

**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 RULES 6, 7,  
AND 41 OF THE ARIZONA RULES OF  
CRIMINAL PROCEDURE

No. R-16-0041

JOINT COMMENT OF APDA AND  
AACJ IN SUPPORT OF PETITION

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Arizona Public Defender Association (“APDA”) and the Arizona Attorneys for Criminal Justice (“AACJ”) support the proposed amendments submitted by the Administrative Office of the Courts.

APDA is an Arizona non-profit corporation comprised of public defense offices and programs throughout the State of Arizona. The primary purposes of

the APDA include improving the quality of legal representation of poor people who face the loss of their liberty, safeguarding the constitutional rights of indigent individuals, and resolving criminal matters effectively and fairly.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order 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. The offices and individuals affiliated with the APDA and AACJ defend the overwhelming majority of individuals facing criminal charges in Arizona.

In its Petition, the AOC explains that its proposed amendments are part of an overall effort to follow through on recommendations contained in the Fair Justice for All Task Force Report. Significantly, the Fair Justice for All Task Force Report was created in response to this Court's Administrative Order of March 3, 2016, *see* [AO 2016-16](#), which states in part:

Our ideal of "justice for all" means that people should not be disparately punished because they are poor. While everyone should

face consequences for violating the law, criminal fines and civil penalties should not themselves promote a cycle of poverty by imposing excessive amounts or unduly restricting people's ability to be gainfully employed.

To promote these goals, practices in Arizona's courts should reflect these principles:

1. People should not be jailed pending the disposition of charges merely because they are poor. Release decisions and conditions should protect public safety and ensure the defendant's appearance at future proceedings.
2. Article 2, Section 18 of Arizona's Constitution provides that "There shall be no imprisonment for debt, except in cases of fraud." Consistent with this constitutional provision, people should not be jailed for failing to pay fines or other court-assessed financial sanctions for reasons beyond their control.
3. Court practices should help people comply with their court-imposed obligations, for example, by effectively alerting people to appearance dates, allowing deferred payment of fines, and allowing community service as an alternative to financial sanctions.
4. Sanctions such as fees and fines should be imposed in a manner that promotes, rather than impedes, compliance with the law, economic opportunity, and family stability.

The AOC's Petition is a welcome first step toward implementing part of these goals within the narrow context of the current language of Rules 6, 7, and 41. For purposes of clarification, we suggest that a comment to be added to the amendments to Rule 6.1(b) clarifying that this change is intended to broaden the circumstances under which counsel will be appointed to indigent defendants. Prior to this amendment, courts were required to appoint counsel at initial appearances in

criminal proceedings that “may result in punishment by loss of liberty”. Based on the work of the Fair Justice for All Task Force, it was recognized that some defendants facing misdemeanor charges were not appointed counsel under this standard because the prosecution stipulated that they would not be seeking any jail time. Some of these defendants, however, remained in custody on low bonds. The Task Force concluded that since these defendants were in custody on misdemeanor charges that they should be entitled to have the assistance of court appointed counsel to, among other things, advocate for their release. Hence, the new category of court appointed counsel needed to be added to this Rule.

Clearly, much more work remains to be done. Consequently, the APDA and AACJ will comment on other potential areas of improvement as proposals in those areas arise. The APDA and AACJ appreciate the efforts that the Court and AOC have undertaken in this vital area and look forward to working with other stakeholders to make the four principles set forth by this Court in its March 3, 2016, Administrative Order a reality.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of October, 2016.

By: /s/ David Euchner  
DAVID J. EUCHNER  
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