

Basic Steps of a Lower Court Criminal Appeal

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Step Six

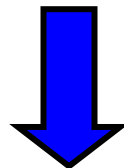
Appellant Files Memorandum

Step Seven

Appellee Files Memorandum (optional)

Step Eight

Oral Argument (optional)



SUPERIOR COURT DECISION

The Steps to Filing a Criminal Appeal

The party who seeks to have the Superior Court review the Lower Court's order, ruling, judgment, or sentence entered in either a criminal or civil traffic case is called the "Appellant." The party who opposes the appeal is called the "Appellee." The following pages describe the most important steps to properly file or defend a criminal appeal. The legal terms referred to in these steps are defined in **Appendix 2**.

Step 1: DETERMINE WHETHER YOU CAN APPEAL

- A. You may appeal three things: (1) a guilty verdict after your trial or submittal; (2) an order denying a motion for new trial or an order affecting your substantial rights; or (3) an illegal or excessive sentence.
- B. **You may not appeal if you entered a plea of guilty or no contest.** In certain circumstances, you may ask the Lower Court to review the guilty or no contest proceedings under Rule 32 of the Arizona Rules of Criminal Procedure.

Step 2: APPELLANT FILES A "NOTICE OF APPEAL"

- A. You must file a paper called a "Notice of Appeal" with the clerk of the court in which your case was heard. **Do not file this at the Superior Court.**
- B. The Notice of Appeal must be filed no later than fourteen (14) days after the order, ruling, judgment, or sentence you are appealing. **You must file your Notice of Appeal before the deadline.** The court will dismiss the appeal if it is not timely filed. Weekends and holidays are NOT excluded from the deadline.
- C. The clerk of the Lower Court may have a form that you can use for your Notice of Appeal. If not, a Notice of Appeal form is included in this guide (**Form 1**).
- D. The Notice of Appeal must include your current mailing address and phone number. If either your address or phone number changes during your appeal, you must notify the Lower Court.
- E. In the Notice of Appeal you must identify the judgment, sentence, ruling and/or order that you want the court to review. Include the date when the action appealed from was entered and the name of the judge who entered the ruling.
- F. You should sign the Notice of Appeal.

Step 3: DETERMINE IF AN “APPEAL BOND” MUST BE FILED TO DELAY THE EXECUTION OF SENTENCE

- A. In most cases, your sentence will be stayed pending your appeal. This means you will not have to fulfill its requirements while the appeal is pending. Contact the Lower Court clerk and determine if your sentence was stayed, or if an appeal bond was ordered and, if so, how much it is. The bond may be paid with a cashier’s check or a bond obtained from a bonding company.
- B. If an appeal bond was ordered and is not paid, you will be required to fulfill the requirements of the sentence while the appeal is being decided.
- C. If you cannot afford the appeal bond, you can ask the Superior Court to either waive the bond or set a lower bond. Use **Form 2** and file it with the **Superior Court in the county where your trial was held.**

Step 4: APPELLANT ORDERS THE TRIAL RECORD

- A. The record on appeal consists of the exhibits and transcripts or CDs of the proceedings that are sent to the Superior Court.
- B. Within fourteen (14) days of the order appealed from, you must decide what items are needed for the record on appeal and then file an original and one copy of a form indicating the items to be included in the record on appeal. (A form for the “Designation of Record on Appeal” is attached as **Form 3.**)
- C. The Superior Court will not retry your case. It will decide your appeal by reviewing the record it is sent and reading the written memorandum it receives. It is, therefore, very important that the Superior Court is given a record of all of the proceedings that concern the issues you are appealing.
- D. If you believe the Superior Court should review all of the documents and exhibits contained in the Lower Court’s file, write “All records” on the form. If it is not necessary for the Superior Court to review everything in the Lower Court’s file, you may want to limit the record on appeal.

Step 5: APPELLANT ARRANGES FOR PAYMENT

- A. If you have not been declared an indigent on appeal, you must make arrangements to pay for the record or transcript preparation fees within fourteen (14) days after filing the Notice of Appeal.

