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ARIZONA SUPREME COURT

In the matter of:	)	
	)	
PETITION TO AMEND RULES 1.5, 17.1,	)	
17.2, AND 17.3 OF THE RULES OF	)	Supreme Court No. 24-_____
CRIMINAL PROCEDURE	)	
	)	

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, Umayok Novell, City Magistrate, City of Mesa Municipal Court, respectfully petitions this Court to amend the rules specified above as proposed in the Appendix. The proposed amendments to Rules 1.5 and 17.1 are prompted by the Mesa Municipal Court's development of a virtual court process for handling in-custody initial appearances, arraignments, probation violation admissions and disposition hearings with stipulated sentencing agreements, Rule 11 hearings, and pretrial conferences to include real-time plea negotiations, electronic plea agreements, and sentencings with defendants held at the Central Arizona Detention Center in Florence and at detention centers at various police department substations. In addition, the Mesa

Municipal Court and other Limited Jurisdiction Courts anticipate holding similar real-time virtual court proceedings for Maricopa County inmates in the future. The proposed changes to Rules 17.2 and 17.3 are primarily technical.

I. Purpose of the Proposed Rule Amendments.

Rule 17.1(a)(2) states that, “For purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.” Rule 1.5 allows courts to require defendants to appear by use of an interactive audiovisual system for some proceedings. However, Rule 17.1(f) only provides Limited Jurisdiction Courts with procedures for holding Telephonic Pleas and Plea by Mail plea proceedings. Rule 17.1(f) does not include procedures for interactive audiovisual plea proceedings. Petitioner’s proposed amendments to Criminal Rules 1.5 and 17.1 create procedures for Limited Jurisdiction Courts to conduct real-time interactive audiovisual pretrial conferences that immediately result in plea and sentencing proceedings.

The amendments to Criminal Rule 1.5 and Rule 17.1 allow and encourage Limited Jurisdiction Courts to provide electronic filing portals and to utilize newer software solutions that capture digital signatures and fingerprints. The proposed amendments are in line with the Arizona Supreme Court’s R-22-0009 Order amending the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Family Law Procedure, the Rules of Procedure for the Juvenile Court, the Rules

of Civil Appellate Procedure, and the Justice Court Rules of Civil Procedure regarding the use and acceptance of electronic signatures and notarized documents, effective January 1, 2024.

The amendment will also enable Limited Jurisdiction Courts to provide more productive court proceedings by reducing the number of pretrial conferences and provide greater access to justice for defendants who are in detention centers, live farther away, have limited or no access to transportation, or live out of state.

A. Amendment to Rule 1.5. Interactive Audiovisual Systems

Pursuant to the current Criminal Rule 1.5(c)(1), Limited Jurisdiction Courts may require parties to appear by use of an interactive audiovisual system without the parties' consent for (F) "a pretrial or status conference" and (G) "change of plea in a misdemeanor case." The current Criminal Rule 1.5(c)(2) states when audiovisual proceedings are prohibited and lists "felony sentencing" and a "felony probation disposition hearing." This implies that misdemeanor sentencing, and misdemeanor probation dispositions hearings are permitted. The proposed rule change adds both misdemeanor "sentencing" and "misdemeanor probation violation admission and disposition hearings" to the list of interactive audiovisual system hearings Limited Jurisdiction Courts can require parties to participate in without their consent.

The second proposed Criminal Rule 1.5 amendment removes the two references to the term “videoconference” and replaces it with “interactive audiovisual” system for consistency. The term “videoconference” appears to be interchangeable with interactive audiovisual in Criminal Rule 1.5. A “videoconference” hearing is, by definition, more limiting than an “interactive audiovisual” hearing. The term “videoconference” does not appear to be used in any other Criminal Rule, nor is it used in the Arizona Code of Judicial Administration, Section 5-208: Operation Standards for Interactive Audiovisual Proceedings in Criminal Cases.

