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ARIZONA SUPREME COURT

In the Matter of:	)	
	)	
PETITION TO AMEND RULES	)	Supreme Court No. R-24-_____
14.4 and 17.2 OF THE	)	
ARIZONA RULES OF CRIMINAL	)	
PROCEDURE	)	
_____	)	

Pursuant to Rule 28 of the Arizona Supreme Court, Special Projects Consultant, Jerry Landau, respectfully petitions this Court to amend Rules 14.4 and 17.2, Arizona Rules of Criminal Procedure.

I. Background

Each year, more than 300,000 cases are adjudicated in Arizona's criminal courts. Of those, over 39,000 are adjudicated in the Superior Court. In FY 2022, 98.87% of the convictions and sentences imposed resulted from plea bargaining. Plea bargaining is a longstanding essential component of our justice system. It resolves criminal cases more promptly than through trial and provides greater certainty about the case outcome for the state, defendants, and victims. By

comparison, 1.01% of cases were decided by jury trial, 0.08% by bench trial, and 0.04% by a finding of guilty but insane.

The process of negotiating a plea ultimately rests with the prosecutor and the defendant's attorney. However, judges exercise an important oversight role in determining the appropriateness of the plea, the accuracy and completeness of the plea bargaining document, and the determination that the defendant's plea is made knowingly, voluntary and intelligently. A court also may reject a plea or any provision of the agreement.¹

On June 2, 2021, Chief Justice Robert Brutinel issued Administrative Order 2021-84 establishing a Task Force on Plea Bargaining, Sentencing and Dispositions ("The Task Force").² The Task Force was instructed to evaluate and offer recommendations on six topics. While this petition will focus on only two of these topics (## 5 and 6 below), it is necessary to summarize the Task Force's overall objective in order to place this petition in proper context.

The genesis of the creation of the Task Force, in part, traces to Judicial Branch's Strategic Agenda, *Justice for the Future: Planning for Excellence*, Goal 5,

¹ Rule 17.4 (e), Az. R. Cr. P.

² The Task Force membership consisted of a broad representation of stakeholders in the Arizona criminal justice system. (The Task Force membership is listed in Attachment I).

which emphasizes the need to recognize and address concerns that affect public trust and confidence in our justice system. Because the vast majority of criminal defendants in Arizona are sentenced pursuant to a negotiated guilty plea, it is paramount that the public trust in the fundamental fairness of the plea process. A central focus of the Task Force's efforts was to determine whether we could improve transparency, fairness, and consistency in this process. Further, in order to capture reliable data, including demographic data, to permit reliable analysis concerning whether unwarranted disparities exist in the process, the Task Force endeavored to ensure that all pleas and resulting sentencing orders are sufficiently complete, accurate, and clear to allow clerks to enter reliable data into the court's case management system. The Task Force's recommendations are premised on effectuating these goals.

To enhance public trust and confidence in the criminal justice system, the Task Force was instructed to address the following issues concerning the plea and sentencing process:

1. Compile and publish demographic data on plea bargains, sentencing and dispositions;
2. Develop and provide implicit bias training for attorneys who negotiate plea agreements;

3. Develop and provide judicial training on plea agreements to improve bias awareness, ensure sufficiency of facts, and to utilize data to inform decision making and increase awareness of disproportionate sentencing outcomes for minority defendants;
4. Identify and train judges on best practices for ensuring sentencing orders are complete and legible for those responsible for data entry into the court's case management system;
5. Ensure defendants are advised of the possible collateral consequences of a guilty plea;
6. Proposing amendments to the Rules of Criminal Procedure, as needed, to accomplish the goals of this Task Force.

Once the Task Force concluded its mission and reported to the Court, a working group comprised of several members of the Task Force and Judges Ron Reinstein and Jerry Landau was formed to draft this petition to implement some of the Task Force's actionable recommendations. As noted, this petition addresses only issues 5 and 6 (above)—ensuring that defendants are advised of the possible collateral consequences of a guilty plea and proposing amendments to the Rules of Criminal Procedure to accomplish the goals of the Task Force.

