

Lise Witt's Comments on R-19-0014 Petition to Amend Rules 27.3 and 27.4

I welcome this petition to set and clarify requirements for modification of conditions of probation and early termination of probation. My requested changes would go a bit further.

The current proposed changes still make a hearing under Rule 27.3 or 27.4 discretionary with the court and provide no means for real appellate review of denials. This means that courts can decide to never have hearings for probationers who are on lifetime sex offender probation or otherwise considered troublesome. When a court denies a probationer's motion for modification of conditions of probation or early termination of probation, his only means of appellate review is to file a discretionary special action with the Court of Appeals. The Court of Appeals usually denies them, effectively resulting in no appellate oversight on these motions. My proposed changes to Rules 27.3 and 27.4 correct these problems.

Proposed Changes to Rule 27.3 of the Arizona Rules of Criminal Procedure

Rule 27.3(4) should be amended to read:

*Hearing.* The court must hold a hearing on any request for modification or clarification under (c)(2) or (c)(3) when a probationer requests one in writing in a motion to modify or clarify any condition or regulation.

Rule 27.3(5) should be added:

*Appeal.* A probationer may appeal a court's ruling on a request for modification or clarification under (c)(2) or (c)(3) pursuant to Rule 31 of the Arizona Rules of Criminal Procedure.

Proposed Changes to Rule 27.4 of the Arizona Rules of Criminal Procedure

Rule 27.4(4) should be amended to read:

*Hearing.* The court must hold a hearing when a probationer requests one in writing in a motion for early termination of probation. The probationer has a due process right to be represented by an attorney at his own expense, present relevant evidence in the form of documents and witnesses, and to cross-examine his probation officer, the investigative report writer, and any other witnesses that the State presents. The State shall disclose the probationer's investigative report to probationer at least 30 days before the hearing. The State shall secure the attendance of probationer's probation officer and investigative report writer at probationer's hearing. In all other cases, the court may hold a hearing on any request for early termination.

Rule 27.4(5) should be added:

*Appeal.* A probationer may appeal a court's ruling denying early termination of probation pursuant to Rule 31 of the Arizona Rules of Criminal Procedure.