APPENDIX A

Proposed Rules

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FOR THE RULES FOR COURT-ORDERED MENTAL HEALTH PROCEEDINGS

Prefatory Comment

Unlike other recent rules restyling projects, such as the civil, criminal, family, probate, and juvenile rules - all modeled on a previously existing set of rules - there were no prior court rules expressly governing court-ordered mental health evaluation and treatment proceedings under A.R.S. Title 36. Previously, practitioners and courts attempted to apply the civil rules to court-ordered mental health evaluation and treatment proceedings, but the civil rules were not compatible due to the relatively short time frames that Title 36 requires. Therefore, the Court has adopted these new rules to provide a specific set of functional rules for Title 36 mental health proceedings.

Like family, probate, and juvenile proceedings, mental health proceedings are largely based on statutes. These mental health rules are not substitutes for the pertinent statutes, and practitioners must be familiar with those statutes as well as these Rules. The intent of the Rules is to clarify the statutes and address procedural gaps, when necessary, and to support the purposes stated in Rule 101(b).

PART I. GENERAL PROVISIONS

Rule 101. Applicability of These Rules

(a) **Scope.** These Rules govern procedures in court proceedings under the Arizona Revised Statutes, Title 36, Chapter 5.

(b) **Purpose and Construction.** Parties and courts should construe these Rules, and courts should enforce them, in a manner that secures the fair administration of justice, eliminates unnecessary delay and expense, and protects both the patient's due process rights and the public welfare.

2027 Comment to Rule 101 regarding Tribal Court Orders
Tribal Court involuntary commitment orders are governed by A.R.S. § 12-136 and the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders.

Rule 102. Applicability of Other Rules

(a) **Rules of Evidence.** The Arizona Rules of Evidence apply in a mental health proceeding, unless:

(1) The Rules of Evidence are inconsistent with Rule 110 of these Rules or Arizona Revised Statutes Title 36, Chapter 5, or

(2) The parties agree otherwise.

(b) Other Rules. Other Arizona Rules of Court apply only when specifically referenced in these Rules.

Rule 103. Definitions

(a) Generally. Unless the context requires otherwise, the definitions in A.R.S. § 36-501 apply to these Rules.

(b) Additional Definitions. As used in these Rules:

(1) ***"A.R.S."*** means the Arizona Revised Statutes.

(2) ***"Clerk"*** means the superior court clerk.

(3) ***"Civil Rule***" means a rule in the Arizona Rules of Civil Procedure.

(4) ***"Discovery"*** means only depositions, interrogatories, requests for admissions, and requests to produce documents and things under the Civil Rules.

(5) ***"Judge"*** means a superior court judge, commissioner, or judge pro tempore.

(6) ***"Mental health proceeding"*** means a court proceeding under A.R.S. Title 36, Chapter 5, including a proceeding to enforce, continue, review, or renew an existing treatment order, to change the treatment plan, to amend the terms of the treatment order, or to otherwise facilitate treatment under an existing order.

(7) ***"Outpatient treatment provider"*** means the mental health treatment agency designated in a court order, or the agency's designee, to supervise and administer the patient's mental health treatment program when the patient is not in an "inpatient facility" as defined in the Arizona Administrative Code, Title 9, Chapter 21.

(8) ***"Patient"*** includes a proposed patient, as the context of a rule requires.

(9) ***"Presiding judge"*** means the county's presiding superior court judge or that judge's designee.

(10) ***"Probate Rule"*** means a rule in the Arizona Rules of Probate Procedure.

(11) ***"Reasonable means"*** when used in the context of providing notice or a document under these Rules means transmitting the notice or document in a manner that it will be timely received by the other parties, considering the nature of the notice or document and the date

of any pending event or court proceeding. "Reasonable means" may include hand-delivery, email, telefax, overnight delivery, or other expedited or routine delivery services.

(12) ***"Supreme Court Rule"*** means a rule in the Rules of the Supreme Court of Arizona.

(13) ***"These Rules"*** means the Rules for Court-Ordered Mental Health Proceedings.

(14) **"*Treatment order*"** means an order entered pursuant to A.R.S. § 36-540, including any modification of that order, and any order for continued treatment entered pursuant to A.R.S. § 36-543. "Treatment order" excludes any order that by its terms has expired or that has been terminated by court order pursuant to A.R.S. § 36-541.01.

