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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-20-0005
)
) COMMENT OF ARIZONA
PETITION TO AMEND RULE) ATTORNEYS FOR CRIMINAL
17.1(f)(1) AND RULE 41, FORM 28,) JUSTICE REGARDING PETITION
ARIZONA RULES OF CRIMINAL) TO AMEND RULE 17.1(f)(1)
PROCEDURE) AND RULE 41, FORM 28,
) ARIZONA RULES OF CRIMINAL
_____) PROCEDURE

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) submits the following comment to Petition R-20-0005, which addresses telephonic pleas and sentencing in limited-jurisdiction courts. AACJ generally supports expanding the availability of telephonic plea and sentencing hearings in limited-jurisdiction courts. The current circumstances and future uncertainty caused by the COVID-19 pandemic make such expanded availability even more prudent. Thus, in some ways, Petition R-20-0005 does not go as far as it should. In addition, AACJ has concerns about some of the proposed

changes to Arizona Rule of Criminal Procedure 17.1(f) and some of the proposed changes to Form 28, Arizona Rule of Criminal Procedure 41.

Interest of Arizona Attorneys for Criminal Justice

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.

Comments to Petition R-20-0005

1. Eligibility for telephonic pleas in limited jurisdiction courts.

Currently, Rule 17.1(f)(1)(A) limits the eligibility for telephonic pleas in limited-jurisdiction courts to defendants who reside out-of-state or more than 100 miles from the court or who have a serious medical condition that makes appearing in court an undue hardship. The Court should take this opportunity to expand the eligibility of telephonic pleas in limited-jurisdiction courts beyond these two categories of defendants.

In the experience of AACJ members, most criminal defendants who are able to appear in person for their plea and sentencing hearings in limited-jurisdiction courts choose to do so. Telephonic change-of-plea hearings are often cumbersome for criminal defendants and for their attorneys. For a criminal defendant, completing the change-of-plea paperwork on one's own can be challenging, and the great majority of defendants prefer to have an attorney by their side during the process to guide and assist them.

There is no reason to limit telephonic plea and sentencing hearings in limited-jurisdiction courts to the distant and the infirm, particularly if they have proven to be secure and reliable for those populations. The current COVID-19 and the corresponding need for social distancing illustrate one reason that limiting the circumstances for telephonic pleas does not serve a useful purpose. Indeed, expanding the eligibility for telephonic hearings might be helpful in conserving court resources, as well as making it less burdensome on defendants. Other reasons that a defendant might prefer a telephonic plea hearing are easily apparent. For instance, an in-person appearance might require a defendant to take an entire day off of work, while a telephonic appearance might allow a defendant to avoid missing work at all. Similarly, an in-person appearance might require a defendant to procure childcare, which also could be avoided in the case of a telephonic hearing.

AACJ suggests that the Court modify the rule to eliminate the eligibility criteria altogether. Alternatively, AACJ suggests that the Court add to the rule language that would allow a limited-jurisdiction court to accept a telephonic plea if the court finds that it serves the interest of justice or that other circumstances exist that warrant the acceptance of a telephonic plea.

2. Procedure for telephonic pleas in limited jurisdiction courts.

AACJ has several concerns about the proposed changes to Rule 17.1(f)(1)(B) and the corresponding proposed changes to Form 28. First, the rule should be clarified to allow a defendant to plead guilty or no contest to some offenses while maintaining not-guilty pleas for others. Instead of the suggested amendment in the Petition, AACJ suggests that that current language of Rule 17.1(f)(1)(B)(i) be amended as follows: “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~~ particular offenses in the complaint[.]” Similarly, amended Form 28 should require the counts to which a defendant is pleading guilty or no contest to be specified. The Petition’s proposed amended Form 28 (at paragraphs 2 and 4 in the form proposed in the Petition) suggests that a defendant must plead guilty or no contest to all of the charges (or none of them).

Second, the language for proposed new Rule 17.1(f)(1)(B)(iii) is unclear and appears to give the prosecutor a favored position in plea negotiations. It is not clear whether this proposed language would give the prosecution the authority to prescribe forms for pleading guilty or no contest to the court, and alternatively, if the parties are entering into a plea agreement, the defendant should have the ability to negotiate over the form of the agreement. AACJ suggests that following new language instead: “any other forms that the court or the parties deem necessary for completing a plea under the circumstances of the case.”

Third, the language in paragraphs 4 and 5 of proposed amended Form 28 is not clear and confuses situations in which defendants plead to the court and situations in which the parties reach a plea agreement. AACJ suggests the following language instead (combining the language in proposed paragraphs 4 and 5):

I am pleading guilty or no contest to the following charges in the complaint without a written plea agreement, and I admit that if my case went to trial, the facts would support the following charges against me:

I am NOT pleading guilty or no contest to the following charges in the complaint:

I have entered into a written plea agreement and I agree to its terms.

Fourth, the language in paragraph 6 of proposed amended Form 28 describes the **maximum** penalties allowed, not the “range of penalties,” as stated in the form.

Fifth, the language in paragraph 10 of proposed amended Form 28 does not accurately describe the consequences to a defendant who pleads guilty or no contest while on probation or parole for another offense. AACJ suggests the following language instead: “If I was on probation or parole for another offense at the time of the commission of this offense, I understand that my plea of guilty or no contest in this case and the resulting criminal convictions constitutes an automatic violation of probation or parole in the other case.”

Finally, current Form 28 does not require a defendant to make any declaration under penalty of perjury regarding eligibility for a telephonic plea or any other subject. This is unnecessary and should not be included in amended Form 28. Likewise, current Form 28 does not require a concurrence from the defendant’s attorney and is also unnecessary.

AACJ requests that the Court consider these points when deciding whether and how to amend Arizona Rule of Criminal Procedure 17.1(f) and Form 28, Arizona Rule of Criminal Procedure 41.

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ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

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This comment e-filed this date with:

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