

Supreme Court Criminal Rules Review Committee
Hon. Kevin E. Kane, Chair
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SUPREME COURT OF ARIZONA

In the Matter of PETITION TO) Supreme Court
AMEND THE FORMS APPENDED TO THE) No. R-03-0029
RULES OF CRIMINAL PROCEDURE)
)
) Amended Petition to Amend
) the Forms Appended to the
) Rules of Criminal Procedure
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I. INTRODUCTION

The original rule petition in R-03-0029 was filed on October 1, 2003, by Judge George T. Anagnost, who asked that the forms following the Rules of Criminal Procedure be deleted for the following reasons: (1) courts do not use the forms attached to the rules, having developed their own forms appropriate for the processing of criminal cases; (2) although the forms are not needed, the State incurs substantial costs in paper and printing time to reproduce these forms in the statutes, rule books, and other bulletins; (3) removing the forms from the published rules will save money and effort and will not impair the function of

the criminal process; (4) appropriate forms may be provided by Administrative Code, which is now becoming the preferred method of publishing new forms to the court community.

At its June 2004 rules agenda, the Arizona Supreme Court continued the matter so that a committee could be formed to review all the forms to determine whether they needed updating and whether they should be transferred to the Code or retained in the Rules of Criminal Procedure. The membership of the Committee, denominated the Supreme Court Criminal Forms Review Committee ("the Committee"), is listed in Attachment I. The undersigned Judge of Phoenix Municipal Court chairs the Committee.

II. SUMMARY OF PROPOSED CHANGES

The revised forms, Attachment II, were drafted by a Committee comprised of prosecutors, defense counsel, and representatives of the court. They are gender neutral, use contemporary language, and comply with the current criminal rules and statutes. They represent what the Committee views as contemporary best practice for use in a modern court setting both in limited jurisdiction and superior courts. The Committee recommends to the court that the proposed forms be adopted for statewide use. At such time as the Arizona Supreme Court finally adopts the proposed forms, the Committee will provide conforming comments to the Rules that reference the forms.

(1) Form 1 (Complaint):

The Committee recommends the deletion of existing Form 1. The Committee believes that no useful purpose is served by proposing a single form of Complaint for use by the state's numerous prosecutorial agencies, all of which have individualized forms already in use.

(2) Form 2(a) (Warrant for Arrest--Justice Court):

The Committee recommends combining existing Form 2(a) and 2(b) into a single Form 2 because there are no substantive differences between a misdemeanor and felony warrant for arrest. The Committee has not changed the substance of the existing Forms 2(a) and 2(b).

As with all the forms described below the committee recommends use of a template which is exceedingly legible and readily permits adaptation by all jurisdictions. The format represented by attachment II is the format that the Committee recommends.

(3) Form 2(b) (Warrant for Arrest--Superior Court):

See above.

(4) Form 3 (Summons):

The Committee added appropriate language regarding reasonable accommodations for persons with disabilities and a certificate of service by mailing.

(5) Form 4 (Release Questionnaire):

The Committee revised the arrangement of information on the form to be more user friendly and electronically adaptable. The Committee updated language regarding victim information and domestic violence and added a clause concerning fugitive arrest under the Uniform Criminal Extradition Act. The Committee eliminated the instructions to the magistrate currently found in Form 4 as unnecessary in light of judicial educational programs. The Committee recognizes the impracticality of a form that requires completion by different persons. Therefore, the parts of the form to be completed by law enforcement, Part I and Part III, were consolidated into one section in the new Form 4. Part II of the current Form 4, which is filled out by the defendant or magistrate, has been separated into a new Form 4(a).

The Committee was unable to agree whether to include a question on national origin and citizenship found in current Form 4. Some members of the Committee believed this line of questioning is inappropriate due to the possibility of incrimination, and that the warning in the instructions is sufficient to warn of the dangers of incrimination. Other members believed national origin and citizenship did not necessarily equate to illegality or guilt but instead were relevant to community ties and the issue of release. The

portion of Form 4(a) which is in dispute has been placed in brackets. The Committee invites comment on this issue.

In addition to the above, the Committee added three new subsections to Form 4 using a checklist format for ease of use. The new subsections are captioned: Drug Offenses, Crimes Against Persons, and Domestic Violence Defendant Issues. The two latter new subsections provide the Court with specific information about the potential for future violence or threats by the accused, any violence used or threatened against the alleged victim(s) or witnesses of the current offense, as well as any past threats or violent acts committed by the accused. The Drug Offense section addresses issues relevant to controlled substance offenses.