B. Amendment to Rule 17.1. The Defendant’s Plea

Petitioner proposes modifying Criminal Rule 17.1(f) to add a new section for Interactive Audiovisual Plea procedures in Limited Jurisdiction Courts along with the existing Telephonic Pleas and Plea by Mail procedure sections. The proposed amendments create procedures for parties to complete and provide interactive audiovisual plea packets virtually to the court for a plea proceeding and sentencing during a single virtual pretrial conference docket and pretrial conference setting.

Additionally, Petitioner proposes modifying Criminal Rule 17.1(f)(1) and 17.1(f)(1)(B) related to Telephonic pleas by replacing the “online dispute resolution (ODR)” terminology with “court’s authorized electronic filing system”

to be consistent with the terminology used in the Arizona Supreme Court's R-22-0009 order effective January 1, 2024.

C. Technical Amendment to Rule 17.2. Advising of Rights and Consequences of a Guilty or Not Contest Plea

The proposed technical amendment to Rule 17.2(a) updates the reference to Rule 17.1(f) subsection (2) to subsection (3) to reflect the renumbering of the Plea by Mail procedures.

D. Technical Amendment to Rule 17.3. A Court's Duty to Determine Whether a Plea Is Entered Voluntarily and Intelligently

Petitioner proposes two technical amendments to Rule 17.3(a) starting with amending the reference to Rule 17.1(f) subsection (2) to subsection (3) to reflect the renumbering of the Plea by Mail procedures.

The second proposed technical amendment to Criminal Rule 17.3(a) eliminates the words "in open court" to be consistent with the almost identical phrase in Criminal Rule 17.2(a). Criminal Rule 17.2(a) states, "Except as provided in Rule 17.1(f)(2), before accepting a plea of guilty or no contest, the court must address the defendant personally, inform the defendant of the following, and determine that the defendant understands:..." Rule 17.3(a) states, "Except as provided in Rule 17.1(f)(2), a court may not accept a plea of guilty or no contest unless it determines, after addressing the defendant personally in open court,

that...” Criminal Rule 17.1(a)(2) lays out the requirements for “personal appearance” in “open court” and therefore the phrase “in open court” does not need to be repeated in Criminal Rule 17.3(a).

II. Conclusion

Petitioner requests that the Court open this petition for public comment and that the Court consider the petition and comments in the regular course provided by Supreme Court Rule 28.

RESPECTFULLY SUBMITTED this 4th day of January, 2024.

By /s/ Umayok Novell
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APPENDIX

Arizona Rules of Criminal Procedure

(deletions shown with strikethrough, new language is underlined)

RULE 1. GENERAL PROVISIONS

Rule 1.5. Interactive Audiovisual Systems

(a) [No Changes]

(b) [No Changes]

(c) When a Defendant May Appear by an Interactive Audiovisual Proceeding
~~Videoconference~~.

(1) *In the Court's Discretion*. A court may require a defendant's appearance by use of an interactive audiovisual system without the parties' consent at any of the following:

(A) through (F) [No changes]

(A) an initial appearance;

(B) a misdemeanor arraignment;

(C) a not-guilty felony arraignment;

(D) a hearing on a motion to continue that does not include a waiver of time under Rule 8;

(E) a hearing on an uncontested motion;

(F) a pretrial or status conference;

(G) a change of plea to any in a misdemeanor offense case and sentencing;

(H) misdemeanor probation violation admission and disposition hearing;

(I) an informal conference held under Rule 32.7; or

(J) a hearing under Rule 7.7(c).

(2) through (3) [No Changes]

(4) *Change in Hearing's Scope*. If the scope of a hearing expands beyond that specified in (c)(1) and (c)(3), the court must reschedule the interactive audiovisual proceeding ~~a videoconference~~ and require the defendant's personal appearance.

