

---

**N-O-T-I-C-E**  
**PROPOSED AMENDMENTS**

---

**The Law & Order Code Committee proposes amendments to**

**Law & Order Code  
Chapter 6, Article X and  
Chapter 5, Rule 87**

**relating to the**

***WELLNESS COURT PROGRAM***

**The proposed amendments allow judges to:**

- 1. Extend probation for up to one (1) year for Wellness Court defendants and**
- 2. Participate in therapeutic staffings for Wellness Court defendants without violating rules against ex-parte communications.**

**The purpose of these proposed amendments is to give judges more tools to help defendants successfully complete the Wellness Court Program.**

**For questions and comments, contact:**

*Julie Wilkens, Law & Order Code Committee Liaison  
480-789-7676  
jwilkens@ftmcdowell.org*

**Or stop by the Prosecutor's Office in the Public Safety Building to pick up a copy of the proposed legislation.**

*We strongly encourage and welcome your questions and comments!*

**Criminal Code, Article X, §6-143(B) and (D)**

The proposed language allows judges to extend a defendant’s probationary term for up to 1 additional year in instances where the defendant is ordered to complete the Wellness Court Program, drug treatment, inpatient or outpatient treatment and/or pay restitution. Rather than violate a defendant that is close to completion and on the road to real recovery, judges will be given some leeway in extending the probationary term for those individuals who need the extra time. As such, the Law & Order Committee recommends the following amendments to the Code (additions and changes appear underlined and in red):

**Chapter 6 - Criminal Code. Article X. Sentencing and Probation**  
**§6-143 Probation.**

- A. A defendant who has been found guilty of an offense may be sentenced to a term of probation unless the offense is an offense for which probation has been expressly precluded.
- B. The authorized term of probation shall not exceed more than two (2) years per offense, except as otherwise provided in subsection D, below.
- C. Probation may include a term of incarceration and/or such other terms that the Tribal Court deems reasonable under the circumstances of the case, including but not limited to the following:
  - 1) Rehabilitative measures;
  - 2) No-association requirements;
  - 3) Drug and/or alcohol testing;
  - 4) No contact provisions;
  - 5) Restitution;
  - 6) Curfew; and
  - 7) Any such other term or conditions, that under the individual circumstance of each case the Tribal Court deems reasonable in an effort to rehabilitate the defendant.

D. When the Court requires the defendant as a condition of probation to successfully complete the Wellness Court Program, drug treatment, or inpatient or outpatient treatment, and/or requires the defendant to make restitution for any economic loss related to the offense, but these conditions have not been satisfied within the two (2) year probationary term set for in subsection B above, the Court, at any time before the termination or expiration of probation and upon hearing, may extend the term of probation up to one (1) additional year to allow the defendant time for successful completion.

## **Rules of Criminal Procedure, Rule 87**

The proposed language performs the same function as the above-detailed amendment to the Criminal Code and allows judges in the Wellness Court Program to participate in staffings for defendants without violating existing judicial ethics rules related to ex-parte communications. Ex-parte communications occur when a party to a case or the party's counsel communicates directly with the judge about the issues in the case without the other parties' knowledge. Currently, Rule 2.9 of the Arizona Rules of Judicial Conduct prohibits judges from engaging in ex parte communication unless they are "expressly authorized by law to do so." In the Nation's Wellness Court (and in State drug courts), judges are part of the therapeutic staffing team, along with the prosecutor, defense counsel, social workers, case workers, etc. The language added to Rule 87 will expressly authorize the judges to participate in the therapeutic staffing team without violating judicial ethics rules. As such, the Law & Order Committee recommends the following amendments to the Code (additions and changes appear underlined and in **red**):

### **Chapter 5 – Civil and Criminal Procedure. Article VIII. Wellness Court Rule 87. Entry of guilty plea; deferred acceptance of plea.**

In any case wherein Wellness Court is offered, the defendant will be required to enter a plea of guilty to the charges. The Court will make a determination whether the plea was entered knowingly, intelligently and voluntarily and, if possible find a factual basis. However, the Court will defer acceptance and entry of the guilty plea onto the record and order the defendant to the Wellness Court program(s) for successful completion. The Court shall advise the defendant that if he or she fails to successfully complete the Wellness Court program, the Court will, upon notification and at hearing, formally accept the guilty plea and set the matter for sentencing. In addition, the Court will also advise the defendant that if he or she fails to successfully complete the Wellness Court program, the Court could impose contempt charges and penalties in addition to the underlying charge and penalty for failure to obey a lawful order of the Court. The two-year probationary term may be extended for up to one (1) additional year to allow for the successful completion of the Wellness Court Program, including treatment, pursuant to §6-143(D), as revised \_\_\_\_\_. The Wellness Court judge shall be permitted to receive ex-parte communications in therapeutic staffings for each participant so long as it is required for the successful treatment of each defendant in a therapeutic court setting.