



# Supreme Court

STATE OF ARIZONA

NOËL K. DESSAINT  
CLERK OF THE COURT

402 ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007-3231

KATHLEEN E. KEMPLEY  
CHIEF DEPUTY CLERK

TELEPHONE: (602) 542-9396

June 9, 2005

**RE: RULE 27, ARIZONA RULES OF CRIMINAL PROCEDURE**  
Arizona Supreme Court No. R-04-0033

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 1, 2005, in regard to the above-referenced cause:

**ORDERED: Petition to Amend Rule 27 [Arizona Rules of Criminal Procedure]  
= ADOPTED as modified, effective December 1, 2005.**

Noel K Dessaint, Clerk

TO:

David K Byers, Administrative Director, Administrative Office of the  
Courts

Robert B Van Wyck, Chief Counsel, State Bar of Arizona

Andrew P Thomas, Maricopa County Attorney

Attn: Philip J MacDonnell

Michael K Jeanes, Clerk, Maricopa County Superior Court

Lexis-Nexis

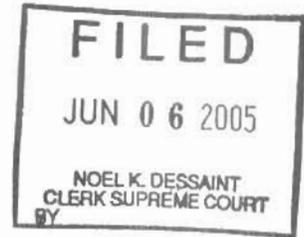
West Publishing

Rules Final List

dw

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-04-0033



ORDER AMENDING  
RULE 27, ARIZONA RULES OF CRIMINAL PROCEDURE

IT IS ORDERED that Rule 27, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto,\* effective as of December 1, 2005.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 6<sup>th</sup> day of June, 2005.

For the Court:

  
RUTH-V. MCGREGOR  
Vice Chief Justice

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

## ARIZONA RULES OF CRIMINAL PROCEDURE

\* \* \*

### RULE 27. PROBATION AND PROBATION REVOCATION

#### Rule

- 27.1 Manner of imposing probation.  
27.2 Intercounty transfers.  
27.23 Modification and clarification of conditions and regulations.  
27.34 Early termination of probation.  
27.45 Order and notice of discharge.  
27.56 Initiation of revocation proceeding; securing the probationer's presence; notice  
27.67 Initial appearance after arrest.  
27.78 Revocation of probation.  
27.89 Admissions by the probationer.  
27.910 Revocation of probation in absentia.  
27.1011 Victim's rights in probation proceedings.

#### Rule 27.1. Manner of imposing probation

[No change in text.]

#### Rule 27.2. Intercounty transfers

##### **a. Courtesy Probation Supervision.**

(1) A superior court or the adult probation department with jurisdiction may authorize a defendant placed on probation to reside in another county upon verification that the receiving county accepts and can provide courtesy probation supervision of a defendant in accordance with the terms and conditions originally imposed upon the defendant.

(2) If the receiving county is unable to ensure that the terms and conditions of probation can be supervised as ordered, the court in the sending county may, after a hearing, amend the terms and conditions of probation to permit transfer.

(3) The court in the sending county shall retain jurisdiction over the defendant and any probation violation proceeding, and shall be responsible for the collection of any financial obligations.

**b. Transfer of Probation Jurisdiction.**

(1) The superior court may authorize the transfer of jurisdiction over a case from the county of original jurisdiction to another county with the agreement of the parties, including the original prosecuting agency, the probationer, the sending and receiving probation departments, and the receiving court. On request, the victim of the offense, as defined by A.R.S. § 13-4401(19), shall have the opportunity to be heard. The court in the sending county shall give the victim notice of the proposed transfer and a hearing, if requested.

(2) The clerk of the court in the county of original jurisdiction shall certify the financial record regarding all financial obligations in the case and forward the original court file and entire record, together with a transmittal letter, to the clerk of the court in the receiving county within twenty (20) days of the order of transfer. The financial record, the court file, and the record may, in the discretion of the clerk, be transmitted in either electronic or paper format. The entire record shall include all exhibits, unless they were subject to disposal under Rule 28. Upon receipt, the transmittal letter shall be signed by the clerk of the court in the receiving county and returned to the clerk of the court in the county of original jurisdiction.

(3) The county probation department transferring the case shall send copies of the file and any other pertinent information to the Chief Probation Officer in the receiving county for processing. The transfer shall be complete when the Chief Probation Officer in the receiving county receives the file and the probationer checks in with the new probation officer. Until the transfer is complete, the sending county shall retain jurisdiction over the probationer.

(4) The Chief Probation Officer may request that the court conduct a review hearing to affirm and/or modify the terms and conditions of supervision to include the payment of fees and restitution. Upon granting a transfer of probation supervision, the court of the receiving county shall assume jurisdiction of the case and have all powers of the sentencing court, including, but not limited to, the restoration of civil rights.

(5) The court in the receiving county shall be responsible for the collection of any financial obligations of the probationer. Any monies collected for fees, costs or expenses due to the sending county shall be dispersed to the sending county.

(6) Upon remand of a case for a new trial, the court in the receiving county shall transfer jurisdiction of the case back to the county of original jurisdiction. In all instances except where a new trial has been ordered the receiving county may do one of the following:

(i) retain jurisdiction;

(ii) transfer the case in its entirety back to the county of original jurisdiction;

(iii) transfer the case back to the county of original jurisdiction and retain jurisdiction only over probation supervision and revocation.

