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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 17.1(a), ) Supreme Court No. R-  
AND TO ADOPT FORM 28(a) IN )  
RULE 41, ARIZONA RULES OF )  
CRIMINAL PROCEDURE )  
 )  
 )  
\_\_\_\_\_ )

On behalf of the Committee on Limited Jurisdiction Courts (“the Committee”), Petitioner respectfully petitions this Court to adopt an amendment to Rule 17.1(a) of the Arizona Rules of Criminal Procedure, and corresponding Form 28(a), as they appear in the Appendix attached hereto. These changes would allow a defendant to enter a plea of guilty or no contest by mail in a limited jurisdiction court.

**I. Background.** The Justice 20/20 Strategic Agenda identified a goal of streamlining court processes. In support of this goal, the Committee recommended

that limited jurisdiction courts be authorized to accept pleas of guilty or no contest in misdemeanor cases by mail.

To implement this initiative, the Committee has drafted a proposed amendment to Rule 17.1(a) of the Rules of Criminal Procedure that would add a new subsection 17.1(a)(4). This new subsection is modeled after existing Rule 17.1(a)(3), which allows *telephonic* pleas of guilty or no contest in limited jurisdiction courts. The Joint Committee on Criminal Rules of the Arizona Judicial Council that proposed Rule 17.1(a)(3) in 1993 included a comment that many defendants in misdemeanors cases were passing through Arizona when the offense occurred, but they never intended to return to the state; and because there was no mechanism for entry of a guilty plea other by than an in-person appearance, these cases often remained on the court's docket for years without resolution.

Like Rule 17.1(a)(3), proposed Rule 17.1(a)(4) is intended to facilitate the disposition of more misdemeanors cases, but without the need for a fingerprint as required on the telephonic plea form, and without the need for a telephonic dialogue between the defendant and the court to proceed with the plea.

## **II. Content of the proposed rule.**

**(a) The rule.** Under Rule 17.1(a)(3), which can be used for any misdemeanor, a defendant must make a showing of undue hardship as a foundation for entering a plea telephonically. Proposed Rule 17.1(a)(4) also requires a

showing of undue hardship, but in addition, the plea by mail process excludes five categories of cases that the Committee has determined are not appropriate for resolution through a plea by mail. Those categories are cases in which:

(i) There is a victim (including criminal domestic violence cases);

(ii) The court may impose a jail term, unless the court will sentence the defendant to time served, or unless the defendant is already in jail and the sentence that will be imposed by the court would be served concurrently and would not extend the period of the defendant's incarceration;

(iii) The court will impose a term of probation;

(iv) The court is required by A.R.S. § 13-607 to obtain the defendant's fingerprint at the time of sentencing (i.e., misdemeanor offenses of theft, shoplifting, and DUI); and

(v) The court determines that a guilty or no contest plea by mail is not in the interests of justice. This final category gives the court wide discretion to reject a plea by mail under the specific circumstances of a particular case.

The proposed rule requires that the defendant's signature be notarized to confirm the defendant's identity. The plea by mail includes the defendant's consent to the entry of judgment on the plea. The court will be required to mail back a copy of the judgment of conviction to the defendant.

**(b) The form.** Along with the proposed amendment to Rule 17.1(a), the Committee is submitting a proposed mandatory form to be published in the Rules of Court as Form 28(a) of Rule 41 of the Rules of Criminal Procedure, which a defendant will use when submitting a plea by mail.

The form includes instructions for the defendant to follow in completing the form. Unlike a plea where the defendant personally appears in court or appears telephonically, there is no colloquy between the court and the defendant on a plea by mail. The plea by mail form must therefore be both complete and understandable. To further these objectives, and because there is no dialogue between the court and the defendant on a plea by mail, each blank space on the form is numbered and has a corresponding instruction.

The process envisions that there will be no opportunity for the defendant to negotiate his or her plea with the prosecutor. Therefore, if a defendant is charged in a complaint with more than one offense, the form advises the defendant that he or she must plead guilty or no contest to “each and every offense” in order to utilize the plea by mail procedure. In keeping with the proposed rule, the plea by mail form includes a space where the defendant can provide information for the court to consider before the imposition of sentence.

**III. Comments.** Discussion and drafting of the rule, the form, and the instructions took place over four meetings of the Committee, whose membership

includes a public defender; a prosecutor was also invited to one of these four meetings and provided input during these discussions. The Committee also sought comments from the Limited Jurisdiction Court Administrators' Association and the Commission on Victims in the Court.

**IV. Conclusion.**

Petitioner requests that the Court adopt the proposed rule and form.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of December, 2010.

By \_\_\_\_\_  
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## Appendix

(additions are shown by underline)

### **Rule 17.1. Pleading by defendant**

#### **a. Personal Appearance; Appropriate Court.**

(1) *Superior Court.* [No change.]

(2) *Courts of Limited Jurisdiction.* [No change.]

(3) *Telephonic Pleas in Courts of Limited Jurisdiction.* [No change.]

