

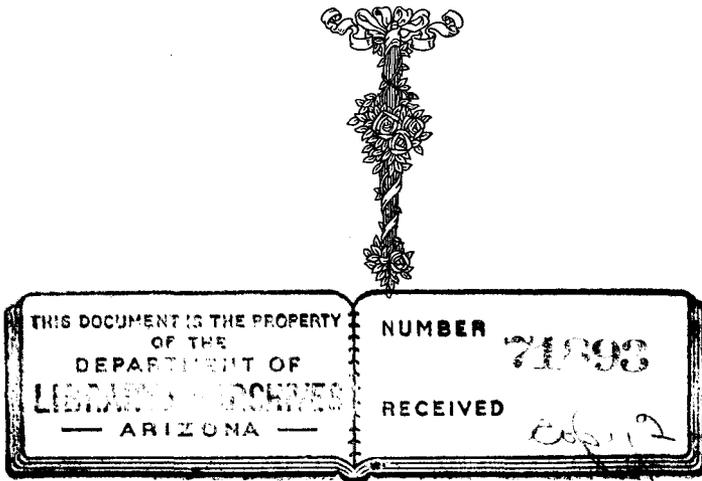
RULES  
*of the*  
SUPREME COURT  
*of the*  
STATE *of* ARIZONA



Effective October 10

1921

RULES  
*of the*  
SUPREME COURT  
*of the*  
STATE *of* ARIZONA



Hon. HENRY D. ROSS, Chief Justice.  
Hon. A. G. McALISTER, Judge.  
Hon. EDW. J. FLANIGAN, Judge.  
C. F. LEONARD, Clerk.  
Hon. W. J. GALBRAITH, Attorney General.  
Mr. GEO. R. HILL, Asst. Attorney General.  
Mr. CON. P. CRONIN, State Librarian.

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# RULES OF THE SUPREME COURT

## STATE OF ARIZONA

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### RULE I.

#### Admission of Attorneys.

1. Practicing attorneys of foreign jurisdictions may be admitted on motion to try any particular case.

2. A member of the bar of another state, the District of Columbia or a territory, in good standing and in active practice for at least three years last past, and who shall furnish a certificate of his admission to practice in the court of last resort of such state, district or territory, and that he is still in good standing in such court, together with the recommendation of at least one of the judges of such court of last resort, may, in the discretion of the court, be admitted to practice on motion made by a member of the Arizona bar.

3. A person of good moral character showing a certificate of admission to practice by a court of record in any other state under the seal of the admitting court, and who shall prove that he has practiced law for at least ten years, and that he is of good moral character, by his own affidavit and the affidavit of one other person, may be admitted to practice in all the courts of this state, upon motion.

4. All graduates in the law course of the University of Arizona may be admitted to the bar of Arizona on their diplomas.

5. All other persons may be admitted and licensed to practice law in this state upon producing and filing with the court the certificate of the State Board of Bar Examiners that the applicant has satisfactorily passed the examination prescribed by the rules and regulations of the board, and is a person of good moral character.

6. All applicants for examination are required to pay \$10.00 before taking the examination, and all persons admitted shall pay \$10.00 and take the oath of office before being licensed to practice.

**RULE II.****Original Applications.**

1. When any application is made to the Supreme Court for writs of mandamus, review, prohibition, habeas corpus, certiorari, or for any prerogative writ to be issued in the exercise of its original jurisdiction, and such application might have been lawfully made to a lower court in the first instance, the affidavit or petition, in addition to the necessary matter requisite by the rules of law to support the application, shall also set forth the circumstances which, in the opinion of the applicant, render it proper that the writ should issue originally from the appellate court to which such application is made, and not from such lower court. The sufficiency or insufficiency of such circumstances, so set forth in that behalf will be determined by the court in awarding or refusing the application. In case any court, judge or other officer, or any board or other tribunal in the discharge of duties of a public character, be named in the application as respondent, the affidavit or petition shall also disclose the name or names of the real party or parties, if any, in interest, or whose interest would be directly affected by the proceedings.

2. All ex parte applications for the issuance of writs in the exercise of original jurisdiction shall be typewritten or printed and filed with the clerk of the court, and the same shall be accompanied by a memorandum of points and authorities in support of the application.

3. Upon the return day of the alternative writ, the respondent may make return, either by demurrer or by answer, or by both. If the return be by demurrer alone and the demurrer is not sustained, the writ will be ordered to issue without leave to answer over.

4. When an application is made for an alternative writ, an order staying the proceedings of any court or officer, until the return of the writ, will not be made unless due notice of the application for the writ shall have been given to all parties interested in the proceedings.