- B.** The Lower Court proceeding will have been recorded on CD. Most of the Superior Courts will allow you to use a CD recording of the Lower Court proceedings for the record on appeal. In such cases, you will order the CD from the Lower Court clerk and pay for it at the clerk's office. The Lower Court will give you a copy of the CD and send a copy to the Appellee and the Superior Court.
- C.** If the proceeding was more than one hour, a few of the Superior Courts will require the recording to be transcribed. If this is the case, you will need to pay a court-approved transcriber to transcribe the CD. Some courts will send the CD to a transcriber for you and provide an estimate of the cost as well as instruction on the method of payment. Others will require you to order and pay for a CD of the proceeding, then locate a court approved transcriber, and make arraignments to have the proceeding transcribed.

The cost of the record varies. CDs generally cost \$12.00 - \$20.00. Transcripts can be billed by the page or the hour. Prices generally range from \$3.50 - \$4.00 per page or about \$150.00 per hour. (These are estimates and subject to change.)

Step 6: APPELLANT FILES "MEMORANDUM"

Within sixty (60) calendar days from the date your Notice of Appeal was due (this is seventy-four (74) days after the date of the action you are appealing), you must file your memorandum with the Lower Court (**Form 4**). You must file the original and one copy. The Lower Court will send the original to the Superior Court and the copy to the Appellee.

You should make at least one copy for yourself. Have the court clerk date-stamp it for your records so you have proof that you filed it on time.

Memorandum Format:

- 15 pages or less, not including any exhibits you may want to attach (The Superior Court will have the records from the trial court proceedings. Do not attach anything that was included in the record below.)
- Typed or printed (one side of the page only)
- White paper (8.5 by 11 inches)
- If you are typing your memo, double space
- If you are hand-writing your memo, please keep in mind that the court has the right to disregard it if it cannot read your handwriting

What Your Memorandum Must Include:

- 1) **The Facts:** a short statement of the facts of your case. You should support your factual statements with references to the Record on Appeal.

For example, if you want the Superior Court to consider the testimony of a particular witness, in your memorandum you should identify the page and line of the transcript where the testimony appears.

If you are allowed to submit a copy of the CD or audio-tape instead of a transcript, you should identify where the testimony appears in the recording.

- 2) **Your Argument:** a short statement explaining the reasons you believe the Lower Court's decision is incorrect.
- 3) **Your Conclusion:** a statement explaining exactly what you are asking the Superior Court to do.

If you want oral argument, you must state "Oral Argument Requested" in the caption on the first page of your memorandum.

Step 7: APPELLEE FILES MEMORANDUM - Optional

After the Appellant files his or her memorandum, you may file an Appellee's Memorandum (**Form 4**). This is your opportunity to respond to the arguments made in the Appellant's Memorandum and explain why the Lower Court judgment was correct. You do not have to file an Appellee's Memorandum. If you choose not to file a memorandum, the Superior Court will decide the matter based only on the Lower Court record and the Appellant's Memorandum. **In Gila County**, however, you must file a memorandum because if the Appellee fails to file a memorandum, the court may automatically rule in favor of the Appellant.

If you decide to file a memorandum, use the same memorandum format discussed in **Step 6** above. Your memorandum must be filed within thirty (30) calendar days from the date the Appellant files his or her memorandum.

File the original and one copy for the other party. You should make at least one additional copy for yourself. Have the court clerk date-stamp it for your records so you have proof that you filed it on time.

THE APPELLANT DOES NOT HAVE THE RIGHT TO REPLY. An Appellant does not have the right to reply to the Appellee's Memorandum. If an Appellant believes there is a need to respond to

issues raised by the Appellee, the Appellant must file a motion requesting the Superior Court's permission to file a reply.

Step 8: ORAL ARGUMENT - Optional

If you requested oral argument in the caption of your memorandum, the Superior Court will set a time for the parties to appear to discuss the facts and arguments made in the written briefs.

- A. The Superior Court Clerk will notify the parties when and where the oral argument will be heard.
- B. Oral argument will be at the Superior Court located in the county where your trial took place. **Appendix 3** contains a list of the Superior Courts and their locations.
- C. Be on time for oral argument.

SUPERIOR COURT DECISION

When the Superior Court issues its decision resolving the appeal, the Superior Court Clerk will send a copy of the ruling to each party and to the Lower Court. Many Superior Courts also post their decisions online. **Appendix 3** contains a list of the fifteen (15) Superior Courts and their website addresses.

The Superior Court has the authority to issue the orders it deems necessary in the appeals process.

