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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:	)	Supreme Court No.
	)	R-24-0005
PETITION TO AMEND RULES 1.5, 17.1,	)	
17.2, AND 17.3 OF THE RULES OF	)	Second Amended Petition
CRIMINAL PROCEDURE	)	
	)	
_____	)	

Based on this Court’s August 22, 2024, order referring this rule petition’s proposed rule amendments to the Committee on Limited Jurisdiction Courts (LJC) for further review, Umayok Novell, City Magistrate, City of Mesa Municipal Court, and Petitioner in this matter, hereby files this Second Amended Petition with revised proposed rule amendments that reflect the feedback and input from the LJC. The revised proposed rule amendments are set forth in the Appendix and are intended to replace the proposed amendments in the initial petition and the first amended petition.

I. Procedural History

On January 4, 2024, Petitioner filed petition R-24-0005 to amend Rules 1.5, 17.1, 17.2, and 17.3 of the Rules of Criminal Procedure to establish procedures for limited jurisdiction courts to conduct remote change of plea proceedings. This Court opened

the comment period until May 1, 2024, and four comments were filed. Two comments supported the petition (one from the Justice of the Peace Bench in Maricopa County and one from the Arizona Commission on Access to Justice), and two comments opposed the petition as drafted (one from the State Bar of Arizona and one from the Arizona Attorneys for Criminal Justice).

Based on the concerns raised in the comments opposing the petition, Petitioner filed an amended petition on June 14, 2024. In response to the amended petition, David K. Byers, Administrative Director, Administrative Office of the Courts, filed a Request to File Late Comment and Comment on July 25, 2024, to request that this Court continue the petition from its August 2024 Rules Agenda, and allow the Petitioner to file a second amended petition after further input, study, and vetting from stakeholders, including the LJC, to ensure that the provisions of the proposed rule amendments are workable for all limited jurisdiction courts and do not conflict with other rules, the Arizona Code of Judicial Administration (ACJA), Administrative Order No. 2022-46, or local policies. Accordingly, at its August 20, 2024, Rules Agenda, this Court ordered that the petition be referred to the LJC for further review, and further ordered that this petition be continued to the August 2025 Rules Agenda.

Petitioner presented proposed rule amendments, revised from the initial petition, to the LJC at its September 25, 2024, meeting. Based on feedback from the members, Petitioner made further revisions and presented the revised proposed rule amendments to the LJC as an action item on November 20, 2024, requesting that the LJC support

the revised proposed rule amendments as presented. In a unanimous vote, the LJC supported the revised proposed rule amendments as presented. The revised proposed rule amendments are attached as the Appendix to this Second Amended Petition.

II. Revised Proposed Rule Amendments

A. Criminal Rule 1.5

Petitioner proposes a non-substantive amendment to Criminal Rule 1.5(a) to add a reference to ACJA § 5-208 to provide additional guidance to courts and practitioners, since ACJA § 5-208 establishes the minimum operational guidelines for interactive audiovisual systems.

Petitioner additionally proposes a non-substantive amendment to Criminal Rule 1.5(c) to replace the word “Videoconference” in the title with “Interactive Audiovisual Means” for consistency purposes. Similarly, Petitioner proposes replacing the word “videoconference” in Criminal Rule 1.5(c)(4) with “interactive audiovisual proceeding.”

B. Criminal Rule 17.1(f)

The substantive amendments Petitioner proposes in this Second Amended Petition pertain to Criminal Rule 17.1(f) and would establish procedures for a third alternative for limited jurisdiction courts to accept a plea and sentence a defendant, namely through an interactive audiovisual system. Accordingly, Petitioner proposes the following amendments to Criminal Rule 17.1(f):

1. Rule 17.1(f)(1) (“telephonic pleas.”). “Telephonic” under Criminal Rule 17.1(f)(1) “includes voice only *and audio-video* communications . . .” (emphasis added). Because Petitioner is proposing a new section (f)(3) that, if adopted, will govern audio-video communications, Petitioner proposes amending Criminal Rule 17.1(f)(1) to remove the reference to audio-video communications, so that Criminal Rule 17.1(f)(1) will apply solely to voice only (i.e., traditional telephone) pleas.