Rule 104. Confidentiality and Public Access to Mental Health Records

(a) **Court Records.** Pursuant to A.R.S. § 36-509.01 and except as provided in Supreme Court Rule 123, the case records of, and case information regarding, a mental health proceeding are closed and are not open for public access or inspection.

(b) **Other Health Care Entity Records.** Pursuant to A.R.S. § 36-509, records of a health care entity, including the information contained in those records, remain confidential and do not become available to the public when they are filed with the court.

(c) **Sealing and Unsealing Records.** The procedure for sealing and unsealing records in a mental health case is governed by Civil Rule 5.4. Sealed records in a mental health case may be examined only by judges or by a person authorized in an order entered under Civil Rule 5.4(h). Access to sealed records by court staff may be determined by local administrative order.

Rule 105. Parties

Only the following are parties to a mental health proceeding:

(a) The entity that filed the petition for court-ordered evaluation under A.R.S. Title 36, Chapter 5,

(b) The entity that filed a petition for court-ordered treatment or an application for continued court-ordered treatment under A.R.S. Title 36, Chapter 5,

(c) The patient,

(d) The patient's guardian, regardless of whether the guardian has been granted authority to consent to the patient's placement at an inpatient psychiatric facility under A.R.S. § 14-5312.01,

(e) The agent to whom the patient has granted inpatient mental health treatment authority pursuant to a mental health power of attorney executed under A.R.S. Title 36, Chapter 32, Article 6, but only if a determination was made that the patient is "incapable," as defined in A.R.S. § 36-3281(D),

(f) The patient's guardian ad litem if appointed under A.R.S. §§ 36-540(G) or 36-543(D)(6),

(g) The outpatient treatment provider, and

(h) Any person or entity who has appeared as an intervenor under A.R.S. Title 36, Chapter 5.

Rule 106. Duties of Attorneys and Parties

(a) **Appointment of an Attorney for the Patient.** A patient has a right to be represented by an attorney. Unless the patient already has an attorney, the court must appoint an attorney for the patient as required by statute.

(b) **Duties of Patient's Attorney.** The patient's attorney must comply with the provisions of A.R.S. § 36-537(B).

(c) **Appearance.** An attorney for any party may enter an appearance by personally or virtually attending a mental health proceeding and informing the court that the attorney is representing a party. An attorney also may appear as attorney of record by filing (1) a notice of appearance; (2) a petition, an application, or a response; or (3) a motion to intervene. An attorney may not file any other document in the case, or address the court on behalf of a party, without first appearing as attorney of record.

(d) **Ending an Attorney's Representation of a Patient.** After an attorney has appeared for a patient, the attorney has a duty to represent that patient until any of the following events occurs:

(1) The court has granted a motion to withdraw made under section (f) or for substitution under subpart (h)(1),

(2) The court, for any other reason, terminates the representation,

(3) 72 hours have elapsed after the entry of an order for inpatient evaluation, and no petition for court-ordered treatment has been filed,

unless the court has entered a subsequent order for an outpatient evaluation,

(4) The petition for court-ordered treatment is dismissed or denied,

(5) The court enters a treatment order and the time to appeal that order has lapsed,

(6) The court order for treatment is terminated, or

(7) An attorney represented the party on appeal or in a special action, and the appellate court has entered its mandate or termination letter.

(e) **Extending Representation or Re-Appointment.** Notwithstanding subpart (d)(5), the court may extend the representation of a patient's attorney beyond the entry of the treatment order, or it may re-appoint the attorney in further proceedings.

(f) **Withdrawal.** Except as provided in Rule 106(d), an attorney of record may terminate representation of a client only by court order permitting withdrawal. The attorney's written or oral motion must state the reasons for withdrawal. The attorney remains the party's attorney of record until the court grants the motion to withdraw.

(g) **Advisory Attorney.** If the court permits a patient to be self-represented, the court may order the attorney to continue in the case as the patient's advisory attorney.

(h) **Substitution.**

(1) ***Generally***. Except as provided in subpart (h)(2), an attorney may substitute as attorney of record only by court order granting a written or oral motion. The client must consent to the substitution in writing or on the record. The court may consider all relevant factors in deciding the motion, including the client's capacity to consent to the substitution. The substituting attorney must promptly notify the other parties' attorneys of the substitution by reasonable means.

(2) ***Within the Same Firm or Office.*** If a case is reassigned to another attorney within the same law firm or governmental office, the new attorney must notify the court and other parties of the reassignment, including any changes in the physical or email address. An order of substitution is not required.

