

RIGHT TO APPEAL – CRIMINAL

This notice explains your rights and responsibilities to file an appeal to Superior Court from an order or final judgment, and your right to an attorney to represent you.

YOUR RIGHT TO AN ATTORNEY DURING THE APPEAL

You have a constitutional right to an attorney to represent you during the appeal stage of your case. This means:

- You have the right to hire a private attorney, and
- In certain situations, you may be eligible for a court appointed attorney to represent you.

Generally, if you had a court appointed attorney for the trial, you will continue to have a court appointed attorney for the appeal.

If the sentence you are appealing includes jail time or probation and you cannot afford to hire a private attorney, you may complete a financial statement and request a court appointed attorney. Depending upon your income and financial situation, an attorney may be appointed; your request may be denied; or you may have an attorney appointed with the requirement that you pay some amount in contribution toward the cost of the attorney's services. The procedure to apply for a court appointed attorney is set forth in Rules of Criminal Procedure, Rule 6. If you wish to consider this process, ask the clerk for further instructions.

If you file an appeal you are the APPELLANT. The Justice Court is called the Trial Court.

THE APPEAL PROCESS

There are two separate stages to the appeal process. The first stage begins in the Justice Court and the second stage takes place in the Superior Court. You must complete ALL steps at both stages or you risk having your appeal dismissed.

This notice does not set forth all the rules that govern the appeal process. You may review the complete rules at the library as contained in the Superior Court Rules of Appellate Procedure, the Rules of Criminal Procedure and in the Arizona Revised Statutes. It is recommended that you keep a copy of all your documents during the appeal process.

STAGE ONE – THE TRIAL COURT

THE NOTICE OF APPEAL. To appeal you must file a NOTICE OF APPEAL with the trial court within fourteen (14) calendar days from the final order or final judgment. If you do not file a NOTICE OF APPEAL within the time allowed by law, you lose the right to appeal. It is required that you designate the specific judgment, order or ruling that is being appealed.

BOND ON APPEAL. If your release status at the time of appeal is "own recognizance", you will retain that status pending the appeal. If you have posted a bond to secure your release, your bond will remain with the court pending the appeal unless modified by the court.

STAY OF EXECUTION OF SENTENCE. Execution of any sentence requiring incarceration will be stayed, pending the appeal. Any order of restitution however, is not stayed pending the appeal.

THE RECORD. Also, within the time to appeal you must file an original and one copy of the DESIGNATION OF RECORD. A designation of the record is a formal list of the items in the court record that you want to include in the appeal.

The justice court record is made by audiotape, CD or video. The court will provide you with a copy of the audiotape, CD or video if the proceedings were on the record. The court will contact you to pick up a copy of the audiotape, CD or video within 10 days after you file the NOTICE OF APPEAL.

If the taped proceedings are more than 90 minutes in length, it will be necessary for you to pay a court reporter to prepare a transcript (a typed record) of the proceedings. You can find a listing for COURT REPORTERS in the yellow pages of the telephone book. Within 14 calendar days after you file the NOTICE OF APPEAL, you must make arrangements with the court reporter or transcriber to pay any record or transcript preparation fees. The transcript must be filed with the trial court before, or at the same time, you file your memorandum (see FILING THE APPELLANT'S MEMORANDUM).

If you cannot afford to pay for the transcript, ask the clerk for information about a waiver or extension to make payment at a later time. If you fail to pay for the transcript your appeal may be dismissed. Additional copies of the proceedings may be obtained for an additional charge.

THE WRITTEN APPELLANT'S MEMORANDUM. You will need the record for the next step – the APPELLANT'S MEMORANDUM. The appellant's memorandum is your written "brief" or explanation of why the trial court ruling was legally wrong. Your memorandum should refer to specific portions of the record of the trial or hearing to point out where there was error by the court (that is why a written record must be prepared).

The memorandum should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length. You may also attach any exhibits from the trial or hearing to the memorandum.

FILING THE APPELLANT'S MEMORANDUM (within 60 days). The APPELLANT'S MEMORANDUM must be filed with the trial court within 60 calendar days of the deadline to file the NOTICE OF APPEAL.

Type or print the caption of the case and your case number at the top of your memorandum. Type or print the title, APPELLANT'S MEMORANDUM, below the caption so that the court can identify it when it is filed. If you are not represented by an attorney you must file the original and one copy of the memorandum with the trial court.

Note: If an attorney represents you, your attorney must file the original memorandum with the trial court. Your attorney will also be responsible for sending copies as necessary to the opposing side. The opposing side will then have 30 days to file an APPELLEE'S MEMORANDUM in response.

WAIT FOR FURTHER INSTRUCTIONS. Once the memorandum has been filed, you should wait for further instructions from the Superior Court as outlined in Stage Two. Remember that the trial court must have your current mailing address at all times to keep you informed. Even if you hire an attorney your address is still required for legal notifications.

STAGE TWO – THE SUPERIOR COURT

NOTIFICATION FROM THE SUPERIOR COURT. If you have completed all of the steps of the first stage, your case moves to Superior Court where an appeals judge will review the case. About 60 days after you file your memorandum you will receive notification that your case has been sent to Superior Court. Next, you will receive a second notice from the Superior Court assigning a Superior Court case number to use in all further correspondence. The notice will also inform you what will happen next.

SUPERIOR COURT ACTION ON THE APPEAL. If you have completed all of these steps, you will receive a ruling from the Superior Court. The Superior Court has the right to affirm the trial court; overrule the trial court; modify some of the trial court's decision; or, if the record is not clear, order a new trial in the trial court.

If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any reason, the court may use any bond, deposit or payments made to satisfy any obligation you may have under the original judgment. You may have to return to the trial court to receive further instructions.