2. Rule 17.1(f)(1)(E) (“sentencing.”). This portion of the telephonic plea subpart allows courts to sentence a defendant in-person or by telephone after a telephonic plea is entered and accepted. Since Petitioner is proposing removing “audio-video communications” from the definition of “telephonic” as discussed above, Petitioner proposes adding to 17.1(f)(1)(E) that the court may sentence the defendant “using an interactive audiovisual system” so that this provision remains substantively unchanged in light of the change to the definition of “telephonic.”

3. New Rule 17.1(f)(3) (“remote pleas.”). Petitioner proposes beginning the rule’s new subpart with defining “remote plea” to make clear that a remote plea is a plea entered using an interactive audiovisual system pursuant to Criminal Rule 1.5 and ACJA § 5-208 and that any remote plea must comply with the requirements of the same. Petitioner also proposes including verbiage in this section to make clear that a remote plea can be either through a plea agreement or a plea directly to the court.

- a. Rule 17.1(f)(3)(A) (“generally.”). To the extent possible, remote pleas should be handled as similarly as possible to in-person pleas—the main difference

being that the defendant is not physically in the same space as the judge. Accordingly, all other rule requirements should apply to remote pleas to the extent they can. For example, the requirements for plea agreements under Rule 17.4 would apply to remote pleas just as they would apply to in-person pleas. Rule 17.1(f)(3)(A) clarifies this.

- b. Rule 17.1(f)(3)(B) (“procedure.”). This provision requires the court to provide the parties with instructions on how the remote plea will be initiated. This is a provision included in other rules sets, such as the civil traffic and eviction rules, and Petitioner proposes carrying it over to this new subpart.
- c. Rule 17.1(f)(3)(C) (“submission of plea documents.”). This provision allows the court to decide whether or not to allow parties to electronically submit plea documents to the court.
- d. Rule 17.1(f)(3)(D) (“sentencing.”). This provision tracks the telephonic provision (17.1(f)(1)(E)) and makes explicit that a court can sentence a defendant the same day or later in-person, telephonically, or using an interactive audiovisual system. For the avoidance of doubt, it is Petitioner’s intent that by the reference to Criminal Rule 1.5 provided in 17.1(f)(3), if the defendant is sentenced using an interactive audiovisual system, the requirements of Criminal Rule 1.5(c)(3) relating to stipulations for proceedings not listed in Criminal Rule 1.5(c)(2) must be met.

- e. Rule 17.1(f)(3)(E) (“fingerprint.”). This provision clarifies that the in-person fingerprint requirements of Criminal Rule 26.10(d) for offenses described in A.R.S. § 13-607(A) apply to remote pleas. Petitioner believes this clarification is necessary due to the unique fingerprint provisions permitted for telephonic pleas and the altogether exclusion of A.R.S. § 13-607 offenses from pleas by mail.
- f. Rule 17.1(f)(3)(F) (“open court.”). Rule 17.1(a)(2) provides that “[f]or purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.” Petitioner proposes adding a similar provision for things that must otherwise be done in “open court.” Specifically, there are several requirements throughout the rules and statutes that require the court to do something “in open court.” This provision clarifies that something done during a remote plea proceeding is done “in open court,” to clarify that the “open court” requirement is met even though it is possible that none of the participants are physically present in a courtroom.
- g. Rule 17.1(f)(3)(G) (“continued application.”). This provision sets forth the procedures that govern in the event of a technology failure, should a party’s video technology cease to function after the proceeding has commenced. Specifically, if a remote proceeding has commenced and a party’s video stops working, the provisions of Rule 17.1(f)(3) continue to apply (and not the provisions for telephonic pleas under Rule 17.1(f)(1)), if the court was able to

sufficiently verify the party's identity before the person's video stopped working.

- h. Rule 17.1(v) ("victims' rights."). The proposed amendment to Rule 17.1(v) adds "remote" to provide that in a remote plea proceeding, a victim has the same rights under Criminal Rule 39 to notice and participation as if the defendant physically appeared in the courtroom.

C. Criminal Rule 26.10(d)

The ability to obtain the defendant's fingerprint for offenses listed in A.R.S. § 13-607(A) will impact a court's ability and process for conducting remote plea proceedings. Criminal Rule 26.10(d) tracks A.R.S. § 13-607(B) except that Rule 26.10(d) requires the defendant's *right index* fingerprint to be permanently affixed to the judgment of guilt and sentence order or minute entry, whereas A.R.S. § 13-607(B) requires only that the defendant's fingerprint be affixed. The requirement that it be the right index fingerprint was removed from A.R.S. § 13-607 during the First Regular Session of the Fifty-Second Legislature (Laws 2015, Ch. 160). Petitioner therefore proposes amending Criminal Rule 26.10(d) to strike "right index" so that the rule better aligns with the statute on which it is based. This will provide courts with more flexibility with regard to obtaining the fingerprint under A.R.S. § 13-607.

