

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY  
(FIRM STATE BAR NO. 0003200)

PHILIP J. MACDONNELL  
CHIEF DEPUTY  
301 WEST JEFFERSON STREET, SUITE 800  
PHOENIX, ARIZONA 85003  
TELEPHONE: (602) 506-3800  
(STATE BAR NUMBER 003813)

IN THE SUPREME COURT OF THE STATE OF ARIZONA

IN THE MATTER OF:  
  
PETITION TO AMEND THE RULE 1.6 OF  
THE ARIZONA RULES OF CRIMINAL  
PROCEDURE.

ARIZONA SUPREME COURT  
NO. R-06-0016

MARICOPA COUNTY ATTORNEY'S RESPONSE TO  
PETITION TO AMEND RULE 1.6 OF THE ARIZONA  
RULES OF CRIMINAL PROCEDURE

The Maricopa County Attorney hereby responds to the Petition to Amend Rule 1.6 of the Arizona  
Rules of Criminal Procedure.

Respectfully submitted this 18<sup>th</sup> day of May, 2007.

ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

BY: Philip J. MacDonnell  
PHILIP J. MACDONNELL  
CHIEF DEPUTY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Pima County Attorney has proposed to amend Rule 1.6 of the Arizona Rules of Criminal  
3 Procedure. This proposed change would increase the ability of the court to have criminal defendants  
4 appear via videoconferencing for various non-evidentiary hearings. The Maricopa County Attorney’s  
5 Office supports this Petition, with one addition.  
6

7 Technological advances have made videoconferencing a relatively easy and inexpensive tool  
8 for the courts. The use of such technology dramatically increases the efficiency of both the courts and  
9 the various detention facilities responsible for transporting prisoners. If videoconferencing in a  
10 particular jurisdiction is a better option than personal transportation, then that court should have the  
11 ability to use that technology. This should be a decision for the court to make, not the parties.  
12 Therefore, the Maricopa County Attorney’s Office would recommend that Rule 1.6(c) be amended to  
13 clarify that it is the court, not a party, which decides whether the video appearance is to be permitted.  
14 This can easily be accomplished by substituting the word “shall” with the word “may” in subsection (c).  
15 See Exhibit A.  
16

17  
18 It is our concern that the current language could be interpreted as allowing an interested party to  
19 enforce the video appearance regardless of the position of the other parties or the court. For example, a  
20 detention facility could refuse to transport prisoners, insisting that all non-evidentiary matters must be  
21 accomplished via videoconferencing. By changing the “shall” to “may”, the amended rule would be  
22

23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28

1 more consistent with the language in paragraph (a) of Rule 1.6 and would clarify any confusion about  
2 the court's ability to enforce this Rule.

3 Respectfully submitted this 18<sup>th</sup> of May, 2007.

4 ANDREW P. THOMAS  
5 MARICOPA COUNTY ATTORNEY

6  
7 BY: Philip J. MacDonnell  
8 PHILIP J. MACDONNELL  
9 CHIEF DEPUTY

10  
11 Copies of the forgoing mailed  
12 this 18 day of May, 2007 to:

13 Clerk of the Court  
14 Arizona Supreme Court

15 Barbara LaWall  
16 Pima County Attorney  
17 32 N. Stone Avenue, Suite 1900  
18 Tucson AZ 85701

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

Rule 1.6 Interactive Audio and Audiovisual Devices

a. **General Provisions.** When the appearance of a defendant or counsel is required in any court, subject to the provisions of this rule, the appearance may be made by the use of an interactive audiovisual device, including video conferencing equipment. An interactive audiovisual device shall at a minimum operate so as to enable the court and all parties to view and converse with each other simultaneously.

b. **Requirements.** In utilizing an interactive audiovisual device the following are required:

(1) A full record of the proceedings shall be made as provided in applicable statutes and rules; and

~~(2) The court shall determine that the defendant knowingly, intelligently and voluntarily agrees to appear at the proceeding by an interactive audiovisual device; and~~

(2)(3) Provisions shall be made to allow for confidential communications between the defendant and counsel prior to and during the proceeding; and

(3) Provisions shall be made to allow a victim a means to view the proceedings; and

(4) Provisions shall be made to ensure compliance with all victims' rights laws.

c. **Proceedings.** Appearance by interactive audiovisual device, including video conferencing, ~~shall~~ may be permitted at any hearing, including initial appearance, arraignment, shall be permitted in the discretion of the court and at any other court proceeding except that:

~~(1) Written stipulation of the parties is required in all proceedings prior to the commencement of the proceeding, except in initial appearances and not guilty arraignments; and This Rule 1.6 shall not apply to any trial, evidentiary hearing or probation violation hearing; and~~

(2) This Rule 1.6 shall not apply to any felony sentencing.