(6) Form 5 (Financial Statement):

The Committee recognizes the complex nature of personal finances and proposes revisions to Form 5 that more accurately, fairly, and comprehensively capture the income, assets, and expenses of persons seeking appointment of counsel and appropriate bond amounts. The checklist format serves as a reminder to defendants about common types of resources, including the addition of any beneficial interest in a trust.

The Committee also recognizes the need to separate the defendant's personal information from the Motion for Appointment of Counsel, Orders, and Recommendations so that the form may be

kept confidential from the public. Therefore, a separate Form 5(a) is recommended to record the motion and orders.

(7) Form 6 (Release Order):

The Committee provided spaces for the listing of bonds with respect to each complaint. There is no requirement that a separate bond be imposed for each charge. The Committee also added space to record optional release conditions.

The Committee recognizes that defendants are often provided release conditions for charges in multiple jurisdictions or for multiple cases in the same jurisdiction at the same Initial Appearance. Therefore, a new grid is proposed that allows the judicial officer to impose different release conditions for charges from different jurisdictions or for multiple cases in the same jurisdiction. The grid is not intended to require a separate condition for each individual charge in the same jurisdiction. The proposed grid also allows the court to identify the type of release:

- UR - Unconditional Release
- NF - Charge Not Filed
- OR - Own Recognizance Release
- 3P - 3rd Party Custody
- U - Unsecured Appearance Bond
- S - Secured Appearance Bond
- NB - Non-bondable

The proposed Form 6 adds to the material found in the current Form 6 by adding many of the release conditions commonly used by Arizona courts, e.g., fingerprinting and contact with probation

or parole officers. The Committee discussed the possibility of adding waiver of extradition as a mandatory condition of release; however the Committee was not convinced that such a mandatory condition would be proper since it requires the waiver of a right. The Committee invites comments from any interested parties on this point. Finally, the proposed form includes a new section that advises potential third party custodians of their obligations to the court to increase third party accountability.

(8) Form 7 (Appearance Bond):

The Committee recommends no substantive changes to Form 7. The only changes proposed by the Committee to the current Form 7 are limited to making the format consistent with the other proposed criminal forms and making the language of the form gender neutral.

(9) Form 8 (Waiver of Counsel):

The Committee recommends several clarifications and additional admonitions to the defendant. The proposed form allows the court to document that the defendant chose to proceed without counsel or that the defendant was not entitled to appointment of counsel and chose not to retain counsel. The proposal also reminds defendants that an attorney may be useful to investigate the lawfulness of a search, seizure, or police interview. Finally, the new form reminds defendants that

changing the decision about waiver of counsel cannot create a basis by itself to delay court proceedings.

(10) Form 9 (Notice of Appearance):

The Committee recommends no substantive changes to Form 9. The only changes proposed by the Committee to the current Form 9 are 1) changing the format so the form is consistent with all other proposed criminal forms and 2) adding a place for the attorney to include all necessary contact information and a bar number.

(11) Form 10 (Waiver of Preliminary Hearing):

The Committee recommends no substantive changes to Form 10. The only change proposed by the Committee to the current Form 10 is to make the format consistent with the other proposed criminal forms.

(12) Form 11 (Bind-Over Order):

The Committee recommends no substantive changes to Form 11. The only change proposed by the Committee to the current Form 11 is to make the format consistent with the other proposed criminal forms.

(13) Form 12 (Transmittal Certification):

The Committee recommends no substantive changes to Form 12. The only change proposed by the Committee to the current Form 12 is to make the format consistent with the other proposed criminal forms and to add a checkbox for the transmittal of any

audiotape or video tape pursuant to Rule 5.6, Rules of Criminal Procedure.

(14) Form 13 (Indictment):

The Committee recommends no substantive changes to Form 13. The only change proposed by the Committee to the current Form 13 is to make the format consistent with the other proposed criminal forms. However, the Committee proposes a new form, Form 13A (Grand Jury Minutes), as a guide for prosecutors who make presentations before a grand jury, since it is customarily the prosecutor who provides draft minutes to the grand jury clerk.