(i) **Duty of Attorney After Withdrawal or Substitution.** Upon entry of an order for withdrawal or substitution, other than a reassignment within the same firm

or office, the former attorney must promptly transfer the file and all disclosure to the new attorney or to the client, if self-represented, and provide the client's most current contact information to the new attorney.

(j) Responsibility to the Court.

(1) Attorneys and Self-Represented Parties. Each attorney of record and self-represented party in a mental health proceeding must remain informed of the status of, and the deadlines in, that proceeding.

(2) Attorneys. An attorney who changes an office address, email address, or telephone number must promptly notify the clerk in each county in which that attorney is an attorney of record of the attorney's current office and email addresses and telephone number and must file a notice in each case in which the attorney has appeared containing that information.

(3) Self-Represented Parties. When a self-represented party first appears, the court must instruct the self-represented party to file a notice containing the party's mailing address, telephone number, and any email address, and to provide copies of the notice to the other parties' attorneys and all self-represented parties. A self-represented party must file an updated notice of any change in contact information no later than 7 days after the change, and promptly provide a copy of the updated notice to the other parties as required by Rule 109.

2027 Comment to Rule 106
If a patient requests to be self-represented, the court should follow the procedure in *In re Jesse M.*, 217 Ariz. 74 (App. 2007).

Rule 107. Computing and Extending Time

(a) Definitions.

(1) "Business day" is a day that is not a Saturday, a Sunday, or a legal holiday in the county where the proceeding is pending.

(2) "Legal holiday" is a holiday that is observed by the court in the county in which the proceeding is pending.

(b) General Time Computation. When computing any time period of more than 24 hours that is prescribed by these Rules, by a court order, or by an applicable statute, the following provisions apply:

(1) Day of the Event. Do not count the day of the act or event from which the designated time period begins to run.

(2) Last Day. Include the last day of the period, unless it is a Saturday, Sunday, or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Time Period Less Than 7 Days. If the time period is less than 7 days, do not count intermediate Saturdays, Sundays, and legal holidays in the computation.

(4) Next Day. The "next day" is determined by counting forward when the period is measured after an event, and backward when measured before an event.

(c) Computation of 24 Hours. For purposes of these Rules, a period of 24 hours does not include those hours that fall on a non-business day.

(d) Extending or Reducing Time. When an act may or must be done within a specified time, for good cause or where justice otherwise requires, on motion or on its own initiative, the court may extend or reduce time. This section does not apply to statutorily-imposed deadlines.

(e) Time of Entry of an Order. A court order is entered when the clerk files it.

Rule 108. Filing Documents with the Court; Electronic Filing; Email

(a) Generally. A document is "filed" with the court by providing it to the clerk for filing. If a judge permits, a party in open court may submit a document directly to the judge, who must promptly transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) Electronic Filing. Electronic filing of documents, where available, is authorized as provided by the Arizona Code of Judicial Administration § 1-901.

(c) Email. Parties may not submit motions and requests to the judge or the judge's staff by email for filing unless authorized by a specific rule.

Rule 109. Serving Filed Documents; Certificate of Service; Copy to Judge

(a) Duty to Serve. Except as specified elsewhere in these Rules or A.R.S. Title 36, Chapter 5, any party who files a document with the court must provide a copy of that document, as well as any notice of hearing for which service is required, to the other parties by reasonable means. If a party is represented by an attorney, service must be made on the attorney unless the court orders, or a specific rule or statute requires, service on the party.

(b) **Certificate of Service.** Except as specified elsewhere in these Rules, the date and manner of providing the document must be noted on the last page of the filed copy of each filed document, or in a separate certificate, in a form substantially as follows: *"A copy has been, or will be [emailed, hand-delivered, mailed] on [insert date] to [name of opposing party or attorney and their address]."*

(c) **Copy to Assigned Judge.** Unless otherwise required by these Rules, any party who files a document may provide the assigned judge with a copy of the document.

Rule 110. Evidence

(a) **Generally.** Except as provided in the Arizona Rules of Evidence, the court must consider all relevant evidence presented by the parties that is admitted by the court and give weight to the admitted evidence as the court determines appropriate.

(b) **Incorporation by Reference.** If an affidavit is submitted pursuant to A.R.S. Title 36, Chapter 5 or these Rules and incorporates another document by reference, a copy of that document must be attached to the affidavit.

(c) **Stipulations to the Admission of Filed Documents.** If parties stipulate to the admission of a document that has been filed and is part of the court's record, that document does not need to be separately marked and admitted as an exhibit and the court will consider the document as evidence.

