



## CITY OF TUCSON

*The Sunshine City* • CITY COURT

**Honorable  
Margarita B. Bernal  
Municipal Court Judge  
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March 26, 2007

Clerk of the Court  
Arizona Supreme Court  
1501 W Washington  
Phoenix, AZ 85007

Re: Comment pursuant to Rule 28  
Petition to Amend Rule 1.6 of Az Rules of  
Criminal Procedure

Attn Clerk of the Court

Please accept this correspondence in lieu of formal pleadings, in support of the Petition to Amend Rule 1.6 of the Arizona Rules of Criminal Procedure.

Background:

Tucson City court magistrates have been conducting initial appearances on felonies and misdemeanors pursuant to interagency agreements for several years. Tucson City court had been the physical location of all weekend felony appearances since approximately 1990. As the consolidation of the limited courts has accelerated in Pima County pursuant to several administrative rules, city court judges have conducted, daily Monday-Friday, combined initial appearances for all in custody defendants. Traditionally one initial appearance session was necessary until approximately May 2004, when two sessions were authorized.

Once the twice a day initial appearances were established, video technology was utilized and the Pima County Detention administration developed, planned and built their facility including two new courtrooms to address the increasing jail dockets, incorporating the several committees' recommendations, insuring compliance with Victim's rights and the public's/media's easy access to court proceedings at the jail facility.

The jail expansion was directed and coordinated, with full consideration and respect for a county wide ad hoc committees' recommendations regarding respect for the defendant's due process, the rules of criminal procedure and the public's right to be present at initial appearances.

One courtroom was developed inside the jail, next to the "holding area" where new arrestees awaited their court appearance. The jail constructed the new expansion of the

courtroom with the intent of releasing misdemeanor defendants quickly.

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Clerk of the Supreme Court

Comment to Petition to Amend Rule 1.6

Previously they had processed all defendants: stripped searched, changed into jail clothing and fed. With the new procedures, defendants would remain in their street clothing, sit in an open holding area, adjacent to the internal jail court, "the East courtroom." Additionally in order to address Victims Rights concerns and to insure access to the public and media, a second courtroom was built, again, in consideration of the ad hoc committees recommended processes and procedures. The videoconferencing of initial appearances had been incorporated and planned from the initial discussion with all of the relevant agencies and in compliance with all local rules and procedures.

There existed however, one glaring omission: , the change to Rule 1. 6 was not raised, The construction of the expansion, the procedures developed by the jail, and was completed in good faith and with the expectation that the procedures were in compliance with all statutes and procedures

Once the issue of the change to Rule 1. 6 was raised in March 2006, the court ordered that initial appearance procedures be changed effective April 2006. The city court (initial appearance ) judges were required to conduct initial appearances in the internal "east courtroom."

Unfortunately, the "east courtroom " facility was not developed, planned or constructed with the idea that a judge, court staff, pretrial service staff, public defenders would be present. Additionally, the unplanned changes to the initial appearance procedure were required without sufficient consideration to the safety of judges, court staff as they entered the detention facility since there had been no planning for this type of activity.

The result was a crowded noising courtroom, where the judge and staff traveled to the courtroom in the transport area where felony prisoners, unrestrained, were awaiting processing to be taken to superior court hearings. The result was predictable: catcalls toward female staff, and rude sexual comments were made by the inmates, which were not corrected. Eventually, several months later, prisoners were eventually ordered locked up when the judge and judicial staff was present. The issue of judicial and staff security was not considered when the unanticipated changes were made to the initial appearance procedures. The present courtroom is still loud, difficult for the interpreter, the defendant and court to hear proceedings due to the crowded work space for all, insufficient audio conditions in a courtroom, not constructed for face to face initial appearances

Access to victim input remains limited since the initial appearance judges are required to be in the "East courtroom" for the felony initial appearances and not in the Mission courtroom which had been designed and planned specifically for public access to the victims, public and to insure media access. Presently, the judge begins the session in the Mission courtroom for misdemeanors and felony defendants who wish to be seen via video and, where victims are present. The judge then reports to the East courtroom to conduct the initial appearance for those felony defendants who do not waive their face to face appearance with the judge.

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Recommendation:

The Pima County jail and criminal justice community continue to coordinate efforts to comply with the Rule 1.6, but given the background, the planning, effort and expense that had been expended in this situation, I believe permitting a permissive use of interactive audiovisual devices for certain proceedings. , would allow local jurisdiction to develop procedures that insure the defendants rights are preserved, yet balancing the safety concerns of the judicial staff and insuring consistent, appropriate access to the victims and insure a public and transparent proceeding.

By allowing the procedure recommended by the proposed rule change, the Presiding Judge in each county, and in coordination with the local detention authority, will increase the processing efficiency of many misdemeanor cases, save limited resources for security and safety of judicial employees as well as the public and preserve the due process rights of defendants and victims.

In large volume courts, Tucson City Court, Phoenix City Court, etc. , the numbers of misdemeanor cases processed in our limited jurisdiction courts and through our overcrowded detention facilities demands the ability to resolve cases in a quick and efficient manner.

The Pima County experience with the creation of the “new generation jail” with the emphasis on limiting costs, by processing defendants in a more streamline manner, is based upon, and constructed with the flexibility and cost saving of provided by the use of videoconferencing technology. The expense of transportation or holding defendants to transport to our limited courts would far outweigh any benefit of holding a defendant on a minor misdemeanor charge.

I would respectfully recommend permitting the use of the audiovisual devices for certain proceedings, in the discretion of the Court, which would favorably impact the efficient operation of the court without negatively impacting the rights of the participants.

I respectfully support the proposed rule change to Rule 1.6

Sincerely,  
/s/ MBernal

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Margarita B. Bernal  
Municipal Court Judge

Hon Jan Kearny, Presiding Judge  
Hon. Tony Riojas, Presiding Magistrate  
David Berkman, Pima County Attorney  
Patricia Hurley-Alvarez, Pima County Criminal Justice Council

Foster Robberson, State  
Bar, Rules Committee  
Jimmie Smith, Bar Pres.  
Arizona State Bar

Attachment Proposed Rule 1.6 / Copies for the Clerk of The court (6)