(15) Form 14 (Information):

The Committee recommends no substantive changes to Form 14. The only change proposed by the Committee to the current Form 14 is to make the format consistent with the other proposed criminal forms.

(16) Form 15 (Notice of Appointment of Mental Health Expert):

The Committee reviewed the common practices for the appointment of mental health experts in several Arizona jurisdictions and observed that the need for forms is required for four discrete functions: Rule 11 prescreening, transfer of cases to a special Rule 11 calendar, determination of competency, and determination of mental condition at time of offense. Therefore, the Committee recommends the addition of

two new forms and the redesignation of the Forms 15(a), 15(b), 15(c), and 15(d).

The first proposed new Form 15(a) serves as a vehicle for the trial court to order a prescreening examination of the defendant to determine whether reasonable grounds exist to order a mental health examination for the defendant.

The proposed Form 15(b) is an order intended for use when the trial court finds that reasonable grounds exist to order a full examination pursuant to Rule 11.

The proposed Form 15(c) is intended to be used in the appointment of expert(s) to determine competency to stand trial.

The proposed Form 15(d) is intended to be used in the appointment of expert(s) to determine mental condition at the time of the offense. When both types of examination are needed, jurisdictions may use a combined form or use both forms for the same expert. The Committee recommends that both forms be used so that the record clearly shows the purpose for which the appointment was authorized.

All of the forms were updated to reflect current rules and statutes. In the process of updating the forms, however, the Committee recognized the need for better delineation of responsibilities for the parties. For example, the rule (and therefore the form) requires the prosecutor and defense counsel to provide copies of reports to the expert. This joint

responsibility often leads to confusion and delay because each party believes the other party has provided the required information. Many jurisdictions have clarified this division of labor in local forms. The Committee recommends that the Rules of Criminal Procedure be modified to permit local variations conforming to local practice.

(17) Form 15-2 (Notice of Appointment of Mental Health Expert):

The Committee's recommendation is that current Form 15-2 be deleted because the notice of appointment is now contained in the changes recommended to Form 15.

(18) Form 16 (Omnibus Hearing Form):

The Committee recommends the deletion of this form. Omnibus hearings are not mandatory and have been modified to best suit individual court case processing requirements.

(19) Form 17 (Waiver of Right to be Present at Deposition):

The Committee recommends no substantive changes to Form 17. The only change proposed by the Committee to the current Form 17 is to make the format consistent with the other proposed criminal forms.

(20) Form 18 (Plea Agreement):

The Committee recommended the addition of a number of advisements that are currently in use throughout the State of Arizona:

1. The caption alerts users to the fact that the form is not adequate for pleas in capital cases.
2. The form lists the current sentencing structure - presumptive, minimum, and maximum terms and required community supervision.
3. The form identifies probation eligibility.
4. The form identifies the maximum fine amount and reminds parties that restitution and waiver of extradition may be required.
5. The form acknowledges that the defendant gives up the right to a direct appeal.
6. The form confirms that both the defendant and the state have the right to withdraw from a plea agreement when the court rejects the plea agreement provisions regarding sentencing. If the parties choose to go forward with sentencing in these circumstances, they are reminded that the court is not bound by any of the sentencing stipulations.
7. The form includes the new admonition regarding immigration consequences pursuant to Rule 17.2.
8. The form recognizes that the parties may agree to waive a trial for both the guilt phase and the penalty phase of a case or only one of those phases. However, the state may

require a defendant to waive a trial for both phases unless the defendant pleads to the court without a plea agreement.

(21)Form 19 (Guilty/No Contest Plea Proceeding):

The recommended changes to Form 19 mirror the changes made to Form 18. The new Form 19 allows the court to make a record that the defendant chooses to waive a trial for both the guilt phase and the penalty phase, or only one phase.

(22)Form 20 (Waiver of Trial by Jury):

The proposed form advises the defendant that a trial by jury is also available for facts "used to aggravate any sentence." The proposed form provides the parties with the option of waiving a trial by jury for either the guilt phase or the penalty phase, or waiving the jury for both phases. The phrase "group of ordinary people" was replaced by "group of citizens."

(23)Form 21 (Application for Restoration of Civil Rights; Withdrawal of Guilty Plea; Vacation of Conviction):

Because civil rights may be restored without the restoration of the right to possess or carry a gun or firearm, the application was clarified to make the request clear.