(d) **Exhibits.** The clerk must mark exhibits for identification and must maintain and dispose of those exhibits according to the Arizona Superior Court Records Retention and Disposition Schedule, Arizona Code of Judicial Administration § 3-402.

(1) ***Admitted Exhibits.*** The clerk must file into the court record all exhibits that are admitted into evidence.

(2) ***Exhibits Offered but not Admitted.*** The clerk must retain any exhibits that a party offers into evidence but that are not admitted.

(3) ***Exhibits not Offered.*** The clerk may return to the party who provided it any exhibit that was marked but was not offered into evidence.

(e) **Judicial Notice.** The court may take judicial notice of records contained in those cases filed in the Superior Court of Arizona in which the patient is, or was, a party if the court determines those records are relevant.

2027 Comment to Rule 110

Examples of relevant evidence include, but are not limited to, the following, regardless of its age:

(1) Prior court orders for the patient's mental health treatment and dismissals or denials of the same,

(2) Records of prior mental health proceedings for the patient, including but not limited to transcripts of witnesses' testimony and documents admitted into evidence or otherwise considered by the court in rendering its decision,

(3) Any history of the patient's compliance or non-compliance with prior treatment recommendations or court orders,

(4) The patient's medical and psychological records,

(5) Law enforcement reports concerning the patient, and

(6) Prior acts and statements of the patient.

Section (b) expands the Arizona Supreme Court's holding in *In Re: Pima County MH No. 20200860221*, 255 Ariz. 519 (2023), to all affidavits submitted under A.R.S. Title 36, Chapter 5, or these Rules. Although incorporation by reference in an affidavit is permissible, "it remains best practice to provide all the statutory required information in the affidavit itself." *Id* ¶ 18.

PART II. RULES RELATING TO COURT PROCEEDINGS

Rule 201. Requests and Motions

(a) **Requests.** Statutes and these Rules refer to "requests" and "motions." Unless a specific rule or a court order provides otherwise, the requirements and procedures of section (b) concerning motions also apply to requests.

(b) **Motions.** Motions must state a detailed basis for the relief sought. Motions generally should be in writing, but if the court or these Rules permit an oral motion, the motion must be made on the record. The movant must make a good faith effort to confer with all parties before filing the motion. The movant must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to contact the other parties.

(1) **Filing.** A written motion must be filed with the clerk. The movant must provide a copy of the motion, along with a proposed form of order, to the assigned judge. This may be done through an electronic filing

system if the system has that functionality. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding judge. Pursuant to Rule 109, the filing party must provide all other parties with a copy of the motion and any proposed order by reasonable means.

(2) **Response and Reply.** A party may file a response to a motion no later than 3 business days after service under subpart (b)(1). The movant may file a reply no later than 3 business days after service of a response. The reply must be limited to the matters raised in the response.

(3) **Page Length.** Unless the court allows otherwise, the length of a motion or a response to a motion, including supporting memorandum, may not exceed 10 pages, and the reply may not exceed 5 pages.

(c) **Court Ruling.** Except as these Rules or statutes provide otherwise, the court may summarily rule on the request or motion if either (1) the motion or request indicates that no party objects to the request or motion, or (2) no party has timely filed a written response objecting to the motion or request.

Rule 202. Attendance at Court Proceedings; Exceptions

(a) **Generally.** Except as otherwise provided by this rule, mental health proceedings are confidential and are not open to persons other than parties and witnesses and their attorneys.

(b) **Exceptions.** After considering any party's objection and the patient's privacy interest, the court may permit the following persons and their attorneys to attend a mental health proceeding:

(1) An agent under either a health care power of attorney or a mental health care power of attorney executed by the patient as principal under A.R.S. Title 36, Chapter 32, Article 2 or Article 6, and who is not a party under Rule 105,

(2) The patient's conservator,

(3) Anyone nominated in a then-pending petition to serve as the patient's guardian or conservator,

(4) The patient's guardian ad litem if not appointed in the mental health proceeding,

(5) The patient's attorney in any other court proceeding,

(6) Any person entitled to notice of the proceeding pursuant to A.R.S. Title 36, Chapter 5,

(7) Those persons necessary to ensure the safety and health of the patient and the safety of others who are present during the proceeding,

(8) Any person who the court determines has a significant nexus to the care, treatment, or maintenance of the patient, including the patient's family members and inpatient and outpatient behavior health care providers, and

(9) Any other person for good cause.