II. Ensuring a defendant is advised of the possible collateral consequences of a guilty plea.

1. Rules of Criminal Procedure, Rule 41, Form 18(a).

The Task Force deliberated the best approach to ensuring defendants are properly advised of the possible collateral consequences of pleading guilty. Defendants, of course, are apprised of the sentencing range, monetary obligations, and, if applicable, requirements for community supervision. By existing rule, defendants are also advised of potential immigration consequences. However, these advisements omit specific reference to numerous other possible, and even likely, collateral consequences such as loss of driver license, inability to obtain a professional license, or inability to obtain public benefits.

The Task Force initially focused on the felony plea agreement form, in essence a template based upon Rule 41, Forms 18(a), Rules of Criminal Procedure.³ Although a version of the Rule 18(a) plea agreement form is used throughout the state, a universal form has not been adopted. Form 18(a) apprises defendants of many aspects of the plea agreement process, but it does not provide an exhaustive list of the possible collateral consequences of accepting a guilty plea. The Task Force considered whether the Rule 18(a) collateral consequence advisement should be modified to improve defendants' understanding of the effect of a conviction.

³ Forms 18(a) and (b) provide the felony and misdemeanor plea agreements, respectively.

The Task Force first considered whether to include an exhaustive list of potential collateral consequences. It determined that the universe of potential collateral consequences was too vast to attempt to capture and, in any event, such a list is subject to change. Moreover, some members were concerned that such an expansive list may deter defendants' willingness to enter a plea agreement and that an inadvertent omission of a collateral consequence could invite a subsequent challenge to the plea.

The Task Force next considered whether to retain the current Form 18(a) collateral consequence advisement, which is limited to notice of potential collateral consequences that courts mandate to ensure compliance with constitutional standards. The Task Force concluded that the advisement should be expanded to ensure that defendants are aware of the broader legal consequences of a conviction.

Finally, the Task Force considered a third option to expand the list of potential collateral consequences to include the most significant loss of rights likely to affect a defendant's life, such as immigration, and civil rights, including voting, gun rights, and restoration of rights. The Task Force concluded that this option provided a practical and workable improvement to the existing Form 18(a) collateral consequences advisement.

Although the Task Force recommends that Form 18, as well as form 18(b), be revised to expand the list of potential collateral consequences (as described above),

this petition does not propose to amend the form at this time. The Task Force concluded that a separate task force or work group should be convened to conduct a comprehensive review of Forms 18(a) and 18(b) and that the recommendation to expand the list of collateral consequences should be presented in a subsequent petition that includes other amendments following the comprehensive review.

2. Rules of Criminal Procedure, Rules 14.4 and 17.2.

Once the Task Force determined that the advisement of collateral consequences of a guilty plea should be expanded to better inform defendants of the effects of a conviction, it considered whether this change warranted amendments to relevant Rules of Criminal Procedure. The Task Force recommends, as this petition proposes, amending Rules 14.4 (Proceedings at Arraignment) and 17.2 (Advising of Rights and Consequences of a Guilty or No Contest plea) to expand the scope of the notice of possible collateral consequences and to advise defendants at the inception of a criminal case of these collateral consequences. The Task Force reasoned that defendants should be notified of the potential collateral consequences at two stages of the case—arraignment and change of plea—because advisement at arraignment would encourage defense attorneys to discuss potential consequences with their clients prior to the plea entry proceeding. As set forth below, the proposed amendments to Rule 14.4 would require the court to provide defendants with a general advisement about potential collateral consequences of a conviction at

arraignment. The proposed amendments to Rule 17.2 expand the scope of the potential collateral consequence advisement at the plea hearing.

A. Rule 14.4

The Task Force recommends the following two amendments to the court's arraignment advisement in Rule 14.4(e) (Attachment II):

Rule 14.4. Proceedings at Arraignment

At the Arraignment the court must:

.....

(e) inform the defendant of the following:

.....

(7) Conviction of a crime may have collateral consequences, including but not limited to immigration consequences.

(8) Conviction of a felony offense will result in certain civil rights being suspended.

