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ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO AMEND SUPREME) Supreme Court No. 23-_____
COURT RULE 123(d)(6)) (expedited consideration
) and emergency adoption
) requested)
)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, Petitioner respectfully petitions this Court to amend Supreme Court Rule 123(d)(6)(B) as shown in the Appendix, to implement changes to A.R.S. § 36-540(S) by the enactment of House Bill (HB) 2041, Mental Health; Voluntary Evaluations; Payment (Laws 2023, Ch. 103) during the First Regular Session of the 56th Legislature as more particularly described below.

HB 2041 is expected to become effective in early Fall 2023. Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of the proposed amendments as set forth in the Appendix.

I. Background and Grounds for Petition Approval.

On May 1, 2023, Governor Hobbs signed HB 2041, which among other things, adds “health care institutions as defined in A.R.S. § 36-401 that provide services subject to the federal Emergency Medical Treatment and Labor Act” to the list of entities included in the program that is to be established under A.R.S. § 36-540(S) to allow the delineated persons and entities to determine the existence of an active court order for treatment and the history of court orders for treatment.

Supreme Court Rule 123(d) was recently amended for this purpose, to allow access to mental health case records and information by “a lawful representative of a regional behavioral health authority or health care provider as defined in ARS § 36-501 and their respective attorneys through an electronic system as established by the director of the Administrative Office of the Courts.” Supreme Court Rule 123(d)(6)(B)(viii). Accordingly, Petitioner proposes amending Supreme Court Rule 123(d)(6)(B)(viii) to include a lawful representative of a “health care institution as defined in ARS § 36-401 that provide services subject to the federal Emergency Medical Treatment and Labor Act.”

Petitioner also proposes an amendment to Supreme Court Rule 123(d)(6)(B)(ii), to clarify that in addition to the attorney of record in a case, an attorney in the same office who is assigned to the case may be granted access to mental health case records and information. This proposed change tracks the proposed amendments in currently pending rule petition R-23-0029 related to

access to documents in cases filed under A.R.S. Title 36, Chapter 37 (Sexually Violent Persons).

II. Preliminary Comments.

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

III. Request for Expedited Consideration and Emergency Adoption.

Pursuant to Supreme Court Rule 28(h), Petitioner believes that expedited consideration and emergency adoption of the proposed amendments to Supreme Court Rule 123(d)(6)(B) are warranted in this matter because HB 2041 is expected to become effective in early Fall 2023.

Therefore, as permitted by Supreme Court Rule 28(h), Petitioner respectfully requests that this Court expedite its consideration of this petition for inclusion on the August 2023 Rules Agenda, consider adoption of the proposed amendments as set forth in the Appendix on an emergency basis at that Agenda, open the petition for comment, and consider adopting the proposed amendments on a permanent basis at this Court's December 2023 Rules Agenda.

Respectfully submitted this 28th day of June, 2023.

By /s/ David K. Byers
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APPENDIX

Rules of the Supreme Court of Arizona

(deletions shown with ~~strikethrough~~, new language is underlined)

Rule 123. Access to Judicial Records of the State of Arizona

(a) through (c) [No Change]

(d) [No change in text]

(1) through (5) [No Change]

(6) *Mental Health Case Records.*

(A) [No change]

(B) Case records and information are open to the following:

(i) [No change]

(ii) a current attorney of record in the mental health proceeding and any attorney in that office who is assigned to the case;

(iii) through (vii) [No change]

(viii) a lawful representative of a regional behavioral health authority, health care institution as defined in ARS § 36-401 that provides services subject to the federal Emergency Medical Treatment and Labor Act, or health care provider as defined in ARS § 36-501 and their respective attorneys through an electronic system as established by the director of the Administrative Office of the Courts; and

(ix) [No change]

(C) through (F) [No change]

(e) through (j) [No change]