



**ATTACHMENT\***

Rule 38.1. Application for suspension order

- a. Whenever after the filing of a complaint, indictment or information, but prior to a plea of guilty or trial, the prosecutor determines that it would serve the ends of justice to suspend further prosecution of a defendant so that he or she could participate in a deferred prosecution program, the prosecutor, with the consent of the defendant, may, by written motion, apply to the court for suspension of prosecution.
- b. The motion of the prosecutor shall set forth facts showing that the defendant is a person legally eligible for participation in the deferred prosecution program, and a written consent signed by the defendant and his or her counsel, if any, agreeing to the participation by the defendant in the program shall be filed with the motion.
- c. After the filing of a motion by the prosecutor as provided in this rule, the court ~~may~~ shall order that further proceedings be suspended for the period of time specified in the motion up to two years. If the defendant is in custody, the court may order him or her released.

Comment

The provisions of Rule 38 are intended to implement the Deferred Prosecution Program authorized by A.R.S. § 11-361 et seq.

~~The rule provides that the motion by the prosecutor to suspend prosecution be filed in the superior court notwithstanding the fact that the case may be pending in the justice court.~~

When the ~~superior~~ court suspends further prosecution so that a defendant may participate in a deferred prosecution program, the normal time limits required by Rule 8 for the commencement of trial of a criminal case are suspended.

Rule 38.2. Resumption of prosecution

- a. If the prosecutor is not satisfied that the defendant has fulfilled the conditions of the deferred prosecution program, he or she may file a written notice with the ~~superior~~ court that he or she desires that the order suspending prosecution be vacated and that prosecution of the defendant be resumed. The prosecutor shall serve a copy of the notice upon the defendant in the manner provided by Rule 35.5
- b. Upon filing of the notice to resume prosecution the court shall vacate the order suspending prosecution and order that the prosecution of the defendant be resumed. A copy of the order shall be mailed by the court to the defendant and his or her counsel.
- c. After prosecution is ordered resumed the defendant shall be tried within 90 days of the date of the order ordering the resumption of prosecution.

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\*Additions to text are indicated by underscoring; deletions by ~~strikeouts~~.  
Supreme Court No. R-12-0016

Comment

38.2(b). After prosecution is ordered resumed the superior court will make any other appropriate orders to resume the prosecution of the case from the phase it was in at the time prosecution was suspended. ~~If the case was pending in the justice court at the time prosecution was suspended, the superior court will remand the case to the justice court for resumption of proceedings in that court.~~

38.2(c). A new time limit for commencement of trial is provided when prosecution is ordered resumed. The 90-day time limit applies irrespective of the phase the case was in at the time prosecution was suspended.

Committee Comment to 1993 Amendment

The 1993 amendment to Rule 38.2(b) substituted the word "court" for "clerk" to adapt the rule to the circumstances in all courts.