

Committee on Limited Jurisdiction Courts
Hon. R. Michael Traynor, 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)	
)	Comment of the Committee on
)	Limited Jurisdiction Courts
)	

The Committee on Limited Jurisdiction Courts, through undersigned, files the following comment, pursuant to Rule 28, Arizona Rules of the Supreme Court, to Petition R-03-0029, Ariz.R.Crim.P. relating to proposed amendments to the forms appended to the Arizona Rules of Criminal Procedure.

Having reviewed the proposed amended forms, the Committee on Limited Jurisdiction Courts (LJC) met for two sessions with the Supreme Court Criminal Rules Review Committee (Review Committee) about the applicability and usability of the forms in limited jurisdiction courts. The agreed upon revisions to proposed forms are summarized below and attached.

In general, the revisions to the forms, Attachment I, include changes to font size and style, margins to conform with Rule 10, Ariz.R.C.P.; changing checkboxes to “[]” to aid in software conversion; revising the notary block to be consistent with the Notary Reference Manual; because Arizona does not have “precincts”, the removal of references to that term; and conforming the forms to limited jurisdiction processes and procedures.

(1) Form 1 (Complaint):

The LJC agrees with the deletion of existing Form 1 for the purpose stated by the Review Committee.

(2) Form 2(a) (Warrant for arrest (Justice Court)) and Form 2(b) (Warrant for arrest (Superior Court)):

Forms 2(a) and (b) warrant for arrest were referred to the LJC Rule Implementation Subcommittee for consideration. This subcommittee was established to develop guidance and training for the implementation of the R-03-0027 and R-03-0028. Members of the subcommittee included judges and representatives of LJC, the Department of Public Safety, Pre-trial Services and the Administrative Office of the Courts. The subcommittee has recently finalized two rule-based arrest warrants; in Attachment I as Form 2(a) and Form 2(b). The rule warrants have been designed with law enforcement officers and ACIC Wants and Warrants Database data entry flow in mind.

After developing the two separate rule warrants and recognizing their ease of use and understanding, LJC recommends that the separate arrest warrants (Forms 2 (a)-(g)) provided in Attachment I be adopted.

(3) Form 3 (Summons):

LJC recommends the division of Form 3 into two forms (Form 3(a) and (b)) to distinguish a Summons that requires the defendant to have fingerprints taken from one that does not. Form 3(a) highlights the fingerprint requirement for the defendant, while with Form 3(b) it is made clear that fingerprints are not required.

(4) Form 4(a) (Release questionnaire completed by law enforcement):

LJC recommends the division of Form 4 into two forms (a) for law enforcement completion and (b) for defendant completion.

Form 4(a), as it is included in Attachment 1, has been revised to ensure that judicial officers have the information necessary for Proposition 100 enforcement and victim protection by adding sections 1-3 to paragraph B, "victim(s) and defendant reside together" to paragraph E, and "Prior Protective Order" to paragraph F. Additionally, "DV" in paragraph F was replaced with "Domestic Violence."

(5) Form 4(b) (Release questionnaire completed by defendant):

This form was referred to the LJC/COSC Proposition 100 Subcommittee for consideration. This subcommittee was established to review rules, statutes, forms, policies and procedures and published documents to ensure full implementation of Proposition 100. The members include representation from the LJC, the Committee on Superior Court, the Commission on Minorities in the Judiciary, the Commission on Victims in the Courts, and various Initial Appearance benches.

LJC recommends the changes set forth in Form 4(b) but is not able to review any further recommendations by the LJC/COSC Proposition 100 Subcommittee.

(6) Form 5 (Financial statement):

LJC has separated the defendant's financial statement (Form 5(a)) from the motion of appointment of counsel, orders and recommendations (Form 5(b)) to better suit limited jurisdiction case flow. Additionally, LJC has renamed Form 5(b) to Motion for Appointment and Order.

Changes to Form 5(a) include the options to order monetary amounts for the financial assessment and contribution to the cost of the court-appointed attorney.

The verbiage regarding "Recommendation after Financial Assessment" and "Order after Financial Assessment" has been removed. At the time the judicial officer is making this order, the financial assessment has already been completed using Form 5(a).

(7) Form 6 (Release order):

LJC recommends:

1. the addition of the "Booking Number" and defendant "Date of Birth" in the caption and the division of complaints with unconditional release from the other types of release,
2. changing Items 5-8 in the paragraph for Mandatory and Standard Condition of Release to open check boxes indicating they are not mandatory conditions,

3. the addition of “Not go to scene of the alleged crime” to Item 12 in the paragraph for Other Conditions of Release,
4. changing “Appear as directed for fingerprinting and photographing” to “Electronic monitoring, if available. (Mandatory if charged with a felony offense under Chapter 14 or 35.1 of Title 13” in Item 16 in the paragraph for Other Conditions of Release,
5. changing “You have the right to be present at your trial and at all other proceedings in you case, and if you file to appear, a warrant will be issued for your arrest and the trial or proceeding may be held without you” to “You have the right to be present at your trial and at all other proceedings in your case. If you fail to appear the court may issue a warrant for you arrest and/or hold the trial or proceeding in your absence” in the consequences paragraph, and
6. capitalizing state when used with “of Arizona”.