(v) [No Changes]

RULE 17.1 PLEAS OF GUILTY AND NO CONTEST; SUBMITTING A CASE ON THE RECORD

Rule 17.1. The Defendant's Plea

(a) [No Changes]

(b) [No Changes]

(c) [No Changes]

(d) [No Changes]

(e) [No Changes]

(f) Limited Jurisdiction Court Alternatives for Entering a Plea and

Sentencing. The parts of Rule 17 and Rule 26.9 requiring a defendant to be present are met by the defendant complying with this rule's requirements.

(1) Interactive Audiovisual Pleas. "Interactive audiovisual" is defined pursuant to Rule 1.5.

(A) Discretionary. A limited jurisdiction court has discretion to accept an interactive audiovisual plea of guilty or no contest to any misdemeanor offense.

(B) Procedure. The defendant may plead to the court or be given an electronic plea agreement form along with any other forms the prosecutor provides that are deemed necessary by the parties for completing a plea under the circumstances of the case. The electronic plea agreement form must be substantially in the form set forth in Rule 41, Form 18(b).

(C) Signature. The court shall provide the defendant with the ability to sign the plea agreement form and judgment and sentence order electronically.

(D) Fingerprint. If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A), the court must provide an option to capture a high-quality biometric fingerprint image pursuant to Rule 1.5(c).

(E) Sentencing. After entry and acceptance of an interactive audiovisual plea, the court may sentence the defendant, either on the same day or later, in-person or at an interactive audiovisual hearing.

~~(4)(2)~~ Telephonic. "Telephonic" includes voice only and audio-video communications between the court and the parties. This rule's provisions concerning telephonic pleas also apply to pleas submitted through an online dispute resolution ("ODR") system approved by the Administrative Office of the Courts the court's authorized electronic filing system.

(A) [No Changes]

(B) Procedure. The defendant must submit the plea in writing to the court, and the writing must be substantially in the form set forth in Rule 41, Form 28. If the court authorizes it, the defendant may submit plea documents through ~~an ODR~~ the court's authorized electronic filing system, and Form 28 may be used for that process. The documents the defendant submits for a telephonic plea must include the following:

- (i) a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offense(s) in the complaint, or to the offense(s) described in a written plea agreement
- (ii) a legible photocopy of the defendant's driver's license or other government-issued photo identification that contains the defendant's name and birth date; and
- (iii) any other forms the prosecutor provides that are deemed necessary by the parties for completing a plea under the circumstances of the case.

(C) **[No Changes]**

(D) Judicial Findings. Before accepting a plea, the court must hold an in-person, interactive audiovisual, or telephonic, hearing with the parties, advise the defendant of the items set forth in Form 28, inform the defendant that the offense(s) may be used as a prior conviction, and find:

- (i) a factual basis exists for believing the defendant is guilty of the offense(s); and
- (ii) the defendant's plea is knowingly, voluntarily, and intelligently entered.

(E) **[No Changes]**

~~(2)~~**(3) Plea by Mail. [No Changes]**

(v) Victims' Rights. In a telephonic or interactive audiovisual plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom. The court may not accept a plea by mail in a case involving a victim.

Rule 17.2. Advising of Rights and Consequences of a Guilty or Not Contest Plea

(a) Generally. Except as provided in Rule 17.1(f)(23), before accepting a plea of guilty or no contest, the court must address the defendant personally, inform the defendant of the following and determine that the defendant understands:

(1) through (5) [No Changes]

(b) [No changes]

Rule 17.3. A Court's Duty to Determine Whether a Plea Is Entered Voluntarily and Intelligently

(a) Required Judicial Determination. Except as provided in Rule 17.1(f)(23), a court may not accept a plea of guilty or no contest unless it determines, after addressing the defendant personally ~~in open court~~, that:

(1) the defendant wishes to forego the constitutional rights of which the defendant has been advised; and

(2) the defendant's plea is voluntary and not the result of force, threats or promises (other than that which is included in the plea agreement).

(b) [No Changes]