(4). Pleas by Mail in Courts of Limited Jurisdiction. Notwithstanding the requirements in Rules 1.6, 14.2, 17.1(a)(2), 17.2, 17.3, and 26.9 that the defendant personally appear before a judicial officer, courts of limited jurisdiction may accept a written plea of guilty or no contest to a misdemeanor or petty offense if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. Except as noted above, a plea submitted by mail must comply with the requirements of Rule 17 and must be signed by the defendant and acknowledged by a notary public.

The defendant shall use the guilty/no contest plea by mail form appearing in the Appendix to these rules for entry of a plea by mail. The form shall recite that the defendant waives his or her constitutional rights, enters a plea of guilty or no contest to the offenses described in the complaint, and consents to the entry of judgment. The plea by mail form must include a statement for the court to consider when determining the appropriate sentence.

The court shall send the defendant by mail a copy of a judgment entered pursuant to this rule. The judgment of guilt may be used as a prior conviction in the event of a subsequent conviction.

A plea by mail shall not be available for the following:

(i) Cases involving a victim;

(ii) Cases in which the court may impose a jail term, unless the defendant is sentenced to time served, or the defendant is currently

incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently;  
(iii) Cases in which the court may sentence the defendant to a term of probation;  
(iv) Offenses for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; and  
(v) When this method of entering a plea would not be in the interests of justice.

The local court shall establish a policy for participation by the prosecutor in pleas by mail.

**b. Voluntary and Intelligent Plea.** [No change.]

**c. Pleas of No Contest.** [No change.]

**d. Record.** [No change.]

**e. Waiver of Appeal.** [No change.]

Comment: A plea by mail would be entered by utilizing Form 28(a), which is modeled after Form 28 that is used for a telephonic plea.

*[Proposed Rule 41, Form 28(a) [new], appears on the following four pages.]*

**INSTRUCTIONS FOR COMPLETING THE FORM  
FOR ENTERING A“GUILTY/NO CONTEST PLEA BY MAIL”**

**Warning:** *The submission to the court of a completed form to enter a “guilty/no contest plea by mail” will have important legal consequences.*

- *Please read these instructions completely and carefully. If you do not follow these procedures correctly and completely, your plea by mail may not be accepted by the court, and you may be required to appear in court in-person.*
- *Read Rule 17.1(a)(4) of the Arizona Rules of Criminal Procedure and/or consult a lawyer if you have any additional questions after reading these instructions.*

**Note:** *You must have a copy of the complaint charging you with a crime to complete the form.*

**You must complete the following items on the plea by mail form.**

- (1) Enter the name of the court where the complaint was filed (for example, Phoenix Municipal, Ajo Justice).
- (2) Enter the name of the county where the court is located.
- (3) Enter your first name, middle name, and last name exactly as they appear on the complaint.
- (4) Enter the court’s case number.
- (5) Print your full legal name (which can be different than your name on the complaint.)
- (6) Check whether you are pleading guilty or no contest. Check only one box.
- (7) Provide the reasons why you have an “undue hardship” in paragraph 12. An undue hardship is something that makes it difficult for you to personally appear in court, such as an illness, physical incapacity, a substantial distance to travel, or you are incarcerated (that is, you are currently in jail.) You may enter a plea by mail only if you have an “undue hardship”. If you do not have an “undue hardship”, you must personally appear in court.
- (8) Provide any information you would like the judge to consider before you are sentenced. You may attach additional pages if needed to provide complete information. You may also attach any other documents or statements you’d like the judge to consider before you are sentenced.
- (9) & (10). ***You must sign and date the plea by mail form in front of a notary public.*** You must have identification to show the notary. The notary public will add his or her stamp or seal and the notary’s signature to show that the notary personally witnessed you sign the plea by mail form. Your signature confirms that you have read and understand the plea by mail form as well as these instructions, or that they have been read to you and that you understand them. If you do not read or speak English, please contact the court and request the assistance of an interpreter. If you have a lawyer, your lawyer must also sign the form and provide a State Bar number. Please note that only an attorney who is licensed to practice law in Arizona may sign the form.
- (11) & (12). You must provide your complete mailing address and a telephone number. The court will mail a copy of the judgment of conviction to you.

**READ THE PLEA BY MAIL FORM ON THE FOLLOWING PAGES CAREFULLY. DO NOT SIGN THE FORM OR SEND IT TO THE COURT IF YOU HAVE QUESTIONS ABOUT ANYTHING IN THE FORM, OR ABOUT THE LEGAL CONSEQUENCES OF A PLEA BY MAIL.**

(1) \_\_\_\_\_ COURT (2) \_\_\_\_\_ County, Arizona

STATE OF ARIZONA Plaintiff  
-versus-  
(3) \_\_\_\_\_  
Defendant's name (first, middle, and last names)

[CASE/COMPLAINT NO.]  
(4)

**GUILTY/NO  
CONTEST  
PLEA BY MAIL  
and  
JUDGMENT OF  
CONVICTION**

1. I (5) \_\_\_\_\_ (*print your full legal name*) am the defendant in this case. I have a copy of the criminal complaint in this case, and I have read and I understand the charges filed against me. I hereby agree to plead (*check only one*): (6)  Guilty  No Contest to the criminal offense(s) alleged in the complaint. If there is more than one offense alleged in the complaint, I am pleading guilty or no contest to each and every one of the criminal offenses in the complaint.