(c) **Participation.** A person permitted to attend a proceeding under section (b) is not elevated to the status of a party and may not file documents, present evidence, or cross-examine witnesses unless the court allows otherwise. The court for good cause, however, may allow a person attending the proceeding to participate, but only in a manner that the court permits.

(d) **Confidentiality.** The court must take steps that are reasonably calculated to inform attendees that, pursuant to A.R.S. §§ 36-509 and 36-509.01, case records and information regarding the mental health proceeding are confidential.

2027 Comment to Rule 202(d)
Although the above-referenced statutes do not specifically require the court to inform attendees of the confidential nature of mental health proceedings, this provision is intended to ensure adherence to those statutes. Steps the court may take include posting a written notice inside or outside the courtroom, providing the attendees with a written admonition, or providing an oral admonition at the start of the hearing.

Rule 203. Virtual Attendance and Testimony

(a) **Definitions.**

(1) **"*Proceeding,"*** when used in this rule, means a court event that parties, or their attorneys, have an opportunity to attend.

(2) ***"Virtual"*** **or** ***"virtually,"*** when used in this rule, means by telephone, video conferencing, or other audio or audiovisual technology allowing two or more persons to communicate.

(b) **When Permitted or Required.** The court may permit, or require, a person to attend or testify virtually if the court determines:

(1) The person can be identified as someone who is permitted to attend the proceeding under Rule 202;

(2) If the person is participating in the proceeding, the person can be heard by every other person participating in the proceeding, including the judge and, if applicable, the certified reporter or an electronic recording system; and

(3) Allowing the person to virtually attend or virtually testify will not unfairly prejudice any party.

(c) **How Requested.** Unless otherwise ordered by the court, a person who wants to virtually attend or virtually testify must either file a written request or make an oral request on the record. The request must state the basis and may be for a particular proceeding or for multiple proceedings in the same case.

(d) **Time for Making Request.** A written or oral request to allow virtual attendance or virtual testimony must be made in a timely manner, considering the circumstances at the time the request was made. Circumstances may include but are not limited to (1) the promptness of the person in making the request; (2) the nature of the proceeding, including whether it is contested or evidentiary; (3) whether all parties agree to the virtual attendance or virtual testimony; (4) the reason why virtual attendance or virtual testimony is being requested; and (5) logistical factors.

(e) **Use of Exhibits During Virtual Testimony.** Unless the court orders otherwise, before a party may question a person testifying virtually about an exhibit, that party must:

(1) Provide that person and all parties, in advance, with a copy of that exhibit, which must have been marked so that it can be identified easily by that person, all parties, and the court; and

(2) Confirm to the court that the copy of the exhibit provided to the person who is testifying virtually is identical to the exhibit provided to court.

(f) **Instructions for Virtual Attendance or Testimony; Video Conferencing Preferred.** If the court permits or requires virtual attendance or testimony, the court must either provide instructions for how to attend or testify virtually or require the party who requested the virtual attendance or testimony to provide those instructions. When both video conferencing and audio conferencing are available, and absent good cause, the court must require the person attending or testifying virtually to do so by video.

Rule 204. Effect of an Existing Guardianship for a Patient

(a) **Before a Hearing.** The court may dismiss a petition for court-ordered treatment or an application for continued court-ordered treatment if all the following apply:

(1) Prior to the hearing on the petition or application, the patient has a guardian who has been granted additional authority under A.R.S. § 14-5312.01;

(2) The court finds the patient's needs can be adequately met by the guardian; and

(3) The court finds a court order for treatment is not necessary to ensure the patient's compliance with necessary treatment or to protect the public safety.

(b) **During a Hearing.** At a hearing on a petition for court-ordered treatment or application for continued court-ordered treatment, the court may grant the patient's guardian the additional authority under A.R.S. § 14-5312.01 if the court finds both of the following:

(1) The guardian has not already been granted that authority; and

(2) The patient meets the criteria for court-ordered treatment under A.R.S. § 36-540(A).

If the court grants the guardian the additional authority under A.R.S. § 14-5312.01, the court then may either (A) deny the petition or application after finding that the patient's needs can adequately be met by the guardian, or (B) grant the petition and enter an order for treatment or continued treatment.

(c) **After Entry of an Order for Treatment.** The court may terminate a court order for treatment or continued court-ordered treatment at any time if the court finds the patient's needs can be adequately met by a guardian who has been granted the additional authority under A.R.S. § 14-5312.01 and that a court order for treatment is no longer necessary to ensure compliance with necessary treatment or to protect the public safety.