(24)Form 22 (Transmittal for Record on Appeal to Superior Court):

The Committee recommends no substantive changes to Form 22. The only change proposed by the Committee to the current Form 22 is to make the format consistent with the other proposed criminal forms and to add a checkbox for the transmittal of any

audiotape or video tape as allowed by the Rules of Criminal Procedure or local rule.

(25) Form 23 (Notice of Rights of Review After Conviction):

In order to make this form accurate for use in all criminal cases, and because the initiation of either an appeal or post-conviction proceedings in a capital case is different from any other criminal case, the Committee modified the existing form so that the appellate and post-conviction rights for capital and non-capital defendants are set forth in separate sections. No other substantive changes are recommended by the Committee.

(26) Form 24(a) (Notice of Appeal from Superior Court):

The Committee recommends no substantive changes to Form 24(a). The only change proposed by the committee to the current Form 24(a) is to make the format consistent with the other proposed criminal forms.

(27) Form 24(b) (Notice of Appeal to Superior Court):

The Committee recommends no substantive changes to Form 24(b). The only change proposed by the committee to the current Form 24(b) is to make the format consistent with the other proposed criminal forms.

(28) Form 24(c) (Notice of Post-Conviction Relief):

The Committee has inserted a new question which is question 6 in the new Form 24(c). It asks the petitioner to state whether a claim of ineffective assistance of counsel will be

raised against current defense counsel. The reason for this question is that the Committee learned that it is the normal practice of most courts to appoint the Public Defender's Office as PCR counsel, unless that agency was previously allowed to withdraw due to conflict. In the majority of criminal cases, it is the Public Defender who represents criminal defendants in trial or on appeal. As a consequence, of the PCR matters initially appointing the Public Defender as counsel, the vast majority are delayed because the Public Defender moves to withdraw as PCR counsel due to a conflict because the defendant wants to raise a claim of ineffective assistance against prior Public Defender counsel. Question 6 is now included in the hope that it will alert the Court to a potential conflict, resulting in the Court appointing an entity other than the Public Defender to represent the defendant in post-conviction proceedings. No other substantive changes to Form 24(c) are proposed by the Committee.

(29) Form 25 (Petition for Post-Conviction Relief):

The current version of Form 25 was created before Rule 32 was amended to provide for the filing of a Notice of Post-Conviction Relief (Form 24(c)). Consequently, there is a substantial amount of duplication between the information obtained in Form 24(c) and Form 25. The Committee has revised Form 25 to eliminate most of the repetition. The third

paragraph from the instructions section of current Form 25 has been deleted because this information is already in Form 24(c). Likewise, questions 3, 8, and 11 of current Form 25 have been deleted because that information is already contained in Form 24(c). No other substantive changes to Form 25 are recommended by the Committee.

(30) Form 26 (Request for Preparation of Post-Conviction Relief Record):

The Committee recommends no substantive changes to Form 26. The only change proposed by the Committee to the current Form 26 is to make the format consistent with the other proposed criminal forms.

(31) Form 26(a) (Subpoena):

The Committee recommends no substantive changes to Form 26(a). The only changes proposed by the Committee to the current Form 26(a) are to make the format consistent with the other proposed criminal forms, to add notice of ADA accommodation, and to remove the notary language.

(32) Form 26(b) (Alternative Form of Subpoena):

The Committee recommends no substantive changes to Form 26(b). The only changes proposed by the committee to the current Form 26(b) are to make the format consistent with the other proposed criminal forms, to add notice of ADA accommodation, and to remove the notary language.

(33) Form 27 (Repealed):

Form 27 was previously repealed.

(34) Form 28 (Out of State Guilty Plea Proceeding):

The only changes proposed by the Committee to the current Form 28 are limited to making the format consistent with the other proposed criminal forms, making the language of the form gender neutral, and making the form consistent with the recommended changes to Form 19 above.

(35) Form 29 (Entry of Not Guilty Plea and Advisements):

The Committee recommends no substantive changes to Form 29. The only change proposed by the Committee to the current Form 29 is to make the format consistent with the other proposed criminal forms and to make the language of the form gender neutral.

III. CONCLUSION

The Committee respectfully requests that the Court adopt the attached Forms and mandate their use in all Arizona courts, with allowances for non-substantive local variations and adaptations.

DATED this 1st day of November, 2006.

Hon. Kevin E. Kane, Chair
Supreme Court Criminal Forms Review Committee