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ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Rules 1.5, 17.1, 17.2,
and 17.3 of the Arizona Rules of
Criminal Procedure

Supreme Court No. R-24-0005

Joint Comment by the Directors of the
Maricopa County Indigent Defense
Agencies

The Maricopa County indigent representation offices (IR) collectively handle most cases filed in Maricopa County in which there has been a finding of indigency. The Office of Public Defense Services (OPDS) provides administrative and financial oversight to the staffed offices and the Office of Contract Counsel (OCC). The staffed offices are comprised

of the Office of the Public Defender (OPD), the Office of the Legal Advocate (OLA), the Office of the Legal Defender (OLD), and the Office of the Public Advocate (OPA). As the Directors of Indigent Defense in Maricopa County, we appreciate the intent of the Second Amended Petition to enhance procedural efficiency and access to justice by permitting remote appearances for entry of pleas and sentencings in limited jurisdiction courts. However, we oppose the petition as currently drafted because it does not fully resolve the constitutional concerns raised in earlier comments, particularly those submitted by the Arizona Attorneys for Criminal Justice (AACJ). Specifically, the proposed amendments still lack a clear requirement that the defendant consent to be sentenced remotely. We also offer recommendations to clarify the scope and applicability of the proposed rules to promote consistency across case types and jurisdictions.

I. Changes from the first petition do not clearly address the Constitutional concerns raised by the first petition.

The first petition proposed amending Ariz. R. Crim. P. 1.5(c)(1) to add misdemeanor sentencings and misdemeanor probation violation dispositions to the list of proceedings that a court can unilaterally require defendants appear remotely. Presumably to address the Constitutional concerns raised by AACJ, the second amended petition removed the proposed amendments to Rule 1.5. However, the second amended petition added language in Rule 17.1(f)(3)(D) that would permit a court to sentence a defendant remotely after entry and acceptance of a remote plea without specifying that consent of the defendant is required. This creates ambiguity as to whether, in a situation in which the court has required

a remote entry of plea as permitted under Rule 1.5(c)(1)(G), the court must obtain consent of the defendant to proceed to sentencing remotely under Rule 17.1(f)(3)(D).

This omission raises due process concerns. The Arizona Court of Appeals recently reaffirmed the Constitutional right of a defendant to be present in-person for a sentencing proceeding. The Court also agreed that under the current version of Rule 1.5, a defendant can waive that right and be sentenced remotely:

Under the Sixth and Fourteenth Amendments, “[a] criminal defendant has the right to be physically present at every critical stage of a trial,” including sentencing. *State v. Forte*, 222 Ariz. 389, 392 ¶ 7, 214 P.3d 1030, 1033 (App. 2009) (citation omitted). Nothing in the Constitution though stops a defendant from voluntarily waiving his right to be present in court. *Id.* at 393 ¶ 12, 214 P.3d at 1034 (citation omitted). So long as the superior court follows the requirements in Rule 1.5(c)(3), the Constitution is no roadblock to holding a virtual hearing for a misdemeanor sentencing.

White v. State, 1 CA-SA 24-0258, 2025 WL 555077, at *3 (App. Feb. 20, 2025).

The proposed rule amendment, by failing to reference or require the defendant’s consent, creates ambiguity about whether sentencing may occur remotely over the defendant’s objection when a plea is entered remotely. This could lead to inconsistent interpretation causing constitutional violations.

II. Recommended Amendments

As a more practical matter, the procedural provisions for a remote entry of plea and sentencing contained in the second amended petition's Rule 17.1(f)(B)--(D) need not be restricted to limited jurisdiction courts. These procedures are appropriate for remote entry of plea and sentencings in felony cases as well--which are permitted, upon stipulation of the parties, under Rule 1.5(c)(2) and (c)(3).

We also do not see any reason to restrict remote sentencing, when a defendant consents, only to cases in which the entry of plea was conducted remotely. If a defendant enters a plea in-person, it may still be appropriate for the court, with consent of the defendant, to conduct the sentencing remotely. The proposed Rule 17.1(f)(3)(D) appears, however, not to allow this. To address these concerns, we recommend the petition not be adopted as currently drafted. We would support the proposed changes to Rule 17.1(D) in the second amended petition if amended as follows:

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

We also recommend changing the heading of Rule 17.1, subsection (F), to "Entering a Plea and Sentencing Remotely" so that the provisions contained in Rule 17.1((f)(1)(A) – (G) apply to remote entry of plea and sentencing proceedings in both felony and misdemeanor cases.

III. Conclusion

We support the objectives of the petition. However, we urge the Court not to adopt the petition as currently drafted. The failure to explicitly require the defendant's consent to remote sentencing introduces unacceptable constitutional risk. With some revisions, however, the rule changes will promote access, efficiency, and fairness in resolving criminal cases.

Respectfully submitted this day of April 30, 2025.

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