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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 Rule of Criminal	)	Comment to Second Amended
Procedure	)	Petition
	)	
_____	)	

David K. Byers (“Commentor”) hereby submits this Comment to Second Amended Petition regarding Rule Petition No. R-24-0005 filed by the Honorable Umayok Novell, City Magistrate of the Mesa Municipal Court (“Petitioner”). Commentor supports the rule amendments as set forth in the Second Amended Petition but agrees with the Comment of the Committee on Limited Jurisdiction Courts (LJC) such that Rule 17.1(f)(1)(E) and proposed 17.1(f)(3)(D) could be clarified to indicate when an interactive audiovisual system may be used for sentencing.

I. Procedural History and Background

Petitioner filed petition R-24-0005 on January 4, 2024 (“petition”) and an amended petition on June 14, 2024 (“first amended petition”), to amend various rules

in the Rules of Criminal Procedure to establish procedures for limited jurisdiction courts to conduct change of plea proceedings using interactive audiovisual systems.

On July 25, 2024, Commentor filed a Request to File Late Comment and Comment, 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 governing authorities.

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 those contained in the first amended petition, to the LJC at its September 25, 2024 meeting. The [version presented](#) proposed combining telephonic pleas and pleas entered by a defendant appearing through an interactive audiovisual system into one subpart, and retitling current subpart (1) “Telephonic Pleas” to “Remote Pleas.” The LJC members expressed some confusion with the proposed rule amendments as applied to telephonic pleas.

Accordingly, Petitioner presented a revised version of the proposed rule amendments to the LJC at its November 20, 2024 meeting, which retains the separate subpart for telephonic pleas and a definition for the same, and distinguishes pleas

through an interactive audiovisual system in a separate, new subpart (3) titled “Remote Pleas,” to make clear the procedures specifically applicable to telephonic pleas.

In a unanimous vote at its November 20, 2024 meeting, the LJC supported the revised proposed rule amendments as presented. Accordingly, on January 2, 2025, Petitioner filed a Second Amended Petition reflecting the amendments as supported by the LJC.

On March 7, 2025, the LJC filed a comment indicating its unanimous support of the Second Amended Petition, with the additional comment that the petition’s language conform with the recent Court of Appeals opinion, *White v. State*, CA-SA 24-0258 (App. Feb. 20, 2025) (explaining that Rule 1.5(c)(3) allows for a virtual appearance for a misdemeanor sentencing when the parties have stipulated).

II. Discussion

Commentor files this Comment to advise this Court that the Administrative Office of the Courts supports the rule amendments as set forth in the Second Amended Petition but agrees with the LJC such that Rule 17.1(f)(1)(E) and proposed 17.1(f)(3)(D) could be clarified to account for the *State v. White* opinion by indicating when an interactive audiovisual system may be used for sentencing.

Accordingly, if this Court is inclined to adopt Petitioner’s proposed rule amendments as set forth in the Second Amended Petition and desires to include verbiage to clarify when an interactive audiovisual system may be used for sentencing, Commentor suggests adding the verbiage “if the parties stipulate according to Rule

1.5(c)(3)” before the phrase “using an interactive audiovisual system” in Rule 17.1(f)(1)(E), highlighted in red, as follows:

(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 if the parties stipulate according to Rule 1.5(c)(3), using an interactive audiovisual system.

and in proposed Rule 17.1(f)(3)(D), highlighted in red, as follows:

(D) Sentencing. After entry and acceptance of a remote plea, the court may sentence the defendant on the same day or later, in-person, telephonically, or if the parties stipulate according to Rule 1.5(c)(3), using an interactive audiovisual system.

Commentor’s suggestions relating to 17.1(f)(1)(E) and proposed 17.1(f)(3)(D) as set forth above are incorporated into the entirety of Petitioner’s proposed amendments as set forth in the Second Amended Petition, as reflected in the Appendix to this Comment.

III. Conclusion

For the reasons stated above, if this Court is inclined to adopt Petitioner’s proposed amendments based on the proposals in Petitioner’s Second Amended Petition, Commentor proposes that it adopt the rule amendments as set forth in the Appendix to this Comment.

Respectfully submitted this 30th day of April, 2025.

By /s/ David K. Byers

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APPENDIX

(deletions shown with ~~strikethrough~~, 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 ~~Videconference~~ 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 videconference~~ 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 if the parties stipulate according to Rule 1.5(c)(3), 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 on the same day or later, in-person, telephonically, or **if the parties stipulate according to Rule 1.5(c)(3)**, 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]