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**ARIZONA SUPREME COURT**

In the matter of: )  
)  
PETITION TO AMEND ) Supreme Court No. 24-\_\_\_\_  
RULE 11.3(a)(5)(C) )  
RULES OF CRIMINAL PROCEDURE )  
)  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Rules of the Supreme Court, Petitioner respectfully petitions this Court to amend Rule 11.3(a)(5)(C), Rules of Criminal Procedure, as shown in the Appendix to reflect a current and modernized court-approved training program for mental health experts appointed to conduct competency evaluations.

**I. Background**

The definition of “mental health expert” and the resulting “examiner qualifications” of Rule 11.3 were adopted in 1996 as a result of statutory enactments related to appointment of mental health experts to conduct competency evaluations of defendants in criminal cases.<sup>1</sup> In the ensuing twenty-nine years only one amendment to the examiner qualifications of Rule 11.3 has been made, which again

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<sup>1</sup> A.R.S. 13-4501(4) (current through 2023 56<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess.).

was a result of statutory amendments that added additional topics an expert must be familiar with (reflected currently in Rule 11.3(a)(5)(A) and (B)). Subsection (C) requires a mental health expert to be . . . “approved by the court as meeting court-developed guidelines, including demonstrated experience in forensic matters, required attendance at a court-approved training program of not less than 16 hours and any court-required continuing forensic education programs, and annual review criteria.”

In 2023 the Administrative Office of Courts began to review the current in-person “Competency and Restoration Conference” offered biennially and how it compares to current trends, topics, and needs related to the laws and forensic psychology research and best practices surrounding determination of competency in criminal matters. Since approximately 1998, this conference has been the sole method of meeting the 11.3(a)(5)(C) requirement of “attendance at a court-approved training program of not less than 16 hours.” Two of the conclusions reached in that review of the existing training program inform this petition.

First, the 16-hour training requirement was not to ensure that examiners were appropriately qualified. Rather, 16 hours is the minimum number of continuing education hours persons meeting the statutory definition of “mental health expert” needs to maintain their professional licenses with the state of Arizona. It was determined more than 20 years ago that if the conference met those continuing

education requirements, it would be less burdensome to mental health experts to make the time to attend the conference and therefore there would be a greater likelihood of securing a sizable pool of individuals that met the qualification requirements. However, that has resulted in a course that has repetitive information provided simply to fill the hours requirement. Therefore, Petitioner seeks to strike the specific 16-hour requirement to allow for a revised training program to be developed that is based on the learning objectives, necessary knowledge, and best practices essential to ensuring that competency examiners have the base knowledge and skills necessary to ensure that Arizona's criminal case competency proceedings meet state and national standards. Moreover, striking the rigid 16-hour requirement allows the court-approved training program to be flexible enough to adjust to changes in forensic psychology research, best practices, and competency law.

Second, the need for qualified competency evaluators is such that biennial training does not serve the best interests of the justice system. Rather, individuals who would like to become qualified examiners may have to wait nearly two years to meet the training requirements of Rule 11.3(a)(5)(C). In determining that an online, on-demand training program would better meet the needs of the justice system and those mental health experts who wish to become qualified examiners under Rule 11.3, an additional amendment to Rule 11.3(a)(5)(C) is needed. Modernization of the court-approved training program both in the curriculum and

learning objectives and in the method of delivery will allow a greater number of individuals to complete the training and become qualified at a consistent, year around rate. Therefore, the Petitioner requests that the language of *attendance at a court-approved training program* be amended to read *completion of a court-approved training program*.

### **III. Conclusion**

In light of the constitutional and statutory requirements regarding the right to be competent before being subjected to criminal proceedings and the qualification of mental health experts to conduct competency examinations, the proposed amendments are appropriate to allow for modernization of the delivery of the required court-approved training program and the necessary flexibility to ensure that the training program's learning objectives can be adjusted to meet the legal and professional standards for competency as those evolve over time. Therefore, Petitioner respectfully requests that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in the Appendix effective fall of 2024.

RESPECTFULLY SUBMITTED this 9th day of January, 2024.

By /s/David K. Byers  
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## APPENDIX

### Rules of Criminal Procedure

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

#### Rule 11.3. Appointment of Experts.

(a)(1) through (4) [No change]

##### (5) Examiner Qualifications.

(A) – (B) [No change]

(C) approved by the court as meeting court-developed guidelines, including demonstrated experience in forensic matters, required ~~attendance at~~ completion of a court-approved training program ~~of not less than 16 hours~~ and any court-required continuing forensic education programs, and annual review criteria.

(6) [No change]

(b) through (d) [No change]