

Andrew K. Hettinger, Magistrate
Page Magistrate Court
P.O. Box 1180
Page, AZ 86040
Telephone (928) 645-4282
ahettinger@courts.az.gov
Bar No. 030531

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND)
RULE 14.3, RULES OF) Supreme Court No. R-
CRIMINAL PROCEDURE)
_____)

Pursuant to Rule 28, Rules of the Supreme Court, Petitioner Andrew Hettinger, moves to amend Arizona Rules of Criminal Procedure 14.3 to allow defendants to appear by telephone for arraignments for misdemeanor charges in limited jurisdiction courts. This proposed rule change will improve access to justice, facilitate efficient case processing and promote public safety.

I. Background and Purpose of the Proposed Rule Amendment

In Arizona, an arraignment is a pretrial hearing for criminal defendants. “The purpose of an arraignment is to formally advise defendants of the charges against them and their legal rights, to assure they are provided counsel if applicable, to enter a plea, and to set a trial date or a later court date.” Arizona

Rules of Criminal Procedure 14.1. Arraignments are not necessary in limited jurisdiction courts if “defense counsel has entered a plea of not guilty” or “the court permits a defendant to enter a not-guilty plea by mail and to receive notice of a court date by mail.” Arizona Rules of Criminal Procedure 14.2(c)(1-2). When an arraignment is required, Rule 14.3 of the Arizona Rules of Criminal Procedure addresses “The Defendant’s Presence” and states the following:

- (a) **Personal Presence Required.** A defendant must be arraigned personally before the trial court or by an interactive video appearance under Rule 1.5.
- (b) **Personal Presence Not Required if Waived.** A Defendant who personally appeared at an initial appearance may waive personal presence at an arraignment by filing a written waiver at least two days before the arraignment date. The defendant and defense counsel must sign and notarize the waiver. A defendant also must file a notarized affidavit no later than 20 days after arraignment stating that the defendant is aware of all scheduled court appearances and understands that failure to appear at sentencing may result in losing the right to a direct appeal.

Under the current rules, a defendant cannot appear for an arraignment for a misdemeanor charge in a limited jurisdiction court by telephone. While there are provisions in Rule 14 that permit the waiver of an arraignment and alternatives to an in-person appearance, none of these options sufficiently achieve the goals of access to justice and efficient case processing.

Of the two options defendants have for waiving an arraignment, one disadvantages self-represented litigants and the other impedes court processing times. A defendant may avoid an arraignment if defense counsel enters a plea of

not guilty or the court allows the defendant to enter a not-guilty plea by mail.

Allowing defendants represented by counsel to avoid an arraignment creates a two-tiered system where those who can afford the services of an attorney can skip their arraignment, whereas those who are not represented by counsel must take time away from work, family, or other obligations to attend their arraignment or risk having a warrant issued for their arrest. Some defendants may qualify for the services of a public defender due to inability to hire private counsel; however, this right arises only in cases where the “criminal proceeding may result in punishment involving a loss of liberty” and oftentimes an attorney is not appointed until after the arraignment. Arizona Rules of Criminal Procedure 6.1(b)(1)(A). While waiver of arraignment by mail is available to all defendants, if the court allows it, this option frustrates efficient case processing. The court must mail the defendant the appropriate form, wait for the defendant to retrieve their mail, fill out the form and send it back. This process can take weeks, and defendants may fail to return the form to the court. Under the Arizona Case Processing Time Standards, 75% of misdemeanor cases in limited jurisdiction courts should be adjudicated within 60 days and 90% within 90 days. A delay of weeks in the early stages of a case hinders a court’s ability to meet Case Processing Time Standards.

