



# Supreme Court

STATE OF ARIZONA

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CLERK OF THE COURT

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June 9, 2005

RE: **RULES 3.1, 3.2, 3.4, 26.12, 27.5, ARIZ.R.CRIM.P.**  
Arizona Supreme Court No. R-03-0028

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 1, 2005, in regard to the above-referenced cause:

**ORDERED: Amended Petition to Amend ARCrImP, Rules 3.1, 3.2, and 3.4 Re Warrants and Summonses and Rules 26.12 and 27.5 Re Warrants = DISMISSED.**

**FURTHER ORDERED: [Second Amended] Petition to Amend ARCrImP, Rules 3.1 and Rule 3.4 Re Warrants and Summonses and Rule 26.12 Re Warrants = DISMISSED.**

**FURTHER ORDERED: Third Amended Petition to Amend ARCrImP, Rules 3.1, 3.2, and 3.4 Re Warrants and Summonses and Rules 26.12 = ADOPTED as modified, effective December 1, 2005.**

Noel K Dessaint, Clerk

TO:

Hon George T Anagnost, Presiding Judge, Peoria Municipal Court  
Hon R Michael Traynor, Chairperson, Limited Jurisdiction Committee  
Robert B Van Wyck, Chief Counsel, State Bar of Arizona  
Andrew P Thomas, Maricopa County Attorney

Attn: Philip J MacDonnell

Michael K Jeanes, Clerk, Maricopa County Superior Court

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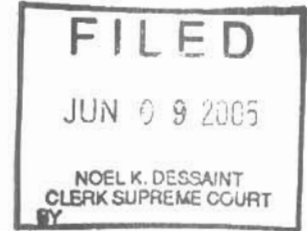
Rules Final List

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**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

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Supreme Court No. R-03-0028



ORDER AMENDING  
RULES 3.1, 3.2, 3.4, AND 26.12,  
ARIZONA RULES OF CRIMINAL PROCEDURE

IT IS ORDERED that Rules 3.1, 3.2, 3.4, and 26.12, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto,\* effective as of December 1, 2005.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 9<sup>th</sup> day of June, 2005.

For the Court:

  
RUTH V. MCGREGOR  
Vice Chief Justice

\* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

## ARIZONA RULES OF CRIMINAL PROCEDURE

### RULE 3. ARREST WARRANT OR SUMMONS UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS

#### Rule 3.1. Issuance of warrant or summons

**a. Issuance.** Upon presentment of an indictment, or on a finding of probable cause made pursuant to Rule 2.4(a), the ~~magistrate court~~ shall ~~immediately~~ promptly issue a warrant or summons, or a notice of supervening indictment under Rule 12.7(c). Upon presentment of a complaint signed by a prosecutor, the ~~magistrate court~~ shall ~~immediately~~ promptly issue a summons or notice of supervening indictment under Rule 12.7(c) or, after a finding of probable cause, issue a warrant.

**b. Preference ~~of~~ for Summons.** Unless good cause exists for the issuance of a warrant, a summons shall issue if the defendant is not in custody and the offense charged is bailable as a matter of right, and there is reason to believe that the defendant will respond to it. If a warrant is requested ~~or issued~~ by the prosecutor, the prosecutor ~~or court~~ shall state the reasons for the issuance of the warrant rather than a summons.

**c. ~~Subsequent issuance of Initial Arrest Warrant.~~** Before issuing an arrest warrant, the magistrate shall determine that probable cause exists that the defendant committed the offense or find that such a determination has previously been made. An initial arrest warrant shall issue if:

- (1) a defendant who has been summoned fails to appear, or;
- (2) there is good cause to believe that the defendant will fail to appear, or
- (3) the summons cannot readily be served or delivered.

**d. Pre-Disposition Warrant. Requirement for Warrant.** ~~Before the arrest warrant may issue, a magistrate must determine that probable cause exists that the defendant committed the offense or find that such a determination had previously been made.~~ After the initial appearance and before disposition of a case, when the defendant fails following proper notice to appear for a court appearance, the court may issue a warrant to secure defendant's appearance.

#### Rule 3.2. Content of warrant or summons.

**a. Warrant.** [No change in text.]

**b. Summons.** The summons shall be in the same form as the warrant except that it shall summon the defendant to appear at a stated date, time and place within 7 days of the date of service 30 days after the filing of an indictment, information or complaint. At the

request of the prosecutor or by direction of the court the summons shall command the defendant to report to a designated place to be photographed and fingerprinted prior to defendant's appearance in response to the summons. Failure to so report shall result in defendant's arrest at the time of defendant's appearance in response to the summons, unless good cause for such failure is shown, whereupon the magistrate shall direct the defendant to report immediately for such photographing and fingerprinting.

**c. Summons for Felony Offense.** [No change in text.]

**Rule 3.3. Execution and return of warrant** [No change in text.]

**Rule 3.4. Service of summons**

The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. In addition, a summons may be served by first class mail or by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.

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**RULE 26. JUDGMENT, PRE-SENTENCE REPORT,  
PRE-SENTENCING HEARING, SENTENCE**

\* \* \*

**Rule 26.12. ~~Fines and Restitution~~ Compliance with Sentence**

**a. Method of Payment - Installments.** The court may permit payment of any fine, or restitution, or ~~both,~~ other monetary obligation to be made within a specified period of time or in specified installments. Restitution shall be payable as promptly as possible in light of the defendant's ability to pay.

**b. Method of Payment - To whom.** The payment of a fine, restitution, or ~~both,~~ other monetary obligation shall be made to the court, unless the court expressly directs otherwise. Monies received from the defendant shall be applied first to satisfy the restitution order and the payment of any restitution in arrears. The court or the person authorized by the court to accept payment shall, as promptly as practicable, forward restitution payments to the victim.

**c. Action upon Failure to Pay a Fine, Restitution, Other Monetary Obligation, or to Comply with Court Orders.**

(1) *For Defendants Not on Supervised Probation.* If a defendant fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with a term or condition of sentence ~~or any installment thereof~~ within the prescribed time, the court shall, within 5 days, notify the prosecutor ~~and the sentencing court.~~

(2) *For Defendants on Supervised Probation.* If a defendant on supervised probation fails to pay a fine, restitution, or other monetary obligation, or any installment thereof is known by the court to have failed to comply with any other term or condition of probation within the prescribed time, the clerk court shall give notice of such delinquency failure to the defendant's probation officer within the time limits set under sections (c)(1) and (3).

(3) *Time limits – Restitution and Non-Monetary Obligations.* If the payment is to be made to someone other than or performance of an obligation does not involve the court, delinquency times shall run from the date on which the payee notifies court or the probation officer becomes aware of failure to pay or comply.

(4) *Court Action upon Failure of Defendant Not on Probation to Pay Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders or restitution.* Upon the defendant's failure to pay a fine, restitution, or other monetary obligation, or failure to comply with court orders or restitution, the court shall may require the defendant to show cause why said defendant should not be held in contempt of court and may issue a summons or a bench warrant for the defendant's arrest pursuant to the provisions of A.R.S. § 13-810.