

Umayok Novell
City Magistrate
City of Mesa Municipal Court
250 East 1st Avenue
Mesa, AZ 85210
Phone: (480) 644-2255
courtinfo@mesaaz.gov

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. R-24-0005
CRIMINAL PROCEDURE	)	Amended Petition
	)	

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 Rule 17.2 and 17.3 are primarily technical.

I. Purpose of the Proposed Rule Amendments.

Rule 1.5(c)(1) allows courts to require defendants to appear by use of an interactive audiovisual system for some proceedings. Rule 1.5(c)(3) allows the parties to stipulate to the defendant appearance using an interactive audiovisual system for proceedings not included under Rule 1.5(c)(1) and (c)(2) including misdemeanor sentencing and misdemeanor probation disposition hearing.

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 have a procedure for how to hold 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

Petitioner proposes a technical amendment to Criminal Rule 1.5 by removing the two references to the term “videoconference” and replace 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

Although Criminal Rule 26.9 states that the defendant “must be present at sentencing,” Rule 1.5 allows the appearance of a defendant or counsel by using an interactive audiovisual system for most court proceedings. Rule 1.5 (c)(1) permits Limited Jurisdiction Courts to require parties to appear by use of an interactive audiovisual system without the parties’ consent for some court proceedings including (F) “a pretrial or status conference” and (G) “change of plea in a misdemeanor case.” Rule 1.5(c)(2) prohibits a court from requiring “a defendant’s appearance by use of an interactive audiovisual systems at any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, unless the court finds extraordinary circumstances and the parties consent by written stipulation or on the record.” Finally, Rule 1.5(c)(3) allows “parties to stipulate that the defendant may appear at the proceeding by use of an interactive audiovisual system.” Therefore, under Rule 1.5(c)(3), parties may stipulate to a defendant’s appearance by use of an interactive audiovisual system at any misdemeanor sentencing or misdemeanor probation disposition hearing. Rule 1.5(c)(3) requires the parties to “file a stipulation before the proceeding begins or state the stipulation on the record at the start of the proceeding” and “before accepting the stipulation, the court must find that the defendant knowingly,

intelligently, and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual proceeding.”

Although Rule 1.5 allows for stipulated interactive audiovisual sentencing proceedings, Limited Jurisdiction Courts do not have any other guidance on how to hold an interactive audiovisual plea and sentencing proceeding. Therefore, 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 electronic plea packets to the court for an interactive audiovisual plea proceeding and sentencing during a single 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 a technical amendment to Rule 17.3(a) amending the reference to Rule 17.1(f) subsection (2) to subsection (3) to reflect the renumbering of the Plea by Mail procedures.

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 30th day of May, 2024.

By /s/ Umayok Novell
Umayok Novell, City Magistrate
City of Mesa Municipal Court
250 East 1st Avenue
Mesa, AZ 85210
Phone: (480) 644-2255
courtinfo@mesaaz.gov

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*. [No changes]

(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 enter into a plea agreement with the prosecutor. The prosecutor shall provide the defendant with an electronic plea agreement form along with any other forms the prosecutor deemed necessary by the parties for completing a plea agreement 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) Pursuant to Rule 1.5(c)(3), the parties must file a stipulation that the defendant may appear at the proceeding by use of an interactive audiovisual proceeding before the plea proceeding or state the stipulation on the record at the start of the proceeding. Before accepting the stipulation, the court must find that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual proceeding.

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

(E) 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).

(F) 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.

(F) A copy of any signed plea agreement and final judgment and sentence order shall be provided to the parties.

~~(1)(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]