This proposed rule change enhances defendants' awareness of potential collateral consequences because it places them on notice at the inception of the case.

B. Rule 17.2

The Task Force recommends several amendments to the court's advisement in Rule 17.2. This recommendation contains a few components. First, for purposes of clarity and to emphasize the importance of including the advisement on civil

rights, all the collateral consequences would be discussed in the same section of the rule. Second, because the advisement of immigration consequences is already in the rule, that language would not change, it would just be moved. Finally, a catchall general advisement of other collateral consequences would be provided to prompt defense counsel to discuss other potential collateral consequences depending on the nature of the case and a defendant's unique circumstances.

The Task Force's proposed amendments to Rule 17.2 are as follows (Attachment III):

Rule 17.2. Advising of Rights and Consequences of a Guilty or No Contest Plea

.....

(b) ~~Immigration Advisement~~ Collateral Consequences.

(1) *Civil Rights*. The court must advise that a plea to a felony offense will affect the defendant's civil rights and specifically state: "If you are convicted of a felony offense, certain civil rights will be suspended. These rights include the right to⁴:

1. Vote.

2. Serve as a juror.

⁴ Proposed paragraph (b) (1) is excerpted, in part, from A.R.S. § 13-904(A), Suspension of civil rights and occupational disabilities.

3. Hold public office.

4. Possess a firearm”.

~~(1) *Advisement.*~~ (2) *Immigration.* The court must advise that a plea may have immigration consequences and specifically state:

“If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen.”

(3) *Other Collateral Consequences.* The court must advise that a plea may have other collateral consequences, depending on the nature of the case.

~~(2)~~ 4) *Advisement Before Admission of Facts.* A court also must give the advisement in (b) ~~(1)~~ before any admission of facts sufficient to warrant a finding of guilt, or before any submission on the record.

~~(3) *Disclosure of Immigration Status.*~~ **(c) Disclosure of Immigration Status.**

A court may not require a defendant to disclose his or her legal status in the United States.

This proposed rule change enhances defendants’ awareness of the scope of potential collateral consequences because it expressly notifies them of the loss of fundamental civil rights and encourages further discussion with their attorneys about other potential collateral consequences that may uniquely impact them based on their circumstances.

III. Comments.

This petition has not been distributed to the court community for pre-filing comments. It is the Petitioner’s intent to forward the proposal for comment to the trial courts and other criminal justice stakeholders contemporaneously with filing.

IV. Comment Period.

The Petitioner recommends the normal comment period be utilized.

Respectfully submitted this _____ day of January 2024.

By _____
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ATTACHMENT I

Task Force on Plea Bargaining, Sentencing, and Dispositions Members

Justice John R. Lopez, IV, Chairperson, Arizona Supreme Court

Melissa Acosta
Public Defender
Pascua Yaqui Tribe

Elizabeth Burton-Ortiz
Attorney
Prosecuting Attorneys' Advisory Council

Honorable Krista Carman
Judge
Yavapai Superior Court

Domingo Corona
Director
Pima County Pretrial Services

Honorable David Cunanan
Judge
Maricopa County Superior Court

Sandra Diehl
Public Defender
Coconino County

Will Gonzalez
Executive Court Administrator
Phoenix Municipal Court

Honorable Frankie Jones
Judge
Phoenix Municipal Court

Jason Kalish
Bureau Chief
Maricopa County Attorney's Office

Lawrence Koplow
Attorney
Koplow Law Firm

Andrew LeFevre
Executive Director
Arizona Criminal Justice Commission

Steven Lessard
Chief Probation Officer
Gila County

Honorable Danelle Liwski
Judge
Pima County Superior Court

Xochitl Orozco
Legal Advocate
Cochise County

Rosemarie Pena-Lynch
Director
Maricopa County Office of Public Defense

Sheila Polk (currently retired)
County Attorney
Yavapai County

Honorable Antonio Riojas
Presiding Magistrate
Tucson Municipal Court

Jon R. Smith
Attorney
Yuma County

Valerie Wyant
Clerk of the Court
Coconino County

Jerry Landau
Judge Pro-Tem, Special Projects Consultant,
AOC

Shanda Breed

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Kristie Wooley

Manager, Adult Probation Services, AOC

Marcus Reinkensmeyer

Deputy Director of the AOC

Dionna Diaz

Administrative Assistant, Adult Probation
Services, AOC

ATTACHMENT II

Rule 14.4. Proceedings at Arraignment

At an arraignment, the court must:

