

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHING PROCEDURES) Administrative Order
FOR ONLINE DISPUTE RESOLUTION) No. 2020 - 82
DURING A PUBLIC HEALTH)
EMERGENCY)
_____)

Due to concern for the spread of COVID-19 in the general population, the Governor of the State of Arizona declared a statewide health emergency pursuant to A.R.S. § 26-303 and in accordance with A.R.S. § 26-301(15). On May 20, 2020, Administrative Order No. 2020-79 was issued, directing Arizona’s courts to continue to conduct business in a manner that reduces the risk associated with this public health emergency.

In January 2019, this Court issued Administrative Order No. 2019-04 authorizing the Scottsdale City Court to participate in a 12-month online dispute resolution (ODR) pilot program. This pilot program was successful and allowed the court to resolve misdemeanor cases without the need to have parties come to the courthouse.

To this end, this Order establishes the procedures for limited jurisdiction courts to use an Administrative Office of the Courts (AOC) approved ODR system, with the cooperation and participation of the prosecutor, to resolve misdemeanor cases.

Therefore, pursuant to Article VI, Sections 3 and 5, of the Arizona Constitution,

IT IS ORDERED that limited jurisdiction courts may conduct arraignments in misdemeanor cases for out of custody defendants using an AOC approved ODR system (“the system”) that allows defendants to appear and enter their pleas through the system.

IT IS FURTHER ORDERED that for cases in which the system is used for arraignments, the court must continue to adhere to the requirements of Rule 14, Arizona Rules of Criminal Procedure. The personal appearance requirement in Rule 14.3(a), Arizona Rules of Criminal Procedure, is met for defendants arraigned through the system.

IT IS FURTHER ORDERED that the system used for arraignments must provide a means by which:

- a) The defendant can be formally advised of the charges by displaying the charges on-screen;

- b) The defendant can be formally advised of the rights delineated in Rule 14.4(e), Arizona Rules of Criminal Procedure, by displaying these rights on-screen, and the defendant can acknowledge an understanding of these rights before proceeding;
- c) The court can appoint counsel if applicable and in accordance with the requirements of Rule 6, Arizona Rules of Criminal Procedure;
- d) The defendant can enter a plea of guilty, not guilty, or no contest to all charges in the case;
- e) The court can provide notification of the next court date to the parties; and
- f) The court can upload documents to electronically send to the parties via the system.

IT IS FURTHER ORDERED that limited jurisdiction courts may allow the parties to participate in plea negotiations for misdemeanor cases and submit a plea agreement to the court using the system.

IT IS FURTHER ORDERED adopting the following procedures for limited jurisdiction courts to accept pleas submitted through the system:

(a) Limited Jurisdiction Court Alternatives for Entering a Plea and Sentencing. The provisions of Rule 17, Arizona Rules of Criminal Procedure, and the provisions of Rule 26.9, Arizona Rules of Criminal Procedure, that require a defendant to be present at the time of sentencing, are met by the requirements below.

(1) Telephonic Pleas. “Telephonic” includes voice-only communications between the court and the parties and an application that permits video in addition to voice communications. The provisions in this subpart concerning telephonic pleas also apply to pleas submitted through an online dispute resolution system approved by the AOC.

(A) Discretionary. A limited jurisdiction court has discretion to accept a telephonic plea of guilty or no contest to any misdemeanor offense.

(B) Procedure. The defendant must submit the plea in writing to the court, and the writing must be substantially in the form set forth in Rule 41, Form 28. If authorized by the court, the defendant may submit plea documents through an online dispute resolution system, and Form 28 may be used for that process. The documents the defendant submits for a telephonic plea must include:

- (i)** a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint or to the offense or offenses described in a written plea agreement;
- (ii)** a legible photocopy of the defendant’s driver’s license or other government-issued photo identification that contains the defendant’s name and birth date; and
- (iii)** any other forms the court or the parties deem necessary for completing a plea under the circumstances of the case.

- (C) *Fingerprint.* If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A), Form 28 must also contain a signed certification from a law enforcement officer in the state in which the defendant resides that the defendant personally appeared before the officer and signed Form 28, and that the officer affixed the defendant's fingerprint to the form.
- (i) If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A) and the defendant's plea form does not include the defendant's fingerprint and the certification of a law enforcement officer, as required by this subpart, the court may defer acceptance of the plea until the defendant has submitted the required fingerprint and certification, or until the defendant appears in open court for sentencing and provides a fingerprint at that time.
 - (ii) In extraordinary circumstances, instead of requiring a certification and fingerprint, the court may permit another method of proving the defendant's identification on Form 28, including but not limited to allowing the defendant to use a notary public to witness the defendant's signature on the form.
- (D) *Judicial Findings.* Before accepting a plea, the court must hold an in-person, telephonic hearing with the parties, inform the defendant that the offense may be used as a prior conviction, and find:
- (i) it has personally advised the defendant of the items set forth in Form 28;
 - (ii) a factual basis exists for believing the defendant is guilty of the offenses to which the defendant pleads; and
 - (iii) the defendant's plea is knowingly, voluntarily, and intelligently entered.
- (E) *Sentencing.* After entry and acceptance of the plea, the court may proceed to sentence the defendant, either on the same day or subsequently, in-person or telephonically.
- (F) *Victim's Rights.* In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom.

IT IS FURTHER ORDERED that all documents electronically transmitted for filing through the system, and which are file-stamped and maintained by the court, shall be considered the original documents of record. A copy of any of these documents upon which the court has placed its seal attesting to the document's authenticity shall be considered a certified copy of the original.

IT IS FURTHER ORDERED that any court rule requiring that a document be an original, be on paper or in any other tangible medium, or be in writing, is satisfied by a document defined herein as the original.

IT IS FURTHER ORDERED that any court rule requiring the court to mail, distribute, or otherwise provide a document to the parties is satisfied if the document is uploaded and electronically sent to the parties through the system.

IT IS FURTHER ORDERED that provisions of this Order that are inconsistent with the Arizona Rules of Court shall supersede procedural requirements of those rules.

IT IS FURTHER ORDERED that these procedures shall be effective until December 31, 2020 or further order of this court.

Dated this 3rd day of June, 2020.

ROBERT BRUTINEL
Chief Justice

