



OFFICE OF THE
Attorney General
STATE CAPITOL
~~Phoenix, Arizona 85007~~
July 31, 1975

R75-405
BRUCE E. BABBITT
ATTORNEY GENERAL
76-247

Honorable James P. Walsh
91 East Monte Vista
Phoenix, Arizona 85004

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ARIZONA ATTORNEY GENERAL

Dear Jim:

You have asked for an opinion about the applicability of the Arizona Rules of Criminal Procedure to city courts (which are classified in the Rules as "courts not of record").

As Rule 1.1 and its commentary indicate, while the 1973 Arizona Rules of Criminal Procedure apply "in all proceedings in all courts" but not when "specifically stated otherwise in a particular rule", there is a second category of exclusion as well: rules and parts of rules that govern procedures foreign to courts not of record are clearly inappropriate to such courts. The 1975 revisions to the 1973 Rules, which become effective August 1, make no change in these general principles.

Proceeding rule by rule, it is our conclusion that all provisions of the 1973 Rules (and 1975 revisions thereto) apply to courts not of record, with the following exceptions:

- Rule 2.1a. Misdemeanors in Superior Court.
- 2.2 Commencing felonies.
- 2.5 "High" misdemeanors (applies to J.P. courts, but not to magistrate courts).
- 4.2c Felonies charged by complaint.
- 5 Preliminary Hearing (nothing in the Rule precludes city court magistrates from holding such hearing, but by tradition they are held by J.P.'s).
- 6.4c Reconsideration of certain determinations re indigency.
- 10.2 Change of judge upon request.
- 11.2 Motion for mental examination.
- 11.3 through 11.7 (All are premised upon the granting of a Rule 11.2 motion).

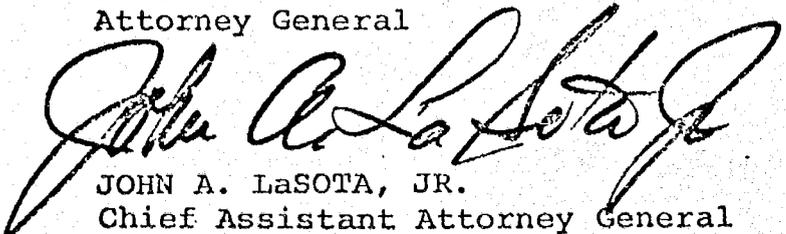


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- 12 Grand jury - The Arizona Constitution Art. 6, § 6, provides that only a superior court judge can summon a grand jury. Further, a grand jury indictment for a misdemeanor can only be tried in Superior Court, per Rule 2.1a.
- 13.1 Indictment and information - These
and documents are only for use in Superior
13.2 Court, per Rule 2.1a.
- 15 Discovery (entire Rule is premised upon either arraignment or filing in Superior Court, per Rule 30.1; does not apply to trials de nova).
- 16.3 through 16.7 - Inapplicable in other than Superior Court. (Note the inconsistency regarding the applicability of Rule 16.7 to non-record courts. The 1975 revision of Rule 16.1a deletes reference to Rule 16.7, while the commentary to Rule 16.1a does not.)
- 17.2 through 17.4 - Inapplicable only when the charge involves a minor traffic offense (definition thereof is in Rule 1.4a).
- 24 Post-trial Motions - Not inapplicable, but there is no need for this Rule in lower courts because of Rule 30.
- 26 Judgment, Presentencing Proceedings, and sentence - Totally inapplicable to minor traffic offenses but not to other lower court proceedings.
- 26.3, .4, .5, .6, .7, .8, .15 - Apply only to Superior Court.
- 31 Appeal from Superior Court.

Sincerely,

BRUCE E. BABBITT
Attorney General



JOHN A. LaSOTA, JR.
Chief Assistant Attorney General