(7) Upon transfer of a case for a new trial, the clerk of the court in the receiving county shall return the original court file and entire record, together with a transmittal letter, to the clerk of the court in the county of original jurisdiction within twenty (20) days of the remand order. The court file and record may, in the discretion of the clerk, be transmitted in either electronic or paper format. The entire record shall include all exhibits, unless they were subject to disposal under Rule 28. Upon receipt, the transmittal letter shall be signed by the clerk of the court in the county of original jurisdiction and returned to the clerk of the court in the receiving county.

(8) Upon transfer of a case for a new trial, the county probation department returning the case to the court of original jurisdiction shall send copies of the file and any other pertinent information to the Chief Probation Officer in the receiving county for processing.

### **Rule ~~27.2~~-~~27.3~~. Modification and clarification of conditions and regulations**

A probation officer or other person designated by the court may modify or clarify any regulation which he or she has imposed. The ~~sentencing~~-court may modify any condition ~~which it has imposed~~ and any regulation imposed by a probation officer, or other person designated by the court, after notice has been provided to the prosecutor and the defendant of proceedings, in which the victim has the right to notice pursuant to Rule ~~27.10~~-~~27.11~~. A probationer, probation officer, the State, or other person designated by the court, at any time prior to absolute discharge, may request the ~~sentencing~~-court to modify or clarify any condition or regulation. Additionally, persons entitled to restitution pursuant to a court order, based upon a change of circumstances, may request the ~~sentencing~~-court at any time prior to absolute discharge to modify the manner in which restitution is paid. The ~~sentencing~~-court may, where appropriate, hold a hearing on any such request. A written copy of any modification or clarification shall be given to the probationer.

### **Rule ~~27.3~~-~~27.4~~. Early termination of probation**

At any time during the term of probation, upon motion of the probation officer or on its own initiative, the ~~sentencing~~-court, after notifying the prosecutor, may terminate probation and discharge the probationer absolutely.

**Rule ~~27.4~~27.5. Order and notice of discharge**

[No change in text.]

**Rule ~~27.5~~27.6. Initiation of revocation proceedings; securing the probationer's presence; notice**

**a. Petition to Revoke Probation.** If there is reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the probation officer or the prosecutor ~~of the jurisdiction in which the probationer was convicted~~ may petition the ~~sentencing~~ court to revoke probation.

**b. Securing the Probationer's Presence.** After a petition to revoke has been filed, the ~~sentencing~~ court may issue a summons directing the probationer to appear on a specified date for a revocation hearing or may issue a warrant for the probationer's arrest.

**Rule ~~27.6~~27.7. Initial appearance after arrest**

[No change in text.]

**Rule ~~27.7~~27.8. Revocation of probation**

**a. Revocation Arraignment.**

(1) The revocation arraignment shall be held no more than 7 days after service of the summons or the probationer's initial appearance under Rule ~~27.6~~ 27.7 before the issuing or assigned judge.

(2)-(3) [No change in text.]

**b. Violation Hearing.**

(1) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the ~~sentencing~~ court no less than 7 and no more than 20 days after the revocation arraignment, unless the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date.

(2)-(3) [No change in text.]

**c. Disposition Hearing.**

(1)-(2) [No change in text.]

**d. Waiver of Disposition Hearing.** At the time of an admission by probationer or a finding by the court that a violation of a condition or regulation of probation has occurred, the probationer may waive a disposition hearing. If the waiver is accepted, the court may proceed forthwith to dispose of the proceeding under Rule ~~27.7~~27.8(c).

**e. Disposition Upon Determination of Guilt of Subsequent Offense.** If there is a determination of guilty, as defined by Rule 26.1(c), of a criminal offense by a probationer in ~~by the court which placed a probationer on probation having jurisdiction over the probation matter,~~ no violation hearing shall be required and the court shall set the matter down for a disposition hearing at the time set for entry of judgment on the criminal offense.

**f. Record.** [No change in text.]

#### **Rule ~~27.8~~27.9. Admissions by the probationer**

[No change in text.]

#### **Rule ~~27.9~~27.10. Revocation of probation in absentia**

**a. Time for Commencement.** [No change in text.]

**b. Petition.**

(1) If ~~he or she~~the supervising probation officer has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the probation officer ~~responsible for the probationer's conduct or the prosecutor of the court of jurisdiction in which the probationer was convicted is~~ being supervised may petition the ~~sentencing~~ court to revoke probation in absentia.

(2) [No change in text.]

**c. Order to Show Cause.** [No change in text.]

**d. Service of Process.** [No change in text.]

**e. Hearing.**

(1) *Appearance of probationer.* If the probationer appears at the time set for hearing, the proceeding shall continue under Rules ~~27.7 and~~ 27.8 and 27.9.

(2) [No change in text.]

**f. Record of Proceedings.** [No change in text.]

**Rule ~~27.10~~ 27.11. Victim's rights in probation proceedings**

The court shall afford the victim, as defined by Rule 39, Rules of Criminal Procedure, the opportunity to be present and to be heard at any proceeding involving: 1) the termination of probation or intensive probation; ~~or~~ 2) probation revocation dispositions; ~~or~~ 3) modifications of probation or intensive probation terms that will substantially impact the probationer's contact with or safety of the victim or if ~~the modification request that~~ affects restitution or incarceration status; or 4) transfers of probation jurisdiction.