RULES OF CIVIL PROCEDURE

Rule 4(d). Process; By Whom Served

Service of process shall be by a sheriff, a sheriff's deputy, a private process server registered with the clerk of the court pursuant to subpart (e) of this Rule, or any other person specially appointed by the court, except that a subpoena may be served as provided in Rule 45. Service of process may also be made by a party or that party's attorney where expressly authorized by these Rules. A private process server or specially appointed person shall be not less than twenty-one (21) years of age and shall not be a party, an attorney, or the employee of an attorney in the action whose process is being served. Special appointments to serve process shall be requested by motion to the presiding Superior Court judge and the court's ~~ruling shall be recorded by minute entry~~ motion shall be accompanied by a proposed form of order. The party submitting the proposed form of order shall comply with Rule 5(j)(2) under which the filing party includes the appropriate number of copies to be addressed to each party who has entered an appearance in the case and stamped, addressed envelopes for distribution of the resulting order., unless otherwise provided by the Presiding Judge. If the proposed form of order is signed, no minute entry shall issue. Special appointments shall be granted freely, are valid only for the cause specified in the motion, and do not constitute

an appointment as a registered private process server.

2. Rule 58(b). Remittitur; procedure; effect on right of appeal

1. A party in whose favor a verdict or judgment has been rendered may, in open court, or in writing filed with the clerk, remit any part of the verdict or judgment.

~~The A remittitur announced in open court shall be entered on the judgment docket and in the minutes, and execution shall thereafter issue for the balance only of the judgment after deducting the amount remitted.~~

2. [no change to text]

RULES OF CRIMINAL PROCEDURE

Rule 7.6. Transfer and Disposition of Bond

(a) and (b) [no change to text]

c. Forfeiture Procedure.

(1) **Notice and Hearing.** If at any time it appears to the court that the released person has violated a condition of an appearance bond, it shall issue a bench warrant for the person's arrest ~~and send a copy of the minute entry evidencing the issuance of such bench warrant to~~. Within ten days after the issuance of the warrant, the court shall notify the surety , in writing or by electronic means, that the warrant was issued ~~within ten days after the issuance of the warrant.~~ The court shall also set a hearing within a reasonable time not to exceed 120 days requiring

the parties and any surety to show cause why the bond should not be forfeited. The court shall ~~provide notice of the hearing to~~ notify the parties and any surety of the hearing in writing or by electronic means ~~by mailing copies of the minute entry to the addresses previously provided by the parties to the court.~~

(2) [no change to text]

(d) and (e) [no change to text]

Rule 10.1. Change of judge for cause

(a) through (c) [no change to text]

COMMENT

[no change to cComment on Rule 10.1(a) and (b)]

Rule 10.1(c). Ariz. Rules of Civil Procedure 42(f)(2)(D) requires the presiding judge [see definition of “presiding judge” in Rule 1.4(b)] to provide a hearing on a motion for change of judge for cause. If the challenged judge, after reviewing the motion, agrees with the moving party that cause exists and all parties so stipulate the case may be reassigned without hearing following the procedures set forth in Rules 10.5(b) and 10.6.

The hearing judge will ~~prepare a minute entry~~ issue an order stating his conclusions, copies of which will be forwarded to the presiding judge and to the parties.

Rule 16.3. Procedure on omnibus hearings

(a) through (e) [no change to text]

~~f. Minute Entry. At the conclusion of the hearing the court shall direct a minute entry of the matters agreed upon.~~

Rule 26.7. Pre-sentencing hearing; request, purpose, pre-hearing conference

(a) and (b) [no change to text]

c. **Pre-Hearing Conference.** The court, on its own initiative or on motion of the parties, may hold a pre-hearing conference to ascertain and limit the matters in dispute or otherwise expedite the pre-sentencing hearing. The court may order the probation officer who prepared the presentence report to attend.

At such conference the court may postpone the date of sentencing for up to 10 days beyond the maximum extension permitted by Rule 26.3(b) and delay the pre-sentencing hearing accordingly, in order to allow the probation officer to investigate any matter specified by the court, or to refer the defendant for mental health examinations or diagnostic tests. ~~The court shall direct a minute entry noting all decisions, agreements and orders made at a pre-hearing conference.~~

Rule 32.5. Contents of Petition

The defendant shall include every ground known to him or her for vacating, reducing, correcting or otherwise changing all judgments or sentences imposed upon him or her, and certify that he or she has done so. 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 and record citations and memoranda of points and authorities are required. In Rule 32 of-right and non-capital cases, the petition shall not exceed 25 pages. The response shall not exceed 25 pages, and any reply shall not exceed 10 pages. In capital cases, the petition shall not exceed 40 pages. The response shall not exceed 40 pages, and any reply shall not exceed 20 pages. A petition which fails to comply with this rule shall be returned by the court to the defendant for revision with ~~a minute entry~~ an order specifying how the petition fails to comply with the rule. A petition that has been revised to comply with the rule shall be returned by the defendant for refiling within 30 days after defendant's receipt of the non-complying petition. If the petition is not so returned, the court shall dismiss the proceedings with prejudice. The period for response by the state shall begin on the date a returned petition is refiled.

