

Criminal and Criminal Traffic Appeal Instructions

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 A LAWYER DURING THE APPEAL STAGE.

You have a constitutional right to a lawyer to represent you during the appeal stage of your case. This means that: (a) you have the right to hire a private lawyer, and (b) in certain situations, you may be eligible for a court-appointed attorney to represent you. Normally, if you had a court appointed attorney for the trial, you will continue to have court appointed counsel for the appeal. If you are appealing a case where the trial court sentence included jail time or probation, and you cannot afford to hire a private lawyer, you may fill out a financial statement for a court-appointed attorney. Depending on your income and financial situation, an attorney may be appointed, your request may be declined, or you may have an attorney appointed with the requirement that you pay some amount in contribution to 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 look into this process, ask the clerk for further instructions.

THE APPEAL PROCESS IN GENERAL

There are two separate stages to the appeal process. The first stage begins in this court; the second stage takes place in the Superior Court. Remember, you must complete all steps at both stages, or you run the risk of having your appeal dismissed. This notice does not set forth all the rules on criminal appeals. To read them entirely, you may review the Arizona statutes, rules of criminal procedure, and in particular the "Superior Court Rules of Appellate Procedure - Criminal" at the library. It is recommended that you keep a copy of all your documents and receipts during the appeal.

STAGE ONE - THE TRIAL COURT

1. **THE NOTICE OF APPEAL.** To appeal, you must file a "Notice of Appeal" with the trial court clerk within 14 calendar days from the date of the appealable order or final judgment. If you do not file a "Notice of Appeal" within these 14 days, you lose the right to appeal. The notice of appeal must specifically state the judgment or ruling that is being appealed. Within the time to file your notice of appeal, you must also file an original and one copy of the "designation of the Record." This is your list of the items in the court record that you want to include in the appeal.
2. **THE RECORD.** Within 14 calendar days after you file your notice of appeal, you must also arrange to pay for a copy of the proceedings at the hearing. The copy may be a recording or a transcript. The clerk will explain which type of record is required. Payment must be in cash or other method explained by the clerk. If you cannot afford to pay for the record, ask the clerk for information about a possible waiver or extension ("deferral") to make payment later. If you fail to pay for the record or transcript, your appeal may be dismissed. Additional copies of the trial or proceeding record or transcript may be obtained for an additional charge.
3. **THE CONDITIONS OF RELEASE PENDING APPEAL.** You cannot be forced to post an appeal bond in order to exercise your right to appeal. If you have been released on your own recognizance during the trial stage of your case, this will be your status during the appeal also. If the trial court required a bond during the trial stage, however, you may still be required to post this bond during the appeal to ensure your appearance at further court proceedings and to make sure you prosecute the appeal diligently.

4. **THE WRITTEN APPELLANT'S MEMORANDUM.** If you appeal, you are called the "Appellant." After the record or transcript is prepared, the court will contact you to pick up your record. You will need the record for this next step - the "Appellant's Memorandum." The Appellant's Memorandum is your written "brief" or explanation why the trial court ruling was legally wrong. Normally, the Memorandum will refer to specific portions of the record of the hearing to point out where there was error by the court. (That is why a party who appeals pays for a copy of the record.) The Memorandum should be typed or printed on letter-sized white paper, double spaced, and not exceed 15 pages in length, not counting any exhibits from the trial or proceeding you want to attach to the Memorandum.
5. **FILING THE APPELLANT'S MEMORANDUM WITHIN 60 CALENDAR DAYS.** The Appellant's Memorandum must be filed with the court within 60 calendar days of the deadline to file the notice of appeal. Type the words "Appellant's Memorandum" below the caption of the case so the court can identify it. You must file the original and one copy of the Memorandum with the court. (The copy you file is sent to the other side. The other side then has 30 days to file an "Appellee's Memorandum.") (If you are represented by an attorney, you file only the original memorandum; your attorney will send copies as necessary.)
6. **WAIT FOR FURTHER INSTRUCTIONS.** Once the Memorandum has been filed, you should await further instructions from the Superior Court as outlined in the next stage. To keep you informed, remember that the trial court must have your current mailing address at all times. Even if you hire an attorney, your address is still required for legal notifications.

STAGE TWO - THE SUPERIOR COURT

7. **NOTIFICATION FROM THE SUPERIOR COURT.** If you have completed all of the first stage, your case moves to Superior Court where an appeals judge will look at 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, and telling you what will happen next.
8. **SUPERIOR COURT ACTION ON THE APPEAL.** If you have now completed all 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 decision, or, if record is not clear, order a new trial in the Superior Court. If the final outcome of your case is that the ruling stands, or if your appeal is dismissed for any other reason, remember that the court may apply any bond, deposit, or payments already made and that you may have to return to the trial court to be given other instructions in person.