

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-15-0028
RULE 31.5, RULES OF)
CRIMINAL PROCEDURE)
)
) **FILED 12/16/2015**
)
)
_____)

**ORDER
AMENDING RULES 26.11 AND 31.5, AND RULE 41, FORM 23,
ARIZONA RULES OF CRIMINAL PROCEDURE**

A petition was filed proposing to amend Rule 31.5, Arizona Rules of Criminal Procedure, to provide for self-representation on appeal. One comment was received suggesting additional amendments to Rules 26.11 and 41. Upon consideration,

IT IS ORDERED that Rules 26.11, 31.5, 41, and Form 23, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective January 1, 2016.

DATED this 16th day of December, 2015.

_____/s/
SCOTT BALES
Chief Justice

TO:
Rule 28 Distribution
Hon. Diane M Johnsen
Mikel Steinfeld
Hon. Michael J Brown

ATTACHMENT*

ARIZONA RULES OF CRIMINAL PROCEDURE

* * *

Rule 26.11. Duty of the court after pronouncing sentence

After trial, the court shall, in pronouncing judgment and sentence:

a.-b. [No change in text.]

c. Advise the defendant that he or she may waive the right to appellate counsel by filing a written notice no later than thirty days after the filing of the notice of appeal.

e.d. [No change in text.]

* * *

Rule 31.5. ~~Appeals by indigents~~ Appointment of counsel for appeal; waiver of right to appellate counsel

a.-d. [No change in text.]

e. Appointment of Counsel. If a defendant's appointed counsel is permitted to withdraw, the trial court or Appellate Court shall appoint new counsel for a defendant legally entitled to such representation on appeal.

f. Waiver of Right to Counsel. A defendant may waive the right to appellate counsel by filing a written notice no later than thirty days after filing of the notice of appeal. If the notice of waiver is given before the notice of appeal is filed, or is filed with the notice of appeal, it must be filed in the trial court. If the notice of waiver is given after the notice of appeal is filed, it must be filed in the Appellate Court. If the trial court determines that the defendant knowingly, intelligently, and voluntarily desires to waive the right to appellate counsel, the defendant shall be allowed to represent himself or herself on appeal. When a defendant waives the right to appellate counsel, the court may appoint advisory counsel during any stage of the appellate proceedings. Advisory counsel shall be given notice of all matters of which the defendant is notified.

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

g. Withdrawal of Waiver. In the interest of justice, the Appellate Court may grant a defendant's written request to withdraw a waiver of the right to appellate counsel. The defendant will not be entitled to repeat any proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel.

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Rule 41. Forms

* * *

Form 23. Notice of Rights of Review after Conviction in Superior Court

* * *

IN ORDER TO EXERCISE YOUR RIGHT TO APPEAL;

1.-3. [No change in text.]

4. You should have a lawyer handle your appeal. If you choose to waive your right to appellate counsel, you must file a written notice no later than thirty days after filing the notice of appeal. If the notice of waiver is given before the notice of appeal is filed, or is filed with the notice of appeal, it must be filed in the trial court. If the notice of waiver is given after the notice of appeal is filed, it must be filed in the appellate court. If the trial court determines that you knowingly, intelligently, and voluntarily desire to waive the right to appellate counsel, you will be allowed to represent yourself on appeal. The court may appoint advisory counsel during any stage of the appellate proceedings.

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