(d) **Out-of-County Guardian.** If the court grants an existing guardian the additional authority under A.R.S. § 14-5312.01(B) and a court in another county appointed the guardian, the court must transmit a copy of the order granting the additional authority to the court in the other county. The court in the other county must then file the order and issue the guardian amended letters of appointment.

2027 Comment to Rule 204(d)

The two courts should consider whether a transfer of venue of the guardianship is appropriate, as provided in A.R.S. § 14-5313.

Rule 205. Independent Evaluation

(a) Generally. A patient has a right under A.R.S. § 36-538 to an independent evaluation of the patient's mental condition prior to a hearing for court-ordered treatment under A.R.S. § 36-539, an annual review under A.R.S. § 36-543, or a judicial review under A.R.S. § 36-546. A patient who is unable to afford an evaluation may exercise that right by requesting the court to appoint an independent evaluator.

(b) Procedure. A patient may ask the court for an independent evaluation by making an oral or written motion. Other parties are not permitted to respond to the motion.

(c) Disclosure. If the patient intends to call as a witness the person who conducted the independent evaluation, both of the following apply: (1) the independent evaluator must provide a written report, which must include a summary of the person's diagnosis and findings regarding the patient; and, (2) the patient must timely disclose to the other parties a copy of the report, as well as the name, telephone number, and email address of the person who conducted the evaluation.

Rule 206. Change of Judge

(a) For Cause. The procedure for change of judge for cause in a mental health proceeding is governed by Civil Rule 42.2, except that:

(1) A party must file the affidavit for change of judge for cause no later than 2 business days after discovering the grounds for the change,

(2) The party filing the affidavit must provide a copy of the affidavit to the other parties by reasonable means, and

(3) A party may file a response or controverting affidavit no later than 2 business days after the filing date of the affidavit.

(b) As a Matter of Right

(1) When Available. Each side in a mental health proceeding has a right to file one notice of change of judge in the case. The notice may be filed only with respect to the judge assigned to a petition for court-ordered treatment or to an application for continued court-ordered treatment. For purposes of this rule, a mental health proceeding has only two sides:

one side is a party who files the petition for court-ordered treatment and any party who files an application for continued court-ordered treatment constitute one side; the other side is the patient.

(2) Time Limits.

(A) Petition for Court-Ordered Treatment. A party who files a notice of change of judge with respect to a petition for court-ordered treatment must do so no later than 48 hours before the hearing and promptly provide the notice to the other parties by reasonable means.

(B) Application for Continued Court-Ordered Treatment. A notice of a change of judge with respect to an application for continued court-ordered treatment must be filed no later than 5 days after the court provides notice of the hearing and must be provided to the other parties by reasonable means.

(3) Waiver. A side waives the right to a change of judge if the judge considers any contested issue. Waiver does not occur when a judge considers a petition for court-ordered evaluation.

(4) Procedures on Notice.

(A) On Notice. If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the case except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the case can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.

(B) Court Action. If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the case. Otherwise, the presiding judge must promptly reassign the case.

(c) Effect on Hearing. The filing of an affidavit for change of judge for cause, or an order changing a judge as a matter of right, constitutes good cause for continuing a hearing on a petition for court-ordered treatment, and may constitute good cause for continuing a hearing on an application for continued court-ordered treatment. Upon receipt of the affidavit, or the entry of an order following a notice, the court:

(1) Must vacate any scheduled hearing on a petition for court-ordered treatment, set a new hearing in compliance with A.R.S. § 36-535(B), provide the parties with at least 24 hours' notice of the new hearing date, and inform the parties as to whether the hearing will be held virtually or in person; and

(2) May vacate any scheduled hearing on an application for continued court-ordered treatment, in which case the court must provide the parties with at least 5 business days' notice of the new hearing date.

Rule 207. Request to Continue a Court Proceeding

(a) **Manner of Making the Request.** A request to continue a court proceeding must be timely under the circumstances. It may be made orally in court, in a document filed with the clerk, or by email sent to the assigned judge's staff. If the party makes the request in a document filed with the clerk, that party must provide a copy of the document to the other parties by reasonable means. If the request is made by email, the sender must copy all parties or their attorneys on that email, and the judge's staff must provide a copy of the email and any attachments to the clerk for filing.

(b) **Content of the Request.** The party requesting the continuance must state a detailed basis for the continuance and state whether the other parties agree to the continuance.