**RULE III.****Transcripts.**

1. The papers or portions of the record to be used on appeal in a civil cause shall be such as the appellant and appellee shall

request the clerk of the superior court to transmit, or such as the parties shall stipulate to have transmitted, to this court, as provided in Par. 1256 Civil Code 1913; or an agreed statement of the case approved and signed by the superior judge as provided in Par. 1257 Civil Code 1913. The papers or copies of papers enumerated in Sec. 1130, Penal Code, 1913, shall constitute the record upon appeal in criminal cases.

2. The appellant, in every civil cause, within thirty days after an appeal is perfected, or record in superior court is completed, shall cause the clerk of the superior court to transmit to the supreme court a certified copy of the minute entries, the appeal bond or affidavit in lieu thereof, if any, together with the papers and portions of the record specified in the notice of the respective parties or the stipulation of parties, if any. The record of the superior court shall be deemed completed when the notice of appeal shall have been given and a bond or affidavit in lieu thereof filed, and a bill of exceptions, a statement of facts, statement of the case, or reporter's transcript, whenever the same may be necessary, shall have been allowed and filed.

#### **RULE IV.**

##### **Abstract of Record.**

1. In any civil cause brought to this court on appeal, the appellant must file in this court, within thirty days after the filing of the record, at least five copies of an abstract of said record, which shall contain: (a) the pleadings, original or amended, upon which the issues were tried; (b) the findings of fact and conclusions of law or the verdict; (c) the judgment or order appealed from; (d) the motion for a new trial; (e) the minute entries of the trial court, and appeal bond or affidavit in lieu thereof; (f) the bill of exceptions and statement of facts; (g) such other portions of the record as may be necessary to inform the court of the errors relied upon without an investigation of the record itself.

2. The abstract of record shall be chronologically arranged; shall be prefaced with an alphabetical index of its contents, specifying the folio of each separate paper, order, and the testimony of each witness; and shall have a cover.

3. Unless some question is predicated upon the formal parts of pleadings, motions, depositions, exhibits, or other papers

filed in the trial court and made part of the record on appeal, such formal parts shall be omitted in preparing the abstract after once stating the venue and title of the cause, giving the names of the parties in full, and thereafter the venue and title may be indicated by the words "title of cause".

(a) In the case of depositions the substance of the testimony contained therein shall be reduced to narrative form, and, unless material, notices, interrogatories, certificates of officers taking the same, signatures of witnesses, etc., shall be omitted.

(b) In the case of deeds, mortgages, contracts, and other exhibits, only the material parts shall be stated, and certificates of acknowledgment and endorsements made by officers thereon shall be omitted, except when these are material.

(c) Endorsements made by the clerk of the trial court showing the date of the filing of the pleadings and other papers shall appear in the abstract by simply noting: "Filed.....", giving the date of the filing.

(d) Exhibits, incapable of being readily incorporated into the abstract, may be omitted, but due reference must be made to the same in such a way as to identify them from other parts of the record.

4. Abstracts of record shall be printed or typewritten in the form and manner as herein required for the printing or typewriting of briefs, so that the abstracts of record may be, whenever hereafter required, bound together with the briefs so as to form a volume or volumes of uniform size.

5. Within thirty days after filing the record in the supreme court, the appellant shall file five copies of the abstract of record and serve at least two copies of same upon the attorney for the adverse party.

6. Within ten days after the service of the abstract of record, the adverse party may serve upon the appellant or his attorney a written notice stating that such abstract is incorrect, insufficient or defective, and specifying what corrections should be made, or what should be added in order to make the same sufficient. Within ten days thereafter, the appellant may correct the abstract or file a supplemental abstract containing the additional matter specified in such notice. The appellee may, at his option, and without motion, prepare and file such

supplemental abstract, and costs thereof shall be taxed against the appellant in the judgment of said court.

7. The abstract of record as filed will be treated by the court as containing such portions of the record as the parties deem sufficient upon which to try the assignments of error.

8. Abstracts of record not conforming to this rule may be stricken from the files, on motion of the party affected by such non-compliance, or by the court of its own motion.

## **RULE V.**

### **Bills of Exceptions and Statements of Facts.**

Bills of exceptions and statements of facts may be consolidated into one and the same paper; but in all cases the same shall be in narrative form, tersely and succinctly stated.

Whenever any objection is made to evidence or to any question propounded to a witness, and an exception is taken to the ruling of the trial court thereon, in every such case the question and answer of the witness shall be inserted *totidem verbis*.

