

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

) No. R-24-0005

)

Petition to Amend Ariz. R. Crim. P. 1.5,
17.1, 17.2, and 17.3.

) **Comment of Arizona Attorneys for**
) **Criminal Justice regarding Petition to**
) **Amend Arizona Rules of Criminal**
) **Procedure 1.5, 17.1, 17.2, and 17.3**

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Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment on the Second Amended Petition to amend Arizona Rules of Criminal Procedure 1.5, 17.1, 17.2, and 17.3.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public

awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ appreciates Petitioner's willingness to make amendments to account for the comments on the initial petition last year. In particular, Petitioner removed all the changes to Rule 1.5 that were repugnant to the Sixth Amendment's right to be present in the courtroom. AACJ continues to agree with the petition's desire to use language consistently by changing "videoconference" to "interactive audiovisual system."

I. Rule 17.1(f).

AACJ is confused by the structure of the proposal. It is not clear why adding a new Rule 17.1(f)(3) is necessary or helpful, because there should be no such distinction between "telephonic pleas" and "remote pleas." All telephonic pleas are remote pleas. Accordingly, AACJ recommends renaming Rule 17.1(f)(1) from "telephonic pleas" to "remote pleas" and include both audio and audiovisual in that provision. This will avoid the unnecessary doubling of the length of the rule. Also, proposed Rule 17.1(f)(3) adds provisions to pleas conducted over video that do not exist in Rule 17.1(f)(1) for audio; if anything, only audio communications should be more onerous than audiovisual communications, because it is harder to confirm identity and to ensure through body language that the plea is knowing, intelligent, and voluntary.

Furthermore, there are several provisions in proposed Rule 17.1(f)(3) that do not track Rule 17.1(f)(1), such as the procedure for taking fingerprints when required by A.R.S. § 13-607, and the inclusion in the proposal of pleas “directly to the court or by plea agreement.” These discrepancies are not explained. In AACJ’s estimation, duplicating the rule for “telephonic” and “remote” creates far more problems than it is worth, and thus it is advisable to simply redefine “remote pleas” as including both telephonic and the use of an interactive audiovisual system.

Beyond the structure, there are other issues with current Rule 17.1(f) that the Petition helped bring to light. Proposed Rule 17.1(f)(3)(D) mistakenly omits a reference to the defendant’s consent to proceeding directly to sentencing. The amendments to the petition suggest that Petitioner agrees that the defendant’s consent is necessary, which suggests that this is an oversight. It is a mistake to assume that a defendant who wishes to enter a plea remotely is similarly interested in being sentenced remotely; that is true most of the time but certainly not all the time. Defendants and their counsel frequently marshal greater resources for sentencing, where the judge makes the final decision regarding restrictions or deprivation of liberty. AACJ notes that current Rule 17.1(f)(3)(E) also omits a reference to the defendant’s consent to proceeding directly to sentencing; this was likely an oversight.

AACJ appreciates that Petitioner withdrew the request to eliminate the phrase “open court” from certain rules. But AACJ does not see the need to add “open court” one more time in Rule 17.1(f)(3), especially since it is not equally stressed in Rule 17.1(f)(1). It is understood that Rule 17.1(f) creates an exception to the general rule requiring physical appearance in the courtroom, and no more needs to be said.

II. Rule 26.10(d).

AACJ agrees with the proposed change to Rule 26.10(d), because the term “right index” was removed from A.R.S. § 13-607(B) a decade ago. *See* Laws 2015, Ch. 160, § 1.

III. *White v. State*.

One other point of note. Since the Petition was filed, the court of appeals has issued an opinion in *White v. State*, 1 CA-SA 24-0258, 2025 WL 555077 (Ariz. App., Feb. 20, 2025). In *White*, the court held that the superior court abused its discretion by refusing to conduct a remote sentencing for a misdemeanor offense when both parties consented to it based on a misinterpretation of Rule 1.5(c)(2). Although *White* is not an opinion of this Court, AACJ submits it was correctly decided and reasoned. Because *White* interpreted the plain language of Rule 1.5(c)(2)-(3), and its reasoning does not appear to upset the court’s discretion under Rule 17.1(f)(1)(A), no additional modification to the rule appears necessary.

IV. Rule 17.1(f) Proposed Redraft.

Below is AACJ's suggestion for a redrafted Rule 17.1(f), which includes all the substance of the Petition but in a form that is easier to read and eliminates the internally contradictory language:

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~~ **Remote** Pleas. "Telephonic" "**Remote**" includes ~~voice-only and audio-video~~ communications between the court and the parties **using voice only as well as an interactive audiovisual system as described in Rule 1.5 and ACJA § 5-208.** This rule's provisions concerning telephonic **remote** pleas also apply to pleas submitted through an online dispute resolution ("ODR") system approved by the Administrative Office of the Courts.

(A) Discretionary. A limited jurisdiction court has discretion to accept a ~~telephonic~~ **remote** plea of guilty or no contest to any misdemeanor offense.

(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 system, and Form 28 may be used for that process. The documents the defendant submits for a ~~telephonic~~ **remote** 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) Fingerprint.

(i) If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A), Form 28 also must contain a signed certification from a law enforcement officer in the state in which the defendant resides that the defendant personally appeared before the officer and signed Form 28, and that the officer affixed the defendant's fingerprint to the form.

(ii) If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A) and the defendant's plea form does not include the defendant's fingerprint and the law enforcement officer's certification as this rule requires, the court may defer the plea's acceptance until the defendant has submitted the required fingerprint and certification, or until the defendant appears in open court for sentencing and provides a fingerprint at that time.

(iii) In extraordinary circumstances, instead of requiring a certification and fingerprint, the court may permit another method of proving the defendant's identification on Form 28, including allowing the defendant to use a notarial officer to witness the defendant's signature on the form.

(D) Judicial Findings. Before accepting a plea, the court must hold an in-person or ~~telephonic~~ **remote** 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) Sentencing. After entry and acceptance of a ~~telephonic~~ **remote** plea, **with the defendant's consent,** the court may sentence the defendant, either on the same day or later, in-person or ~~telephonically~~ **remotely.**

(2) [No change]

(v) In a ~~telephonic~~ **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

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CONCLUSION

For the reasons stated above, AACJ asks this Court to make appropriate changes to Rule 17.1(f)(1) to redefine “remote” as including both telephonic and interactive audiovisual proceedings, and to make other technical changes to the rule, but otherwise to deny the Petition.

DATED (electronically filed): April 24, 2025.

By: /s/ David J. Euchner
David J. Euchner

Copy delivered to:

Hon. Umayok Novell
City Magistrate
City of Mesa Municipal Court
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