2. I admit to a factual basis for the offense(s) set forth in the complaint (that is, if my case went to trial, the facts would show that I did what I am charged with doing). I consent to the entry of judgment on my plea as indicated in paragraph 1 above.

3. I understand that the court will determine the sentence pursuant to my plea, and that I am responsible for satisfying all of the penalties that are imposed by the court. I further understand that the court may reject my plea by mail if any of the following are true:

- my case involves a victim;
- the court will impose a jail term, unless I am sentenced to time served, or unless I am currently in jail and the jail time that is imposed would not extend the length of my current jail sentence;
- the court will impose a term of probation;
- my fingerprint is required to be on the sentencing document;
- a plea by mail would not be in the interests of justice; or
- I have not described in paragraph 12 below any undue hardship that justifies my plea by mail.

4. I understand that the range of penalties for misdemeanor and petty offenses are as follows:

Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 3 years probation, plus surcharges and fees.  
Class 2 misdemeanor: a \$750 fine, 4 months jail, and/or 2 years probation, plus surcharges and fees.  
Class 3 misdemeanor: a \$500 fine, 30 days jail, and/or 1 year probation, plus surcharges and fees.  
Petty offense: not more than a \$300 fine, plus surcharges and fees.

The maximum fine amounts are higher for enterprises.

5. If I am arrested on another offense in the future, I know that as the result of my plea in this case, I may be charged with a more serious offense that has more severe penalties.

6. If I am presently on probation or parole, I know that this guilty or no contest plea may result in a violation of my probation or parole.

7. I know that if I am not a citizen of the United States, pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in deportation or removal, could prevent me from

ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen.

8. I understand that by entering my plea of guilty or no contest by mail I am giving up all of the following constitutional rights:

- a. The right to plead not guilty and to require the State to prove guilt beyond a reasonable doubt.
- b. The right to a trial, and depending on the charge(s) against me, a right to a trial by jury.
- c. The right to assistance of an attorney at all stages of the proceeding, including appeal. If I cannot afford one, I may be eligible for a court-appointed attorney at a reduced cost or at no cost.
- d. The right to confront the witnesses against me and to cross-examine them as to the truthfulness of their testimony.
- e. The right to present evidence in my own behalf and to have the court compel my chosen witnesses to appear and to testify free of charge.
- f. The right to remain silent, not to incriminate myself, and to be presumed innocent unless/or until proven guilty beyond a reasonable doubt.
- g. The right to a direct appeal.

9. I give up the right to be present at the time of sentencing.

10. My plea is voluntary and not the result of force, threat, or promises.

11. I understand that I may file a petition for post-conviction relief in accordance with Rule 32 of the Arizona Rules of Criminal Procedure, and if it is denied I may file a petition for review.

12. I wish to enter my plea by mail because my personal appearance in court would be an undue hardship for the following reasons: *(Explain the hardship, such as illness, physical incapacity, substantial distance to travel, or incarceration, fully and in detail. Attach additional pages if needed.)*

(7) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. I would like the court to consider the following information in determining an appropriate sentence *(attach additional pages if needed)*:

(8) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have read the instructions for completing this plea by mail form, or these instructions have been read to me. I have completely read this plea by mail form, or it has been completely read to me. I understand this plea form, and I am voluntarily signing it below. I understand that the court will mail a copy of its judgment to me, and that I will be responsible for fulfilling the penalties and the sentence imposed by the court.

(9) Dated: \_\_\_\_\_

(10) \_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
(if any) Defense Counsel Signature/AZ Bar #

(11) \_\_\_\_\_  
Defendant's Telephone Number

(12) \_\_\_\_\_  
Defendant's Complete Mailing Address

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**THIS SECTION IS FOR NOTARY USE ONLY:**

I hereby certify that \_\_\_\_\_ personally appeared before me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Notary Public Signature \_\_\_\_\_ State of \_\_\_\_\_

My Commission Expires \_\_\_\_\_ County of \_\_\_\_\_

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**THIS SECTION IS FOR COURT USE ONLY:**

**ACCEPTANCE OF PLEA AND JUDGMENT OF CONVICTION**

I CERTIFY that I have personally reviewed the defendant's statements set forth in this Guilty/No Contest Plea by Mail form. The court finds a basis in fact for believing the defendant is guilty of the offense(s) charged, and that the defendant's plea of guilty or no contest is voluntary and intelligent. I accept the defendant's plea and find that the defendant is guilty of the following offense or offenses alleged in the complaint:

\_\_\_\_\_, a violation of A.R.S. § \_\_\_\_\_, committed on \_\_\_\_\_.

(and, if applicable) \_\_\_\_\_

The defendant is sentenced as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

I CERTIFY that a copy of this document was mailed to defendant at the address shown above on this date: \_\_\_\_\_ by (Clerk's name or initials): \_\_\_\_\_.