## **RULE VI.**

### **Motions.**

1. All motions relating to informalities in the manner of bringing a cause to this court; motions to dismiss for want of jurisdiction of this court, and for such defects as defeat the jurisdiction in the particular cause that can not be waived, shall be in writing and a copy thereof served on opposite counsel and the acknowledgement of the service or an affidavit of service thereof, as the case may be, shall be endorsed on or annexed to the original motion, which then shall be filed with the clerk.

The opposing counsel shall have ten days after such service upon him to file his objections or reply to such motion. After the expiration of ten days from the service, the motion shall be deemed submitted to the court for its consideration.

2. Motions dependent on facts not apparent in the record, and of which the court can not take judicial notice, must be supported by affidavit or other satisfactory evidence, copy of which must be served on the opposing counsel at the time that motion is served. The objections or reply to any motion must

be in writing, a copy thereof served on the moving party, together with a copy of any affidavit or other evidence filed therewith.

3. No oral arguments will be heard on motions except in such instances as the court may direct.

4. The clerk, upon filing a motion, shall number and note the same in a docket to be known as the Motion Docket, together with the name of the attorney who makes the motion and the kind of motion made. Any answer to said motion shall be filed, and shall in like manner be numbered and noted in the Motion Docket, together with the name of the attorney opposing such motion.

5. Motions for rehearing, stating the grounds, points and authorities relied on, may be filed within fifteen days after the decision of the court and a copy thereof served on the adverse party, who may present objections thereto within ten days after such service.

The motion for rehearing shall be considered without argument and no motion for rehearing shall be amended except by leave of the court.

## **RULE VII.**

### **Briefs and Arguments.**

1. For the appellant and for the appellee there shall be filed five copies of a brief, with the clerk of the court; and all briefs when printed shall be in pica type on white paper in length ten inches and in width seven inches with an unprinted margin of one and one half inches. Typewritten briefs shall be of the same size, plainly legible, and shall not exceed second impression copies. All briefs shall be in pamphlet form and shall have covers. One copy of each brief shall be for the use of the court reporter.

2. Each brief shall contain, in the following order and separately stated:

(1) A concise statement of the case, presenting succinctly the questions involved and the manner in which they are arranged.

(2) An assignment of the errors relied upon.

(3) An argument exhibiting a clear statement of the

points of law or facts to be discussed under each assignment of error relied upon with a reference to the folios of the abstract of record that are pertinent thereto and the authorities relied upon in support thereof. Citations of authorities shall be to the volume and page of the state reports and, where possible, shall also include a citation to the reporters and specific cases.

3. The brief of appellee shall be of like character with that required of the appellant except that no assignment of errors shall be required and no statement of the case unless that presented by the appellant is deemed insufficient or is controverted.

4. Whenever an appellant is in default, the appeal may, on motion, be dismissed, and whenever an appellee shall be in default he will not be heard except upon consent of his adversary or by request of the court.

5. Within thirty days after the filing of the abstract of record or within 30 days after the filing of a supplemental abstract, the appellant shall serve upon the attorney of the opposite party at least two copies of his brief prepared in conformity with subdivisions 1 and 2 of this rule; and within thirty days next thereafter counsel for the appellee shall serve upon counsel for appellant at least two copies of his answer thereto; and within twenty days next thereafter the counsel for appellant shall serve upon counsel for appellee at least two copies of his reply thereto, if one be filed, and no further briefs shall be filed or served without leave of the court first obtained.

6. Five copies of these briefs, when so made and served, shall forthwith be filed with the clerk of this court.

7. If the appellee deem the assignments of error insufficient or defective in form, he shall, within ten days after the service of appellant's brief, file and serve upon appellant or his attorney a written notice setting forth his objections to such assignments of error and any insufficiency or uncertainty therein, and within ten days after the service of this notice, the appellant may amend such assignments of error. Any objection to the assignments of error not specified in such notice shall be deemed waived by the appellee. In case of failure to amend such assignments of error, or in case the court deems the assignments insufficient to present the matters involved, it shall require the appellant to file and serve supplemental brief amending such assignments of error within such time and upon

such terms as the court may prescribe. If the appellant fail to file and serve such supplemental brief the court may affirm the judgment or take such other action as justice may require.

8. If any brief, answer or reply shall not be served or filed as herein provided the court may, on motion, strike such answer, brief or reply from the files of the court and consider and decide the cause as though such defaulting party had made no appearance, or may in a proper case, dismiss the appeal or writ of error for want of due prosecution.

9. In all causes where the briefs herein provided for shall have been duly served and filed, either party will be heard orally.—the appellant for one hour and twenty minutes and the appellee for one hour, and no more, unless special reasons for additional time shall be given to the court and such additional time granted by the court before the argument begins.

