

OLD RULE 31:

Notice of Settlement

It shall be the duty of counsel or any party if unrepresented by counsel to give the Clerk of the appellate court prompt notice of the settlement of any case or matter filed in the Court. In the event of any unreasonable delay in the giving of such notice, the Court may impose sanctions against counsel or the parties to insure future compliance with this rule.

NEW RULE 31:

Notice of Settlement

The attorney for a party and any self-represented party must give the appellate clerk prompt notice of the settlement of any pending appeal or other matter. An appellate court may impose sanctions against an attorney or a party for any unreasonable delay in giving such notice to the appellate clerk.

Rule Changes To Know

Beyond the style and organizational improvements, the Supreme Court adopted several substantive rule changes as well. These changes also improve ARCAP and bring the practice of filing and serving briefs into the modern age.

For starters, the new rules recognize the reality of the digital age. Most briefs must be filed electronically—and in many cases must be served electronically as well. Although we had rules governing these topics in various administrative orders, ARCAP 4, 4.1, and 5 now detail these rules for the appellate courts. The new rules call for text-searchable documents in native digital format when possible, rather than scanned copies (ARCAP 4.2(c)). They also encourage parties to embed electronic navigation tools to help the judges, including bookmarking and hyperlinking the brief and record (ARCAP 4.2(d)). Because most judges now read briefs on screens, appellate lawyers should take advantage of these tools to make their briefs user-friendly for screen reading.

Citations to cases and to the record will look different as well. After nearly a decade of debate,¹ briefs in certain circumstances may finally include citations to memorandum decisions and unpublished decisions from other jurisdictions (ARCAP 28(f), ARIZ.R.S.CT. 111(c)). Parallel citations to the Pacific Reporter are no longer required for Arizona cases, but citations to paragraph numbers of decisions should be included (ARCAP 13(f)). Parties in

Division One may include an appendix containing portions of the record; the appendix should have a table of contents and be sequentially numbered to match the PDF electronic numbering and have internal bookmarking (ARCAP 13.1).

All of this should make briefs and appendices easier to read and easier to use. It also means, however, that lawyers need to plan ahead, because these requirements add steps to the process of finalizing a brief.

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Deadlines also have changed substantially. The time from filing a notice of appeal to the opening brief deadline increased from 80 days to about 100 days, and the procedures for calculating the deadline have changed (*see* ARCAP 11.1(b), 12, 15(a)(1)). Amicus briefs in the Court of Appeals finally have a specific deadline: 21 days after a reply brief (ARCAP 16(c)). As in federal court, a Rule 60 motion now tolls the deadline for filing a notice of appeal if filed within 15 days of the judgment (ARCAP 9(e)(1)(E)). And reflecting current practice, a


request for attorneys' fees must be made in an opening or answering brief rather than in a separate motion (ARCAP 21(a)(1)).

Finally, the rules contain some changes concerning bonds. Notably, cost bonds have been eliminated. By rule, a motion for a supersedeas bond in the superior court now automatically stays enforcement of the judgment (ARCAP 7(a)(2)).

There are many other substantive changes as well. Although there is no substitute for reviewing the new rules, the list (*see* p. 54) highlights what you need to know.

Conclusion

Although lawyers often complain about rule changes—who wants to learn new rules after becoming an expert with the old rules?—the new ARCAP rules bring welcome changes. They also provide a precursor of what we can expect to see with our other procedural rules. As always, new rule petitions may be found in the Arizona Court Rules Forum where anyone

may propose a rule change or comment on pending rule proposals. The forum is accessible through the Arizona Supreme Court's website at www.azcourts.gov/rules/Home.aspx. 

—see rule highlights sidebar on next page.

endnote

1. *Compare* Thomas L. Hudson, *Proposed: Make Memorandum Decisions Available Online and Allow Them to Be Cited as Persuasive Authority*, 14 ARIZ. ATT'Y 16 (June 2006), *with* Hon. Donn Kessler, *Citation and Access Are a Dangerous Precedent*, 14 ARIZ. ATT'Y 15 (June 2006).



Highlights of Changes to Arizona Rules of Civil Appellate Procedure

- **Definition of entry of judgment (Rule 2).** Adds some clarifying definitions to Rule 2, including that the “entry” of a “judgment” occurs “when it is filed by the superior court clerk,” rather than when the judge signs the judgment or order. This clarifies certain deadlines that run from the date of entry of judgment (e.g., the notice of appeal filing deadline under Rule 9(a)).
- **Filing and service (Rule 4).** Updates filing and service rules with an emphasis on electronic filing and service. In particular, it requires parties to file documents with the court electronically in most cases. It also incorporates the service rules from the Arizona Rules of Civil Procedure. Any electronic document filed with the court that contains hyperlinks or bookmarks must be served on other parties in the same format.
- **Electronic filing (Rule 4.2).** Contains requirements and suggestions about the format of electronically filed documents. In particular, it requires most electronic documents to be text-searchable. It also encourages bookmarking briefs (to easily navigate within a document) and hyperlinking briefs (to link to cases and other parts of the document). Filing native electronic documents with these modern tools helps the judges.
- **Supersedeas bond (Rule 7).** Updates procedures for staying execution of judgment. Notably, when a party files a motion in the superior court for a supersedeas bond, the updated rule automatically stays enforcement of the judgment until the court has either set the bond amount and deadline for posting the bond or denied the motion.

Parallel citations are no longer required, but case law citations must include a paragraph number if available.

In addition, the rule codifies a recent case holding that when determining the amount of the bond, the appellant must prove net worth by a preponderance of the evidence.

- **Time for filing notice of appeal (Rule 9).** Now clarifies that a timely motion under Arizona Rule of Civil Procedure 60 tolls the deadline for filing a notice of appeal.
- **Cost bond (Rule 10 (old)).** The old requirement to post a cost bond has been eliminated. Rule 10 now addresses expedited election matters.
- **Record on appeal (Rule 11).** Changes the procedures and deadlines for ordering transcripts. Also allows limited submission of video or audio recordings with court permission.
- **Notice of briefing deadlines (Rule 12).** Changes the procedures for setting initial case deadlines and other preliminary matters. Deadlines are now triggered from when the appellate court

assigns the case number, which in turn is based on when the superior court transmits the electronic record.

- **Brief contents and style (Rule 13).** Specifies new requirements for citations to the record and case law. Parallel citations are no longer required, but case law citations must include a paragraph number if available.

The new rule also expressly permits introductions to briefs.

- **Appendix to brief (Rule 13.1).** This new rule allows for an appendix in the Supreme Court and Division One containing portions of the record cited in a brief. The appendix must have a table of contents, internal bookmarks for navigation, and sequential page numbering that matches the electronic PDF page numbering.
- **Briefing deadlines (Rule 15).** Contains new deadlines for filing briefs. Opening briefs are now due 60 days after the clerk issues the notice of deadlines. Total time from notice of cross appeal to opening brief deadline increases from about 80 days to about 100 days.
- **Amicus briefs (Rule 16).** Sets a deadline for filing amicus briefs in the Court of Appeals: 21 days after the deadline for a reply brief.
- **Attorneys’ fees request (Rule 21).** Codifies the current practice of requesting attorneys’ fees in an opening or answering brief rather than by separate motion.
- **Citation of unpublished decisions (ARIZ.S.CT.R. 111).** Allows citation of unpublished decisions issued after January 1, 2015 for persuasive value. The citation must indicate that the decision is a memorandum disposition and a copy of the decision or a free link must be included. Cases from other jurisdictions may be cited as permitted by those courts.^{AR}