LIMITATION ON FURTHER REVIEW

After your appeal to the Superior Court, you can only appeal the validity of a tax, impost assessment, toll, municipal fine or statute. A.R.S. § 22-375. Appeals from the Superior Court to the Court of Appeals are addressed in a separate guide.

The rules also provide a means to request the Superior Court to reconsider its ruling. To do so, you must file a "Motion for Rehearing" in the Superior Court within fourteen (14) calendar days of the date you receive the decision or order. You must include a memorandum which specifically explains why you believe the court misapplied the law and/or facts. You should not merely restate the same argument you made in your original memorandum. The other party will have fourteen (14) calendar days to file a response. You will not be permitted to present an oral argument unless the Superior Court requests it. **Note** – a motion for reconsideration does not extend any deadlines for filing an appeal.

In other cases, special action relief may be appropriate. Chapter 7 of the *Arizona Appellate Handbook* is a good source for information on how to prepare a special action.

Trial *De Novo* (New Trial)

The Superior Court may determine that the record of the Lower Court proceeding is not sufficient to decide the case on appeal. (This could be due to such things as equipment malfunction when the recording of the trial was made.) In such cases, the parties will be notified and a “trial *de novo*” will be ordered.

If a trial *de novo* is ordered, a new trial will be held instead of a traditional appeal. Generally, the trial *de novo* will be held at the Superior Court. In **Maricopa County**, however, it is most often held in the Lower Court.

If a trial *de novo* is ordered before the memoranda have been filed, no appellate memorandum is required.

Steps for a Trial *De Novo*

STEP 1: TRIAL *DE NOVO* IS ORDERED

This process begins when either the Lower Court determines that the record is insufficient and sends the case to the Superior Court for a trial *de novo* or the Superior Court determines that the record is insufficient and orders a trial *de novo*. In either case, the court will notify you that a trial *de novo* has been ordered and where the trial will occur.

The court will also give you instructions as to further proceedings. Be sure to follow the court’s instructions.

STEP 2: APPELLANT ENSURES CASE IS SET FOR TRIAL WITHIN 25 DAYS OF THE NOTICE OF APPEAL

The court should notify you of the trial date. However, the rules require the person who is bringing the appeal to ensure that the case has been set for trial no later than twenty-five (25) days after the date the Notice of Appeal was filed. **If within 25 days after the Notice of Appeal has been filed, your case has not been set for trial and you have not moved to have it set for trial, your appeal will be dismissed.**

Accordingly, if you get a notice from the court that your appeal has been set for a trial *de novo*, immediately contact the court clerk where the trial will occur and ask if a trial date has been set. If it has not, immediately file a motion requesting that your case be set for trial (**Form 7**).

If your case is in **Cochise County**, immediately file a motion requesting that your case be set for trial when you receive notice of a trial *de novo*, even if a trial date has already been set. The Cochise County local rules provide that if you do not file the motion to set your case to trial, your appeal will be dismissed.

STEP 3: PREPARE YOUR CASE FOR TRIAL

If the court has ordered a trial *de novo*, a new trial will be held in your case. This means you start over. Accordingly, you need to prepare your case for trial by reviewing the evidence, subpoenaing your witnesses, filing any pre-trial motions you want heard, etc.

If your case is jury trial eligible and you decide you want to try your case to a jury, you should request a jury trial, in writing, as soon as you receive notice that your case has been set for a trial *de novo*. In **Maricopa County**, the request for a jury trial must be made within five (5) days of the assignment of your case to a judge or commissioner.

If you want a court reporter to record the proceedings in your case, you should order one no later than five (5) days before your trial.

STEP 4: TRIAL IS HELD

The court will give you written notice of the date, time, and location of the trial. Most often it will be held in the Superior Court in the county where your original trial was held. In Maricopa County, however, the new trial is usually held before the lower court. **Appendix 3** contains a list of the fifteen (15) Superior Courts in Arizona and their addresses.

STEP 5: VERDICT

After your trial *de novo*, the court will announce the verdict. If you are found guilty or responsible, you will be sentenced by the judge or commissioner that presided over the trial *de novo*. **Note** - The court is not required to enter the same sentence that was ordered after your first trial.

DATED this _____ day of _____, 20____.

Signature

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that I have mailed a copy of this document to _____
[opposing party]
and delivered a copy to _____ on this _____ day of _____, 20____.
[assigned judge]

Signature