UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
Sandra Day O'Connor United States Courthouse
401 W. Washington St., SPC 60
Suite 625
Phoenix, Arizona 85003-2158

Stephen M. McNamee
Chief United States District Judge

Telephone: (602) 322-7555
Fax: (602) 322-7509

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05-CR- 007

Mr. Peter G. McCabe
Secretary
Committee on Rules of Practice and Procedure
Judicial Conference of the United States
Administrative Office of the United States Courts
OJP-RCSO
Thurgood Marshall Federal Judiciary Building
Suite 4-170
One Columbus Circle, N.E.
Washington, D.C. 20544

      Re: Proposed Revision to Rule 35(k), "Proposed Amendment Regarding Use of Judgment Form Prescribed by Judicial Conference"

Dear Mr. McCabe:

      I write to offer comments regarding the proposed change to Rule 35(k) of the Rules of Criminal Procedure. The proposal requires the Court to enter judgment using the form prescribed by the Judicial Conference because it will facilitate the collection of useful and accurate sentencing information by the U.S. Sentencing Commission. On the surface, such a proposal appears appropriate because it is important that the Commission is able to consistently identify and record all of the elements of the sentencing process. However, what the proposal ignores is the significant impact on a court's current automated procedures to produce the judgment. In the spirit of collegiality, I recommend an amendment to this proposal which would likely result in wider acceptance and better compliance with this rule change, if adopted.

      The current judgment form, which I understand is in the process of revision, is extensive and covers every possible element and option for a criminal sentence, including the Statement of Reasons (SOR). However, the manner in which the form is electronically constructed is cumbersome and will slow the work of staff who produce the judgment. In short, while the judgment form is comprehensive, it is inefficient. The proposed judgment form is a series of individual forms through which the user must scroll, whether or not each page is necessary for the sentence. Forced use of this automation program as presently constructed will slow down the production of the judgment in each case. For a busy border court – such as Arizona, where more than 8,000 defendants are sentenced annually – this would substantially delay the processing of judgments and consuming additional precious staff resources.

The judgment program currently in use in this district addresses all elements and options in a criminal sentence. Identifying data regarding the defendant, assigned judge, docket number, etc., are fed directly from a database in order to avoid duplication of data entry. Our Statement of Reasons program is an automated version of the current Statement of Reasons form approved by the AO and the U.S. Sentencing Commission; however, rather than producing the document with all possible elements listed, we have automated the same data to a "pick list" format so following sentencing, only the element(s) of each section of the SOR that apply appear on the final product. Our program is clear, concise, easily readable, and has been praised by staff of the U.S. Sentencing Commission. With this information in mind, I offer an alternative revision to the proposed amendment to Rule 35(k), which would accomplish the same goal but not necessarily interfere with internal efficiencies within many courts.

Instead of mandating courts use the judgment prescribed by the Judicial Conference, the rule could require *the courts to enter judgment using the form prescribed by the Judicial Conference, or an alternative form which provides all of the elements of sentencing and sequencing of information contained in the form prescribed by the Judicial Conference, as approved by the Administrative Office.* Using this approach, courts which provide all required data in the judgment to the Sentencing Commission in an easily identifiable format could continue to do so. The determination as to whether a local judgment program includes all of the required sentencing elements would not be within the purview of the local court; rather, the approval would rest with the Administrative Office. Accordingly, the Sentencing Commission could be assured of receipt of necessary data, presented in a consistent and predictable fashion, which would facilitate ease of collection and recordation by that office.

With this revision, courts would continue to operate with integrated automated programs which often populate data fields in the judgment. Otherwise, if forced to use the program created by the AO, courts would be running their integrated program for the production of documents and simultaneously the AO judgment program, which would run independently. Completion would be more time-consuming and require duplication of data entry at the local level.

Finally, there is another compelling reason for a simple and more efficient judgment form: reducing the time for prisoner designation by the Bureau of Prisons. For some time, the District of Arizona has been involved with the Department of Justice Office of the Detention Trustee in a pilot program to transmit documents electronically, thus reducing the time for designation by the Bureau of Prisons. This lends a material benefit to the U.S. Marshals Service by clearing bed space in the detention facilities quickly. It also streamlines administrative procedures for the Bureau of Prisons. The adoption of a process that would reduce productivity and add delay would undercut the tremendous benefits of the pilot project, which is being adopted as a national program.

Thank you for the opportunity to provide comments regarding the proposed amendments to the Federal Rules. If the committee would like additional information, please do not hesitate to contact me.

Sincerely,

Stephen M. McNamee
Chief United States District Judge

SMM/sp

cc: Honorable Ricardo H. Hinojosa, Chair, United States Sentencing Commission
Honorable Paul G. Cassell, Chair, Committee on Criminal Law
Ms. Stacia A. Hylton, Federal Detention Trustee