The personal presence requirement for arraignments under Rule 14.3 is unduly burdensome. Under Rule 14.3(a), a defendant must personally appear in

court or appear by interactive video. The arraignment is a brief proceeding that involves the following: (1) entering the defendant's plea, (2) deciding motions concerning defendant's release conditions, (3) setting the next court date, (4) providing written notice of court dates and deadlines, (5) informing the defendant of rights and consequences of not appearing for future court dates, (6) appointing counsel, if applicable and (7) ordering fingerprints, if applicable. Requiring personal appearance in court for a hearing that may be conducted in ten minutes is onerous. Many defendants in limited jurisdiction court misdemeanor cases do not have access to transportation and have work and family obligations that suffer when required to travel to court. While interactive video appearances may mitigate the issue of transportation, not all defendants have access to the appropriate technology. Thus, those without access to the appropriate technology are disadvantaged under the current rules for appearance at an arraignment. Under Rule 14.3(b), a defendant's personal presence is not required if waived; however, the process for waiving an appearance requires that the defendant appeared at an initial appearance, is represented by counsel, and requires the filing of two separate notarized documents. This rule prejudices defendants who are not represented by counsel and is an overly complicated process for misdemeanor charges in limited jurisdiction courts. A failure to allow defendants to appear by telephone unfairly

and unnecessarily obstructs defendants with fewer resources and access to technology from interacting with the court.

One may argue that telephonic appearances are inappropriate for arraignments. For example, it could be said that the court cannot verify the identity of the defendant over the phone. However, with arraignments by mail, interactive video appearances and even personal presence in court, the identity of the Defendant is not verified with government-issued identification. Any argument that the judge and defendant must see each other or that the hearing must be done in person are moot, as waiver of an arraignment by mail and arraignment by interactive video are permitted under the rules. There seem to be no valid reasons to disallow telephonic arraignments, especially for misdemeanor charges in limited jurisdiction courts.

Permitting telephonic appearances for arraignments for misdemeanor charges in limited jurisdiction courts will increase access to justice and speed up time to disposition. With the advent of the COVID-19 pandemic, courts have innovated to prevent the spread of the virus. Although not a revolutionary proposal, allowing defendants to appear telephonically for their arraignments in misdemeanor cases in limited jurisdiction courts is a practical approach that will reduce the number of people coming into the courthouse and create a safer court system and state. It will also allow defendants to be quickly seen and heard.

Defendants often call the court to request information about their cases. Telephonic communication is the most convenient and cost-effective way for the court and public to interact and should not be restrained without good cause. Finally, the Task Force on Fair Justice for All recommendation 22 states that courts should consider “increasing access to the court” and allow telephonic appearances. Defendants have a right to be heard and participate in court proceedings and the rules should facilitate that end.

Rule 14.3 of the Arizona Rules of Criminal Procedure fails to prioritize access to justice and the speedy disposition of misdemeanors in limited jurisdiction courts. To achieve these important ends, telephonic arraignments should be permitted for misdemeanors charges in limited jurisdiction courts.

Content of the Proposed Amendment

Petitioner requests the following addition to Rule 14.3, Arizona Rules of Criminal Procedure:

- (a) Personal Presence Required.** A defendant must be arraigned personally before the trial court or by an interactive video appearance under Rule 1.5.
- (b) Personal Presence Not Required if Waived.** A Defendant who personally appeared at an initial appearance may waive personal presence at an arraignment by filing a written waiver at least two days before the arraignment date. The defendant and defense counsel must sign and notarize the wavier. A defendant also must file a notarized affidavit no later than 20 days after arraignment stating that the defendant is aware of all scheduled court appearances and understands that failure to appear at sentencing may result in losing the right to a direct appeal.

(c) Exception for Limited Jurisdiction Courts. A limited jurisdiction court may conduct a telephonic arraignment for misdemeanor and civil traffic offenses; enter a plea of not guilty or not responsible for the defendant; and provide notice of the next court date. Delivery of the notice is presumed if the notice is deposited in the U.S. mail, addressed to the defendant's last address, and the notice is not returned to the court. "Telephonic" includes voice only communications between the court and the parties.

Conclusion

Petitioner requests the Court to consider adoption of this amendment, with the inclusion of a public comment period. The proposed amendment appears to be more technical than substantive, meriting its consideration in the rule amendment process, rather than via legislative action.

RESPECTFULLY SUBMITTED this 9th day of March, 2021.

/s/ Andrew K. Hettinger
Andrew K. Hettinger, Magistrate
Page Magistrate Court
P.O. Box 1180
Page, AZ 86040

Original of the foregoing
E-filed this 9th day of
March, 2021.

By: /s/ Andrew K. Hettinger

14.3 Arizona Rules of Criminal Procedure

Honorable Andrew K. Hettinger
Page Magistrate Court
(928) 645-4282
ahettinger@courts.az.gov
Bar Number 030531

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