III. Pre-filing Vetting.

The revised proposed amendments as set forth in the Appendix were vetted with and unanimously supported by the LJC. This Second Amended Petition and proposed

rule amendments were subsequently shared with Limited Jurisdiction Court judges across Arizona, representing both small and large jurisdictions, for their continued review.

IV. Conclusion.

The proposed rule amendments attached as the Appendix to this Second Amended Petition provide procedures for limited jurisdiction courts to conduct remote change of plea proceedings and sentencing, thereby enabling 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. Petitioner believes that the proposed amendments as set forth in the Appendix are workable for all limited jurisdiction courts throughout the state.

V. Request

Petitioner therefore respectfully requests that this Court open this Second Amended Petition for public comment, set a comment period and reply due date, and adopt the changes as set forth in the Appendix after considering any comments and reply. The proposed amendments in the attached Appendix are intended to replace the proposed amendments in the Appendix of the January 4, 2024 petition and the first amended petition filed on June 14, 2024.

Respectfully submitted this 30th day of December, 2024.

By /s/ Umayok Novell
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APPENDIX

(deletions shown with ~~striketrough~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 1.5. Interactive Audiovisual Systems

(a) **Generally.** If the appearance of a defendant or counsel is required in any court, the appearance may be made by using an interactive audiovisual system that complies with the provisions of this rule. Any interactive audiovisual system must meet or exceed minimum operational guidelines required by ACJA § 5-208 or adopted by the Administrative Office of the Courts.

(b) [No change]

(c) **When a Defendant May Appear by ~~Videconferenee~~Interactive Audiovisual Means.**

(1) through (3) [No change]

(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 a ~~videconferenee~~ an interactive audiovisual proceeding and require the defendant's personal appearance.

(v) [No change]

Rule 17.1. The Defendant's Plea

(a) through (e) [No change]

(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) *Telephonic Pleas.* “Telephonic” ~~includes means~~ 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.

(A) through (D) [No change]

(E) Sentencing. After entry and acceptance of a telephonic plea, the court may sentence the defendant, either on the same day or later, in-person, ~~or~~ telephonically, or using an interactive audiovisual system.

(2) [No change]

(3) *Remote Pleas.* “Remote plea” means a plea entered by a defendant appearing remotely using an interactive audiovisual system pursuant to Rule 1.5 and ACJA § 5-208. The plea can be a plea directly to the court or by plea agreement.

(A) Generally. To the extent they are consistent, the requirements of Rule 17 apply to remote plea proceedings in the same manner as in-person plea proceedings.

(B) Procedure. The court must provide instructions to the participants on how the remote plea proceeding will be initiated.

(C) Submission of Plea Documents. If the court authorizes it, the plea agreement and any other documents necessary for the court to accept the plea may be electronically submitted to the court.

(D) Sentencing. After entry and acceptance of a remote plea, the court may sentence the defendant, either on the same day or later, in-person, telephonically, or using an interactive audiovisual system.

(E) Fingerprint. If the court is sentencing the defendant for an offense described in A.R.S. § 13-607(A), the court must comply with Rule 26.10(d).

(F) Open Court. Any requirement that something be done in open court is met if it is done during a remote plea proceeding held according to this subpart.

(G) Continued Application. This subpart continues to apply if, after the remote plea proceeding has started, a party's video connection stops working but the person's audio connection still works, and the court has sufficiently verified the person's identity.

(v) Victims' Rights. In a telephonic or remote 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 26.10. Pronouncement of Judgment and Sentence

(a) through (c) [No change]

(d) Fingerprinting. For any felony offense or a violation of A.R.S. §§ 13-1802, 13-1805, a domestic violence offense as defined in A.R.S. § 13-3601, a violation of Title 13, chapter 14, or a violation of Title 28, chapter 4, the court must arrange to permanently affix the defendant's ~~right index~~ fingerprint to the judgment of guilt and sentencing order or minute entry, or obtain the defendant's two fingerprint biometric-based identifier and record it in the court case file, at sentencing or, unless the court orders otherwise, no later than 30 days after sentencing.

(v) [No change]