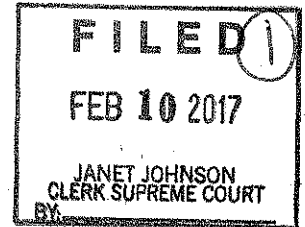


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SUPREME COURT OF ARIZONA

R- 17 - 0030

PETITION TO AMEND RULE 7.3 OF
THE RULES OF CRIMINAL
PROCEDURE

Supreme Court No. R-17-_____

Under Rule 28 of the Rules of the Supreme Court of Arizona, the Maricopa County Attorney's Office, the Office of the Arizona Attorney General, and Arizona Voice for Crime Victims (AVCV) respectfully petition this Court to adopt the below proposed amendment to Rule 7.3 of the Rules of Criminal Procedure.

I. Background and Purpose of the Proposed Rule Amendment

On December 14, 2016, this Court issued an order amending Rule 7, abrogating Form 6, Rule 41, Rules of Criminal Procedure, and substituting a new Form 6 in its place.¹ The order created a new version of subsection 7.3(b) while making no changes to subsection 7.3(a) ("Mandatory Conditions"). The order also implemented a new version of Form 6 ("Release Order") that tracks the changes made to subsection 7.3(b).

The previous subsection 7.3(b) allowed trial courts to place an additional six conditions

¹ The order also amended Rules 3 and 6, abrogated Form 7, Rule 41, Rules of Criminal Procedure, and substituted a new Form 7 in its place. These changes are not relevant here.

of release on a defendant. It did not include an explicit condition prohibiting a defendant from contacting the crime victim(s). Nevertheless, the previous Form 6 included a condition prohibiting a defendant from “threaten[ing] or initiat[ing] any type of contact with the alleged victim(s).”

The new subsection 7.3(b) creates a category of discretionary conditions that trial courts may impose “if the court finds the condition is reasonable and necessary to protect other persons or the community from risk posed by the person or secure the person’s appearance.” The new subsection divides the conditions into non-monetary and monetary conditions. Among the non-monetary conditions is a condition that prohibits the defendant from contacting the victim(s). *See* Rule 7.3(b)(1)(iv). Petitioners agree that this should be an explicit condition in the rule (rather than only in the form). But petitioners do not agree that it should be a discretionary condition.

Judges currently prohibit defendants from “threaten[ing] or initiat[ing] any type of contact with the alleged victim(s)” with such regularity that it is practically a mandatory condition of release. Explicitly making it a discretionary condition will weaken protections for victims. Petitioners thus asks this Court to move the no-contact condition from subsection 7.3(b) to subsection 7.3(a), which would make the condition mandatory, while still allowing an opportunity for contact in a case where the victim’s rights “to be free from intimidation, harassment, or abuse” are not compromised. Ariz. Const. art. 2, § 2.1(A)(1).

II. Pre-Petition Comments

The Maricopa County Attorney’s Office and the Office of the Arizona Attorney General join AVCV in this proposal. AVCV did not circulate this proposal to other agencies.

III. Contents of the Proposed Rule Amendment

Rule 7.3. Conditions of release

a. Mandatory Conditions. Every order of release under this rule shall contain the following conditions:

(1) That the person appear to answer and submit to the orders and process of the court having jurisdiction of the case;

(2) That the person refrain from committing any criminal offense;

(3) That the person not depart the state without leave of court;

(4) That the person not contact the victim, unless the court clearly finds good cause to conclude that the victim's safety would be protected without a no-contact order.

~~(4)(5)~~ If released after judgment and sentence, that the person diligently prosecute his or her appeal.

~~(5)(6)~~ If a person charged with an offense listed in A.R.S. section 13-610(O)(3) has been summoned to appear in court, the court shall order that the person report within five days after release to the arresting law enforcement agency or its designee and submit a sample of buccal cells or other bodily substances for DNA testing as directed and provide proof of compliance at the next scheduled court proceeding. The judicial officer shall advise the person that willful failure to comply with this order shall result in revocation of the person's release, including arrest and confinement for violation of a condition of release, as provided in Rule 7.5 and A.R.S. 13-3967.

b. Discretionary Conditions in General. The court may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to protect other persons or the community from risk posed by the person or secure the person's appearance. In making this determination, the court must consider the results of a risk assessment approved by the supreme court or a lethality assessment provided by law enforcement, if provided.

(1) Non-monetary conditions:

(i) Place the person in the custody of a designated person or organization agreeing to provide supervision;

(ii) Restrict the person's travel, associations, or residence;

(iii) Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or consuming intoxicating liquors or any controlled substance not validly prescribed;

~~(iv) Prohibit the person from contacting the victim;~~

~~(v)(iv)~~ Require the person to report regularly to and remain under the

supervision of an officer of the court;

(vi)(v) Return the person to custody after specified hours; or

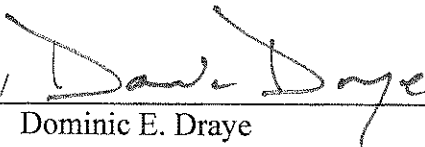
(vii)(vi) Any other non-monetary condition that has a reasonable relationship to assuring the safety of other persons or the community from risk posed by the person or securing the person's appearance.

(2) Monetary conditions. [no changes]

Respectfully submitted January 31, 2017

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