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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 11.3, )  
ARIZONA RULES OF CRIMINAL ) Supreme Court No. R-10-\_\_\_\_  
PROCEDURE )  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 11.3 of the Arizona Rules of Criminal Procedure. This proposed amendment is designed to implement a new statutory provision for the appointment of experts to determine competency for criminal defendants, as adopted in House Bill 2471 (see 2010 Ariz. Sess. Laws, ch. 259, 2<sup>nd</sup> Reg. Sess.).

**I. Background and Purpose of the Proposed New Rule.** House Bill 2471 amends A.R.S. §§ 8-291.02 and 13-4505. These statutes require the court to appoint at least two mental health experts to perform a competency evaluation of a juvenile in a delinquency, incorrigibility, or criminal proceeding, or of an adult

defendant in a criminal case. The appointment directs the mental health experts to examine the person, issue a report and, if necessary, testify regarding the competency of the person being evaluated.

Under the existing statutes, at least one of the two mental health experts appointed by the court must be a psychiatrist licensed pursuant to A.R.S. Title 32, Chapter 13 or 17. HB 2471 amends these statutes by removing the requirement that at least one of the mental health experts be a licensed psychiatrist. However, the new amendments still permit the court to appoint a psychiatrist upon motion of either the court or any party. The amendments also permit the state and the defendant to stipulate to the appointment of only one expert, if the stipulation is approved by the court.

**II. Contents of the Proposed New Rule.** This petition proposes an amendment to Rule 11.3 of the Arizona Rules of Criminal Procedure. The subject of Rule 11 is the incompetency of criminal defendants. Rule 11.3 deals specifically with the appointment of experts for incompetency examinations. The proposed amendments, as shown in the Appendix, conform Rule 11.3 to the changes to A.R.S. § 13-4505 that were adopted by HB 2471.

No rule change is sought concerning the amendments made by HB 2471 to A.R.S. § 8-291.02. The process for determining incompetency and for mental examinations of juveniles in delinquency, incorrigibility, or criminal cases is

statutory. There are no corresponding rules of procedure for the juvenile court regarding this process.

**III. Preliminary Comments.** This petition has not been sent to the court communities for pre-filing comments because of the short period of time since enactment of the legislation, and because the proposed rule only modifies an existing rule of criminal procedure so that it will conform to the statutory amendments.

**IV. Request for Emergency Adoption.** HB 2471 has an effective date of July 29, 2010. Petitioner accordingly requests expedited adoption of the proposed new rule with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of June, 2010.

By \_\_\_\_\_  
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## Appendix

### Proposed amendment to Rule 11.3, Ariz. R. Crim. P.

Additions are shown by underline; deletions are shown by ~~strikeout~~.

#### **Rule 11.3. Appointment of experts**

**a. Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least two mental health experts, ~~at least one of whom must be a psychiatrist,~~ to examine the defendant and to testify regarding the defendant's mental condition. The court on its own motion or upon motion of any party may order that one of the mental health experts be a physician specializing in psychiatry and licensed as provided in sub-section (b) of this rule.

**b. Definition of Mental Health Expert.** [No change.]

**c. Nomination and Appointment of Experts.** The moving party may include in his or her motion a list of 3 qualified mental health experts; the other party may include such a list in a response to the motion. If the court finds that reasonable grounds for a competency examination exist, the court shall appoint two or more mental health experts from its approved list, ~~at least one of whom must be a psychiatrist,~~ to examine the defendant, report to the court in writing within 10 days after examination of the defendant and, if necessary, testify with regard to the defendant's competence. If the appointed expert is unable to conduct the examination within the time allotted, the expert shall immediately inform the court and another expert shall be appointed. Upon approval of the court, the prosecution and the defense may stipulate to the appointment of only one expert.

**d. through g.** [No change.]