(c) **Response.** A party who opposes a request to continue must promptly submit a response. The response may be submitted by email and if so, the clerk must file the email and any attachment.

(d) **Ruling.** After allowing the other parties a reasonable opportunity to respond, the court—as far in advance of the hearing as practicable—must rule on a request to continue and notify the parties of its ruling. The court may rule on a request to continue without oral argument.

Rule 208. Conduct of Hearings

(a) **Objectives.** For any individual hearing, the court may adopt procedures as necessary or appropriate to facilitate a just, speedy, and efficient resolution of the proceeding. To achieve this objective, the court may impose time limits and allocate hearing time.

(b) **Sequence of Hearing.** A hearing should proceed in the following sequence, unless the court orders otherwise for good cause:

(1) ***Opening Statements.*** Each party may make a concise opening statement regarding the facts that the party intends to establish by evidence at hearing.

(2) ***Evidence.*** Unless the court orders otherwise, the parties should introduce evidence in the following sequence:

(A) The party with the burden of proof,

(B) Other parties, if any, in the order the court directs, and

(C) Rebuttal evidence from the party with the burden of proof.

(3) ***Omitted Evidence.*** At any time before closing arguments begin and if justice requires, the court may allow a party to introduce omitted evidence on such terms as the court orders.

(4) ***Closing Arguments.*** The party with the burden of proof may make the first and a rebuttal argument in closing. The court must prescribe the sequence for the remaining parties to make their respective closing arguments.

Rule 209. Disclosure Sanctions

(a) **Purpose.** Due to the short statutorily mandated time periods for conducting these proceedings, the disclosure requirements in these Rules are intended to ensure that all parties are fairly and meaningfully informed of the other parties' legal theories, witnesses, and exhibits, thereby allowing the parties to adequately prepare for court hearings.

(b) **Failure to Comply with Disclosure Requirements.** If any party, or that party's attorney, fails to comply with the disclosure requirements of these Rules, the court may:

(1) Continue the hearing if the continuance does not result in a violation of statutory deadlines,

(2) After conducting a hearing, sanction the offending party or attorney, or

(3) Do both.

(c) **Sanctions.** Sanctions may include any one or more of the following:

(1) Order the offending party or attorney to pay a monetary sanction to the clerk.

(2) Hold the offending party or attorney in contempt of court for violating a court order regarding disclosure.

(3) If the petitioner or petitioner's attorney is the offending party, dismiss the petition.

(4) Exclude evidence.

Rule 210. Dismissals

All dismissals under these Rules are without prejudice unless the dismissal order specifies otherwise.

Rule 211. Delaying a Change of Venue

If the court orders a change of venue, venue may not be transferred until the time for appealing a treatment order has expired under Rule 603. If a timely notice of appeal is not filed, venue may be transferred the day after that deadline. If a timely notice of appeal is filed, venue may not be transferred until the record has been transmitted to the appellate court under the Arizona Rules of Civil Appellate Procedure.

PART III. COURT-ORDERED EVALUATIONS

Rule 301. Commencing a Court-Ordered Evaluation

(a) **Petition.** A court-ordered evaluation is commenced by filing a petition that meets the requirements of A.R.S. § 36-523.

(b) **Response to a Petition.** A patient is not required to file a response to a petition for court-ordered evaluation.

Rule 302. Review of Petition and Determination

(a) **Time for Court Review.** The court must review a petition for court-ordered evaluation at its earliest opportunity.

(b) **Determination.** Based on a review of the petition,

(1) If the court determines that the petition does not meet the requirements of A.R.S. § 36-523, the court must dismiss the petition, promptly provide the petitioner with a copy of the dismissal order by reasonable means, and, if appropriate, order the patient's release.

(2) If the court determines that the patient meets the requirements of A.R.S. § 36-529(A), the court must enter an order that:

(A) Requires the patient to undergo an inpatient or an outpatient mental health evaluation at a designated time and place;

(B) Appoints an attorney for the patient, effective if, and when, the patient is taken into custody; and

(C) Sets a deadline for service of the order and a copy of the petition on the patient.

(3) If the court determines that the patient meets the requirements of A.R.S. § 36-529(B), the court must enter an order that:

(A) Requires the patient to be taken into custody and evaluated at an evaluation agency, and

(B) Appoints an attorney for the patient effective upon entry of the order.

