

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

Petition to Amend Ariz. R. Crim. P. 17.1
and 41, Form 28.

No. R-25-0050

**Comment of Arizona Attorneys for
Criminal Justice regarding Petition
to Amend Ariz. R. Crim. P. 17.1 and
41, Form 28**

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 Petition to amend Arizona Rules of Criminal Procedure 17.1 and 41, Form 28.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 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 supports this petition in part. The current petition seeks to remedy problems created by this Court's adoption of the amended petition in R-24-0005 last year, which added the duplicative and contradictory Rule 17.1(f)(3). AACJ filed two comments on that petition and suggested that the proposal overcomplicated subsections (f)(1) and (f)(3) and offered an alternative proposal. The petition in R-25-0050 largely tracks the structure of AACJ's prior alternative proposal by merging those two subsections and eliminating duplicative—and sometimes contradictory—language.

AACJ's only concern with the petition is maintaining the language in Rule 17.1(f)(1)(A) that the court has discretion to accept or decline a remote plea. This is problematic for two reasons.

First, defendants have a constitutional right to be physically present for sentencing, if they so choose, and Arizona's rules may not abrogate that right. U.S. Const. amends. VI, XIV; Ariz. Const. art. 2, § 24; *United States v. Gagnon*, 470 U.S. 522, 525-26 (1985); *White v. State*, 259 Ariz. 310, 313 ¶ 17 (App. 2025) (citing *State v. Forte*, 222 Ariz. 389, 392 ¶ 7 (App. 2009)). To the extent Rules 1.5 and 17.1(f)(1)(A) say otherwise, they are unconstitutional. Remote appearance for defendants is especially problematic when they are unrepresented, because they

often have difficulty understanding the proceedings for myriad reasons (drug withdrawal, incompetency, hearing impairment, court going too fast, etc.).

Second, in some cases, the defendant wishes to be sentenced remotely, particularly if appearing physically in court creates a substantial hardship (e.g., traveling from out of state, missing work, or health or disability concerns). AACJ is concerned that courts might require a person who has tremendous difficulty traveling to the courthouse to travel to an LJC in Arizona even when both the prosecutor and defendant agree to a remote procedure. In some cases where the defendant is disabled, such a refusal may violate the Americans with Disabilities Act. AACJ cannot conceive a reason why a judge would properly refuse such a request in a misdemeanor case. For this reason, AACJ submits it is important to rephrase this sentence in existing Rule 17.1(f)(1)(A) so it reads, “if the defendant consents and otherwise satisfies the requirements of this rule, the court must accept a remote plea and/or sentencing.”

Not every case is suitable for remote pleas and sentencing. The current rules place the decision-making power in the hands of the court. Trial judges often defer to clerical staff in deciding the best way to process cases, and clerical staff naturally are concerned with efficiency. Criminal justice is inherently inefficient, and thus the court may fail to show the proper deference to the defendant’s constitutional rights when deciding whether to allow/deny or require the defendant to proceed remotely.

The decision properly belongs in the hands of the defendant, who is the only person in the courtroom with a constitutional right to appear physically in that courtroom.

With that exception, AACJ otherwise supports the petition.

DATED (electronically filed): April 20, 2026.

By: /s/ David J. Euchner
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