Rule 32.9. Review

(a) through (d) [no change to text]

(e) **Filing of the Record.** In Rule 32 of-right and non-capital cases, within 45 days after the receipt of the notice of filing of a petition for review, the record, including the trial court file and the reporter's transcript, shall be transmitted to

the appellate court.

In capital cases, the record of the post-conviction proceedings shall not be transmitted to the appellate court unless requested by that court. If requested by the appellate court, the record shall consist of copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings filed and all ~~minute entry~~ minute entries and orders issued in the post-conviction proceedings, plus the reporter's transcript and any exhibits admitted by the trial court in the post-conviction proceedings.

(f) through (h) [no change to text]

Rule 35.5. Service and filing

[no change to text of rule or to existing Comment]

Comment (2007 Amendment)

Rule 5(j)(2) of the Arizona Rules of Civil Procedure was added in 2004 to reduce the clerks' burden of producing and distributing minute entries by requiring counsel to submit with their stipulations and motions proposed forms of orders along with a sufficient number of copies to be conformed and pre-addressed stamped envelopes for each party to the action. This subdivision of the rule, like other provisions in Rule 5, is to be followed by attorneys in criminal cases, unless otherwise provided for by the presiding judge.

Rule 35.6. Notice of orders

Immediately upon the entry of any order in a criminal case, other than in open court, the clerk or a designee shall mail to all parties a copy thereof either by U.S. mail, electronic mail, or attorney drop box. If the court has signed a proposed form of order submitted by a party, no minute entry shall issue.

Rule 35.7. Proposed orders

Any proposed order shall be prepared as a separate document and shall not be included as an integral part of a motion, stipulation, or other document. The proposed order shall be prepared in accordance with this subsection and Rule Rules 5(j)(2) and 10(d) of the Rules of Civil Procedure, and shall contain the following information as single spaced text on the first page of the document:

(1) through (5) [no change to text]

There shall be at least two lines of text on the signature page. Proposed orders shall not be filed or docketed by the Clerk of Court until after judicial review and decision to file, modify or reject. If the court has signed a proposed form of order submitted by a party, no minute entry shall issue.

RULES OF PROCEDURE FOR SPECIAL ACTIONS

Rule 7. Special Appellate Court Provisions

(a) through (f) [no change to text]

(g) If in a special action relief is granted by the Supreme Court or by a Court of Appeals, the order granting relief shall take such form as the court directs, but in every such case the decision of the court shall be given in writing and the grounds of decision shall be stated. If in a special action brought in the Supreme Court or a Court of Appeals relief is denied, the decision of the Court may be made by ~~minute entry in the record of that court~~ order, and no written opinion shall be required.

(h) through (j) [no change to text]

SUPERIOR COURT RULES OF APPELLATE PROCEDURE - CIVIL

Rule 12. Disposition of Appeals

(a) and (b) [no change to text]

(c) **Form of Decision.** The Superior Court shall make its ruling ~~upon the minutes of the court~~ in writing. A copy of such ~~minutes~~ ruling shall be transmitted by the clerk of the Superior Court to the trial court and to the parties. The ~~minutes~~ ruling and the trial court record shall be transmitted by the clerk of the Superior Court to the trial court within 30 calendar days after the expiration of the time for the filing of a motion for rehearing or the Superior Court files its order finally disposing of the case, whichever occurs later, unless a notice of appeal is filed.

(d) [no change to text]

RULES OF PROCEDURE FOR THE JUVENILE COURT

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

(A) and (B) [no change to text]

C. All written motions or stipulations shall be accompanied by a proposed form of order. Any proposed order shall be prepared as a separate document and shall not be included as an integral part of the motion, stipulation, or other document. The proposed order shall be prepared in accordance with the Rules of Civil Procedure, and shall contain the following information as single-spaced text on the first page of the document:

1. To the left of the center of the page starting at line one (1), the party's typed or printed name, address, telephone number, State Bar of Arizona attorney identification number and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney, e.g., the State or Defendant. If the document is being presented by a litigant representing himself or herself, all of the foregoing information shall be included except the State Bar of Arizona attorney identification number;
2. Centered on or below line six (6) of the page, the typed or printed title of the

court;

3. Below the title of the court and to the left of the center of the paper, the typed or printed title of the action or proceeding;

4. Opposite the title, in the space to the right of the center of the page, the typed or printed case number of the action or proceeding; and

5. Immediately below the case number, a brief typed or printed description of the nature of the document.

There shall be at least two lines of text on the signature page. Proposed orders shall not be filed or docketed by the Clerk of the Court until after judicial review and decision to sign and file; modify, sign or file; or reject. If the proposed form of order is signed, no minute entry shall issue. Upon the filing of the order with the Clerk, processing shall be in accordance with the Rules of Civil Procedure. The party submitting the proposed order shall include with it copies to be conformed, together with addressed envelopes for each party/agency in the case. Each addressed envelope requiring delivery via U.S. mail shall include sufficient postage. Conformed copies of the signed order shall be distributed by the Clerk.

Rule 74(D). Form of Order.

[deleted]