

SUPREME COURT OF ARKANSAS

IN RE SUPREME COURT
COMMITTEE ON CRIMINAL
PRACTICE—PROPOSED RULE
CHANGES

Opinion Delivered November 17, 2011

PER CURIAM

The Supreme Court Committee on Criminal Practice has submitted several proposals to the court as set out in detail below. We express our gratitude to the members of the Criminal Practice Committee for their work. These proposals are being published for comment, and the comment period shall end on January 13, 2012. (New language is underlined in the rules set out below.)

Comments should be submitted in writing to: Clerk of the Arkansas Supreme Court, Attention: Criminal Practice Committee, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

Arkansas Rules of Criminal Procedure**1. Rule 24.3.**

Arkansas Rule of Criminal Procedure 24.3 governs conditional pleas of guilty. The committee proposed two changes to the rule. The first change deals with acceptance of a plea of *nolo contendere* to a misdemeanor when the defendant is not present in the courtroom. As presently phased, Rule 24.3(a) requires the defendant to be present in the courtroom when the court accepts a plea of guilty or *nolo contendere*. An exception to the presence requirement permits the court to accept a guilty plea to a misdemeanor where only a fine is imposed by

the court. By referring to pleas of guilty or *nolo contendere* in the introductory clause but only to pleas of guilty in the exception clause, the syntax of Rule 24.3(a) suggests that the court cannot accept a plea of *nolo contendere* unless the defendant is present in the courtroom. The committee perceived no reason for distinguishing guilty pleas from *nolo contendere* pleas and recommended an amendment to Rule 24.3(a) to make clear that the court can accept either plea from an absent defendant provided the charge is a misdemeanor and no jail time will be imposed.

The second change to Rule 24.3 was prompted by a recent comment in the Arkansas Law Review arguing that the conditional guilty plea provision of Rule 24.3(c) should be broadened to permit a defendant to plead guilty while retaining the right to challenge the constitutionality of the statute on which the conviction is based. Comment, *Conditional Guilty Pleas in Arkansas: An Assessment and a Plea for Change*, 63 Ark. L. Rev. 557 (2010). The committee proposed changes to Rule 24.3(b) and the plea form that would permit such a conditional plea.

Rule 24.3, amended as described above, would read as follows:

Rule 24.3. Pleading by defendant.

(a) A plea of guilty or *nolo contendere* shall be received only from the defendant himself in open court, except that counsel may enter a plea of guilty or *nolo contendere* on behalf of a defendant in misdemeanor cases where only a fine is imposed by the court. If the defendant is a corporation the plea may be received from counsel or an authorized corporate officer.

(b) With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment,

(i) to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement; or

(ii) to review an adverse determination of a pretrial motion to dismiss a charge because not brought to trial within the time provided in Rule 28.1 (b) or (c);

or

(iii) to review an adverse determination of a pretrial motion challenging the constitutionality of the statute defining the offense with which the defendant is charged.

(c) A defendant may plead nolo ~~contendere~~ contendere only with the consent of the court. The court shall not accept a plea of nolo contendere unless it is satisfied, after due consideration of the views of the parties, that the interest of the public in the effective administration of justice would thereby be served.

(d) No plea of guilty or nolo contendere shall be accepted by any court unless the prosecuting attorney of the governmental unit in which the offense occurred is given opportunity to be heard at the time the plea is tendered. In any criminal cause in which trial by jury is a right, a court shall not accept a plea of guilty or nolo contendere unless the prosecuting attorney has assented to the waiver of trial by jury.

Prior to the 201_ amendments, subsection (a) allowed the court to take a guilty plea to a misdemeanor not involving imprisonment even though the defendant was not present in the courtroom. The 201_ amendment made it clear that the court could also accept a plea of nolo contendere in such circumstances. A plea of guilty or nolo contendere when the defendant is absent is still subject to the requirements of subsections (c) and (d).

The 201_ amendment also broadened conditional pleas to include subsection (b)(iii).

The Rule 24.3 conditional plea form would read as follows:

I understand my plea is conditioned upon the filing of an appeal on the issue of _____(describe ~~pretrial motion~~ [motion] to suppress seized evidence) [motion] to suppress custodial statement] [motion] to dismiss a charge because not brought to trial within the time provided in Rule 28.1 (b) or (c) or [challenge to the constitutionality of Ark. Code Ann. § _____] upon which appeal will be based.)

2. Rules 5.3 and 5.4.

Act 908 of 2011 authorizes the issuance of electronic citations. After reviewing the legislation, the committee proposed the following changes to Arkansas Rules of Criminal Procedure 5.3 and 5.4 to accommodate the use of electronic citations:

Rule 5.3. Form of citation.

- (a) Every citation issued to a person shall:
- (i) be in writing;
 - (ii) ~~be signed by~~ state the name of the officer issuing it with the title of his office;
 - (iii) state the date of issuance and the municipality or county where issued;
 - (iv) specify the name of the accused and the offense alleged;
 - (v) designate a time, place, and court for the appearance of the accused; and
 - (vi) except in case of an electronic citation, provide a space for the signature of the accused acknowledging his promise to appear.
- (b) Every citation shall inform the accused that failure to appear at the stated time, place, and court may result in his arrest and shall constitute a separate offense for which he may be prosecuted.

Reporter's Notes, 201_ Amendment.

Prior to the 201_ amendment, subsection (a)(ii) required the issuing officer to sign a citation. As amended, the subsection requires only that the citation state the name of the issuing officer. This change, as well as addition of the exception clause to subsection (a)(vi), was prompted by Act 908 of 2011, which authorizes the use of electronic citations.

Rule 5.4. Procedure for issuing citations.

(a) In issuing a citation the officer shall deliver one (1) copy of the citation to the accused.

(b) The officer shall thereupon release the accused or, if the person appears mentally or physically unable to care for himself, take him to an appropriate medical facility.

(c) As soon as practicable, one (1) copy of the citation shall be filed with the court specified therein, and one (1) copy shall be delivered to the prosecuting attorney. If an electronic citation is issued, (i) either a written or electronic copy of the citation shall be filed with the court specified therein as designated by the clerk of that court, and (ii) either a written or electronic copy of the citation shall be delivered to the prosecuting attorney as designated by the prosecuting attorney.

Reporter's Notes, 201_ Amendment.

The 201_ amendment added the final sentence of subsection (c). See Act 908 of 2011 authorizing the use of electronic citations.