(8) Form 7 (Appearance bond):

LJC recommends:

1. re-titling “SECURITY” to “SECURED APPEARANCE BOND” and removing “Secured Appearance Bond” beneath the title,
2. the addition of the name, address and phone number of the depositor,
and
3. the adoption of the proposed Form 7 Attachment A.

(9) Form 8 (Waiver of Counsel):

LJC recommends:

1. changing the title of this form to “Notice of Right to Counsel and Waiver”, and
2. capitalizing Court in the sentence after the second check box, and adding checkboxes to indicate felony or misdemeanor.

(10) Form 9 (Notice of appearance):

LJC recommends adoption of the proposed form.

(11) Form 10 (Waiver of preliminary hearing):

LJC recommends:

1. the addition of “unless charged by grand jury indictment” to the first sentence of the first paragraph,
2. changing “crimes” to “crime(s)” in the second paragraph,
3. removing “[misdemeanor]” and the brackets surrounding felony in the first paragraph.

4. rewriting paragraph 3 and 4 as follows:

“I understand that under the Arizona Constitution, I have a right to a preliminary hearing, if charged by means other than a grand jury indictment, at which a magistrate, without making any determination of my guilt or innocence, will decide whether there is sufficient evidence against me to establish probable cause to try me on these charges. I understand that I have a right to a lawyer at the preliminary hearing, and that if I am unable to obtain the services of a lawyer without incurring substantial hardship to myself or to my family, one will be furnished for me free of charge.

I understand that the prosecutor would be required to present witnesses and evidence against me at such a hearing to demonstrate that there is probable cause to try me on the charges and that I would have the right to cross-examine such witnesses and to present evidence of my own innocence. I understand that if the prosecutor failed to show probable cause to try me, the charge(s) against me would be dismissed without prejudice to re-filing.”

5. changing “offenses” to “offense(s)” in paragraph 5, and
6. adding “I” after “defendant, and” and before “consent” in defense attorney statement.

(12) Form 11 (Transmittal Certification):

LJC recommends changing “The Court Orders that the defendant ___ be held to answer before the superior court in __ Precinct, __ County, Arizona for the listed charges:” to “The Court Orders that the defendant ___ be held to answer the charges before the Superior Court in __ County, Arizona for the listed charges:” and the addition of a checkbox with “The court requests that the above misdemeanors be associated with the felony charge(s) set forth above”.

(13) Form 12 (Information):

LJC recommends changing “Audiotape or videotape of preliminary hearing, if any:” to “Audio or video record of preliminary hearing, if any”.

(14) Form 13 (Indictment):

LJC recommends moving “[Felony / Misdemeanor]” to after the word Indictment in the caption and removal of the brackets and changing “On” to “on” in the second line of the first paragraph.

Additionally, LJC recommends numbering the Indictment as Form 13(a) and the Grand Jury Minutes as Form 13(b).

(15) Form 14 (Information):

LJC recommends adoption of the proposed form.

(16) Form 15(a) (Notice of appointment of mental health expert (pre-screen)):

LJC recommends changing paragraph 7 to read “IT IS FURTHER ORDERED that the expert will submit the written report at least ___days prior to the pre-screen hearing date to the Court which will seal the original and provide a copy to defense counsel. Defense counsel shall provide a redacted copy of the report to the Court and the prosecutor’s office within a reasonable time after receipt.” This statement removes the “10 days prior” requirement which does not work within case processing time frames. It also requires the report be submitted to the Court instead of an entity written on a blank line.

LJC recommends the addition of the section symbol to the fifth paragraph after A.R.S.

(17) Form 15(b) (Rule 11 Order and stipulation):

LJC recommends:

1. changing “Superior Court of” to “Superior Court in” in the second paragraph, and
2. changing the verbiage of the first paragraph of the stipulation to “Both counsel stipulate to the appointment of only one mental health expert to examine the defendant.” This change removes the stipulation to the appointment of two mental health experts, one from each list of three provided by the State and the defendant.

(18) Form 15(c) (Notice of appointment of mental health expert (competency)):

LJC recommends adoption of the proposed form.

(19) Form 15(d) (Notice of appointment of mental health expert (mental condition at time of offense)):

LJC recommends adoption of the proposed form.

(20) Form 17 (Waiver of right to be present at deposition):

LJC recommends adoption of the proposed form.

(21) Form 18 (Plea Agreement):

LJC recommends the adoption of two plea agreements: one for felony non-capital cases and one for misdemeanor cases.

Form 18(a) adds “Felony” in the caption and adds “that” in two places in the last sentence of Item 6.