### **RULE VIII.**

#### **Dismissal of Appeal.**

1. If the transcript of the record or appellant's abstract of the record or brief be not filed within the time prescribed, the appeal may be dismissed on motion, upon notice given. If the transcript, or abstract, or brief, though not filed within the time prescribed, be on file at the time such notice is given, that fact shall be sufficient answer to the motion. If the appellee shall not file his brief within the time allowed therefor, the cause may be submitted for decision upon the motion of the appellant, on notice thereof to appellee.

2. If an appeal is attempted to be taken after the time limited by law, and papers are filed in the trial court, in pursuance of such attempt, such purported appeal may be dismissed on motion of appellee, supported by certificate or affidavits, or both, as provided herein.

3. On motion to dismiss an appeal for failure to file the transcript within the prescribed time, there shall be presented the certificate of the clerk below, under the seal of the court, certifying the amount or character of the judgment or order appealed from, the date of its rendition, the fact and date of filing of the notice of appeal, together with the fact and date of service thereof on the adverse party, and the character and evidence by which said service appears; the fact and date of

filing undertaking on appeal, and that the same is in due form; the fact and time of the completion of the record, if one was completed; if there be any, the names of the attorneys for the respective parties; and also that the appellant has received a duly certified transcript, or that he has not requested the clerk to certify to a correct transcript of the record, or if he has made such a request, that he has not paid the fees therefor, if the same have been demanded.

4. On motion to dismiss the appeal on any other ground than the failure to file transcript within the prescribed time, the moving papers shall consist of the certificate of the clerk of the court below as to the matters mentioned above, or affidavits, or both such certificate and affidavits.

5. Copies of the moving papers shall be served with the notice of the motion.

#### **RULE IX**

##### **Decisions and Orders—Notice of.**

When a decision is given or an order made in any cause, it shall be the duty of the clerk to at once give notice thereof, in writing, to the attorneys of record of the respective parties, such notice to be given in writing by depositing in the post office, addressed to their respective addresses, with postage prepaid, unless the place of business or residence of such attorneys is unknown, when it shall be given to the respective parties litigant.

#### **RULE X.**

##### **Service.**

1. Attorneys and guardians ad litem in the court below will be deemed attorneys and guardians ad litem of the same parties in this court until a substitution is made, and service of notices, briefs, and all papers, may be made on the attorneys or guardians ad litem of record in the court below, until such substitution is made and the notice thereof given to opposing counsel.

2. Service of papers in all cases must be made upon the attorney of record of a party if he have one, unless the place of business or residence of such attorney is unknown, when it may be made upon the party. Service may be made by mail when the person making the service and the person upon whom such

service is to be made reside in different places between which there is a regular communication by mail. Postage in such case must be prepaid and the time shall begin to run from the date of the deposit in the post office. Proof of such service shall be made by written acknowledgment of the party served or by an affidavit of the person making the service, which proof shall be filed with the clerk of the court.

### **RULE XI.**

#### **Diminution of Record.**

For the purpose of correcting any error or defect in the transcript, either party may suggest the same in writing, and upon good cause being shown, obtain an order that the proper clerk certify to this court the whole or any part of the record required, or he may produce the same duly certified, without such order. If the attorneys of the adverse party be absent, or the fact of the alleged defect be disputed, the suggestion, except when a certified copy of the omitted record is produced at the time, must be accompanied by an affidavit showing the existence of the defect alleged.

### **RULE XII.**

#### **Assignments of Error.**

1. All assignments of errors must distinctly specify each ground of error relied upon, and the particular ruling complained of. If the particular ruling complained of has been embodied in a motion for a new trial with other rulings or in any motion, or in a bill of exceptions, or in a statement of facts, or otherwise in the record, it must nevertheless be referred to in the assignment of errors, or it will be deemed to be waived.

2. If the assignment of error be that the court overruled a motion for a new trial, and the motion is based upon more than one ground, the same will not be considered as distinct and specific by this court, unless each ground is separately and distinctly stated in the assignment of errors.

3. An objection to the ruling or action of the court below will be deemed waived in this court unless it has been assigned as error in the manner above provided.

4. If the assignment of error be to the giving of instructions to the jury by the lower court, the appellant must state

wherein the instruction complained of is erroneous in its statement of the law applicable to the case or to any particular fact or facts thereof.

5. If the refusal to give an instruction asked for by the appellant in the court below be assigned as error, the assignment must state the applicability of such instruction to the fact or facts of the case.