(a) enter the defendant's plea of not guilty, unless the defendant pleads guilty or no contest and the court accepts the plea;

(b) decide motions concerning release conditions under Rule 7 if:

(1) the arraignment is held with the defendant's initial appearance under Rule 4.2;

(2) the moving party provides 5 days' notice of a contested release motion; or

(3) all parties agree;

(c) set the date for trial or a pretrial conference;

(d) provide written notice of the dates of further proceedings and other important deadlines;

(e) inform the defendant of the following:

(1) the right to counsel and the right to court-appointed counsel if eligible;

(2) the right to jury trial, if applicable;

(3) the right to be present at all future proceedings;

(4) the failure to appear at future proceedings may result in the defendant being charged with a new offense and the court issuing an arrest warrant;

(5) all proceedings may be held in the defendant's absence, other than sentencing;

~~and~~

(6) the defendant may lose the right to a direct appeal if the defendant's absence from sentencing causes sentencing to occur more than 90 days after any conviction;

(7) conviction of a crime may have collateral consequences, including but not limited to immigration consequences; and

(8) conviction of a felony offense will result in certain civil rights being suspended.

(f) appoint counsel if applicable;

(g) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(1) the defendant is charged with a felony offense; a violation of an offense listed in Title 13, Chapters 12, 14, 15 except A.R.S. § 13-1509, 18, 20 through 23, 32, 34, or 34.1; a domestic violence offense as defined in A.R.S. § 13-3601; a violation of A.R.S. §§ 13-1604, 13-2406, 13-2904, 13-2907 to 13-2907.05, 13-2910, 13-2916, 13-3102, 13-3103, 13-3513, 13-3555, 13-3558, 13-3613, 13-3619, 13-3623, 13-3704, or 46-215; or a violation of an offense listed in Title 28, Chapter 4; and

(2) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number.

(v) Victims' Rights. If the court under (b) decides a release motion at the defendant's arraignment, a victim has the rights provided in Rule 7.2(v).

ATTACHMENT III

Rule 17.2. Advising of Rights and Consequences of a Guilty or No Contest Plea

(a) Generally. 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:

- (1) the nature of the charges to which the defendant will plead;
- (2) the range of possible sentences for the offenses to which the defendant is pleading, any special conditions regarding sentencing, parole, or commutation imposed by statute;
- (3) the constitutional rights that the defendant foregoes by pleading guilty or no contest, including the right to counsel if defendant is not represented by counsel;
- (4) the right to plead not guilty; and
- (5) in a noncapital case, the defendant's plea of guilty or no contest will waive the right to appellate court review of the proceedings on a direct appeal; and that the defendant may seek review only by filing a petition for post-conviction relief under Rule 33 and, if it is denied, a petition for review;

(b) ~~Immigration Advisement~~ Collateral Consequences.

(1) Civil Rights. The court must advise that a plea to a felony offense will affect the defendant's civil rights and specifically state: "If you are convicted of a felony offense, certain civil rights will be suspended. These rights include the right to:

1. Vote.
2. Serve as a juror.
3. Hold public office.
4. Possess a firearm".

~~(1) Advisement.~~ (2) Immigration. The court must advise that a plea may have immigration consequences and specifically state:

“If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen.”

(3) *Other Collateral Consequences.* The court must advise that a plea may have other collateral consequences, depending on the nature of the case.

~~(2 4)~~ *Advisement Before Admission of Facts.* A court also must give the advisement in (b) ~~(4)~~ before any admission of facts sufficient to warrant a finding of guilt, or before any submission on the record.

~~(3) *Disclosure of Immigration Status.*~~ **(c) Disclosure of Immigration Status.** A court may not require a defendant to disclose his or her legal status in the United States.