Form 18(b) adds “Misdemeanor” to the caption, changes the first paragraph to read “The defendant agrees to plead guilty / no contest to the following offense(s):” and allows space for the offense(s), class of offense and checkboxes for misdemeanor and petty/civil traffic offense. Items 1-10 from the original Form 18 are removed and replaced by new Items 1-8. The verbiage “and voluntarily place my initials beside each of the above paragraphs

and” is removed from the defendant’s acknowledgement because initialing each item is not required on this form.

(22) Form 19 (Guilty/No contest plea proceeding):

LJC recommends adoption of the proposed form.

(23) Form 20 (Waiver of trial by jury (non-capital)):

LJC recommends “, if applicable,” be added to the third paragraph in reference to fact used to aggravate any sentence.

(24) Form 21 (Application upon discharge):

LJC recommends adoption of the proposed form.

(25) Form 23 (Notice of rights of review after conviction (capital and non-capital)):

LJC recommends adding “IN SUPERIOR COURT*” after “AFTER CONVICTION” in the caption and referring to the use of Form 1 of Superior Court Rules of Appellate Procedure for limited jurisdiction court cases. The section symbol should also be added after A.R.S. in the second paragraph.

(26) Form 24(a) (Notice of appeal from superior court):

LJC recommends referring to the use of Form 2 of Superior Court Rules of Appellate Procedure for limited jurisdiction court cases.

(27) (Notice of appeal to superior court):

LJC recommends deleting Form 24(b) and indicating the use of Form 2 of Superior Court Rules of Appellate Procedure for limited jurisdiction cases.

(28) Form 24(c) (Notice of Post-conviction relief):

LJC recommends changing the verbiage for the last checkbox of 3.B. from “Superior Court of” to “Superior Court in” and renumbering this form as 24(b) if deletion noted above is adopted.

(29) Form 25 (Petition for post-conviction relief):

LJC recommends changing “superior court of the county” to “court” in paragraph 6.

(30) Form 26 (Request for preparation of post-conviction relief record):

LJC recommends adoption of the proposed form.

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

LJC recommends adoption of the proposed form.

(32) Form 26(b) Subpoena (Alternate-stand by):

LJC recommends adoption of the proposed form.

(33) Form 28 (Out of state guilty/no contest plea proceeding):

LJC recommends:

1. renaming this form “Telephonic guilty / no contest plea proceeding” because telephonic appearance is permissible for defendants who reside more than 100 miles from the Court;

2. changing “maximum penalty” to “range of penalties” in Item 4;

3. adding “[] Class 1 misdemeanor: a \$2500 fine, 6 months jail, and/or 3 years probation, plus surcharges and fees.” to Item 4;

4. removing the checkbox and verbiage “by jury on facts used to aggravate a sentence” from Item 8.b.;

5. rewriting the paragraph after Item 12 to read “I Certify that I have read and understand all of the matters cited above. That I wish to give up my constitutional rights including my right to an attorney and that I wish to plead guilty to the charge(s) of”, and adding space for the defendant to sign and date and provide his or her address and telephone number;

6. moving “Defendant: _____ Def. Attorney/Bar No.: _____

Interpreter: _____” to the end of the form ;

7. rewriting the officer certification to read “I CERTIFY that the above named defendant personally appeared before me, and acknowledged that he or she read all of the foregoing information and identified himself or herself to me _____ (drivers license # and/or a picture ID) and that I have affixed a print of the defendant’s right index finger to this

document.”; and

8. moving the judicial officer’s findings and acceptance of plea to the end of the form just after the Affidavit of Residency;

9. adding a notary block to the Affidavit of Residency; and

10. adding3. removing “(state minimum and maximum possible sanctions)” and adding a checkbox for a Class 1 misdemeanor with “3 years probation” in item 4.

11. Adding “(1)” and “(2) I reside more than 100 miles from the Court” to the second paragraph of the Affidavit of Residency.

(34) Form 29 (Entry of not guilty plea and advisement)

LJC recommends adoption of the proposed form.

(35) Form Index

LJC recommends that the form Index be updated to conform to the recommended addition of forms and title changes.

(36) Petition concluding paragraph

LJC recommends that the concluding paragraph in the petition be rewritten to read “The committee respectfully requests that the Court adopt the attached Forms for use in all Arizona courts with allowances for jurisdictional and non-substantive local variations and adaptations”. This language removes the request to mandate use of the forms as printed and clarifies further the ability for courts to modify the forms to conform to jurisdictional issues and local policies and procedures.

RESPECTFULLY SUBMITTED this 20th day of May 2007.

COMMITTEE ON LIMITED JURISDICTION COURTS

Honorable R. Michael Traynor
Committee on Limited Jurisdiction Courts, Chair

Electronically filed with the Clerk
Of the Supreme Court of Arizona
this 20th day of May 2007.

By: Susan Pickard