6. Assignments of error shall not be amended in this court.

### **RULE XIII.**

#### **Extension of Time.**

For good cause shown, and upon notice to the adverse party, or upon stipulation of parties, the court, or a justice thereof, may extend the time for filing record on appeal, abstracts, briefs and other papers.

### **RULE XIV.**

#### **Withdrawal of Papers.**

No paper on file with the clerk shall be taken from the court room or office of the clerk except by order of the court or by one of the justices; provided either party may withdraw the transcript of the record and the testimony for the purpose of making abstracts or briefs, upon giving a receipt therefor to the clerk and, upon such withdrawal, may retain the same for ten days.

### **RULE XV.**

#### **Service on Attorney General.**

In every criminal case and in every civil case in which a county or any state officer shall be a party, the appellant, if the appeal is from a judgment or order favorable to the county or officer, shall serve personally or by registered mail the county attorney wherein judgment or order was rendered or entered, and also the attorney general, with two copies of his brief at the time of filing such brief in the supreme court, and the same will not be considered until the record affirmatively shows that said copies have been served.

### **RULE XVI.**

#### **Costs.**

Costs shall be allowed to the successful party by the court as follows: the amount paid to the clerk of the supreme court, the

amount paid to the clerk of the superior court for certified copies of the record and transmitting the same, the cost of printing the abstract of record and briefs, and the amount paid for the transcript of the notes of the reporter of the superior court, and such other disbursements as may have been made or incurred pursuant to any order of said court or agreement of the parties.

### **RULE XVII.**

#### **Appearance Fee.**

1. In all cases of appeal in any civil action, the appellant shall, at the time of filing the record on such appeal, pay to the clerk of the supreme court the sum of twenty-five dollars, within thirty days after the filing of such record the appellee shall pay the clerk of the supreme court the sum of fifteen dollars.

2. The applicant for a writ of mandamus, certiorari, quo warranto, or other writ within the original jurisdiction of the supreme court (except the writ of habeas corpus) shall, at the time of filing his petition or application, pay to the clerk of the supreme court the sum of fifteen dollars. Any person opposing the issuance of any such writ shall pay to the clerk of the supreme court the sum of five dollars.

3. No papers shall be filed until the sums above specified are paid to the clerk. Upon the receipt by the clerk of the record upon any appeal, he shall notify the appellant or his attorney that such record has been received and will be filed upon payment of the amount herein provided to be paid. If such amount is not paid within thirty days after the giving of such notice the appeal shall be deemed abandoned and the record returned to the court from which it came, and the judgment may be enforced as if no appeal had been taken. If the appellee shall neglect or fail to pay his filing fees, he shall not be entitled to be heard. No fee shall be collected from the state, or any county, or from the state corporation commission, or state tax commission, or from any state or county officer in his official capacity, who is made a party to any suit.

### **RULE XVIII.**

#### **Mandates.**

Upon the disposition of a petition for rehearing, or if within 15 days after notice of final judgment or decree, no petition

shall have been filed, the clerk shall as a matter of course, unless he is otherwise directed by the Court, issue and forward a mandate to the clerk below; provided, however, for good cause shown, the Court may in its discretion direct the mandate to issue before the expiration of 15 days. In all cases where the judgment or order appealed from is reversed or modified, or further proceedings are directed to be had in the Court below, a copy of the opinion shall accompany the mandate.

### **RULE XIX.**

#### **Mandates from United States Supreme Court.**

Upon the receipt by the clerk of this court of a mandate from the Supreme Court of the United States, in any cause brought to this court on appeal and taken from this court, by appeal or writ of error or certiorari, to said supreme court it shall be the duty of said clerk forthwith to issue, under his hand and the seal of this court, a remittitur to the superior court of the county in which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate; and all the costs subsequent to the appeal from said superior court shall be taxed in said remittitur.

### **RULE XX.**

The rules herein, when not inapplicable, shall, so far as practicable, be observed in criminal cases in appeal.

### **RULE XXI.**

#### **Calendar.**

The calendar of the court shall be called on the second Monday of January, March, May and October of each year, at which time all cases then pending before the court in which all of the briefs have been served and filed, or the time allowed therefor has expired, will be set for hearing unless submitted to the court by consent of the parties without oral argument. The court may set cases at any time by stipulation of counsel for the respective parties.

**RULE XXII.**

These rules shall take effect from and after the 10th day of October, 1921, on which day all other rules shall be considered repealed.

Approved this 14th day of July, 1921.

HENRY D. ROSS,  
Chief Justice.

A. C. BAKER,  
Judge.

A. G. McALISTER.  
Judge.