2027 Comment to Rule 302

Because the patient may be detained—or because the patient may suffer imminent harm to self or present an imminent danger to others—the court's review and resulting action under Rule 302(a) should occur within 24 hours after the filing of the petition.

In determining the service deadline under Rule 302(b)(2)(C), the court should consider the patient's location relative to the place of the evaluation, available transportation, and other pertinent factors, so the patient has an opportunity to comply with the order.

Rule 303. Service of the Evaluation Petition and Court Orders

(a) **Service of a Dismissal Order and Evaluation Petition.** If the court dismisses the evaluation petition, the clerk must mail a copy of the dismissal order, as well as a copy of the evaluation petition, to the patient at the patient's address contained in the petition. If the patient is detained when the court dismisses an evaluation petition, the entity detaining the patient must provide the patient with a copy of the dismissal order and a copy of the evaluation petition.

(b) **Service of an Evaluation Order and Evaluation Petition.** If the court orders the patient to be evaluated, the petitioner must serve the patient with copies of the evaluation petition and the evaluation order as provided in A.R.S. §§ 36-510.01 and 36-529 and must serve the patient's attorney as required by Rule 109(a). Failure to timely serve the patient is not, by itself, grounds for dismissing the petition; however, the court may impose sanctions or remedies to address that failure.

(1) Patient Is Detained. If the patient is detained when an evaluation order is entered, the petitioner must cause a copy of the evaluation order and a copy of the petition for court-ordered evaluation, including any documents that accompany the petition pursuant to A.R.S. § 36-523(C), to be personally served on the patient no later than 24 hours after entry of the order.

(2) Patient Is Not Detained.

(A) If the patient is not detained when an evaluation order is entered and if the court has ordered that the patient be taken into custody, the petitioner must cause a copy of the evaluation order and a copy of the petition for court-ordered evaluation, including any documents that accompany the petition pursuant to A.R.S. § 36-523(C), to be personally served on the patient when the patient is taken into custody.

(B) If the patient is not detained when an evaluation order is entered and the court has not ordered that the patient be taken into custody, the petitioner must cause a copy of the evaluation order and a copy of the petition for court-ordered evaluation, including documents that accompanied that petition pursuant to A.R.S. § 36-523(C), to be personally served on the patient on or before the service deadline set by the court in its order.

2027 Comment to Rule 303

A.R.S. § 36-510.01 governs the manner of service and the requirement for filing proof of service with the court.

Pursuant to A.R.S. § 36-529(C), an order for evaluation expires if the evaluation is not initiated within 14 days from the date of the order.

Rule 304. Hearing on Need for an Inpatient Evaluation

(a) Request; Disclosure. Pursuant to A.R.S. § 36-529(D), a patient may request a hearing to determine whether the patient should be involuntarily hospitalized for evaluation. The patient must attach to the request a list of witnesses, with a concise statement of the witnesses' anticipated testimony, and copies of all exhibits the patient intends to offer at the hearing. No other disclosure is required, and the parties may not conduct discovery before the hearing. However, the parties may interview witnesses and use subpoenas.

(b) Procedure. A request under A.R.S. § 36-529(D) must be in writing, filed with the court, and provided to all parties by reasonable means. Other parties are not required to file a response to the request for the hearing. At its earliest opportunity after receiving the request, the court must hold a hearing to determine whether the patient should be involuntarily hospitalized for the evaluation.

PART IV. PROCEEDINGS FOR COURT-ORDERED TREATMENT

Rule 401. Commencing a Proceeding for Court-Ordered Treatment

(a) Petition. A proceeding for court-ordered treatment is commenced by filing a petition for court-ordered treatment that meets the requirements of A.R.S. § 36-533.

(b) Court Review of the Petition. The court must review a petition for court-ordered treatment at its earliest opportunity.

(c) Dismissal. If after a review of the petition the court determines dismissal is appropriate, it must enter an order dismissing the petition without prejudice and, if the patient is detained, the order must direct the patient's release. In addition, the court must promptly provide the petitioner with a copy of the dismissal order by reasonable means, and the petitioner must provide a copy of the dismissal order and a copy of the petition to the patient.

(d) Other Orders. If the court does not dismiss the petition and order the patient's release as provided in A.R.S. § 36-535(C), the court must:

(1) Determine whether it should order that the patient be detained under A.R.S. § 36-535(A),

(2) Set a hearing as provided in A.R.S. § 36-535(B), to be held no less than 3 business days and no more than 6 business days after the filing date of the petition,

(3) Give the parties a written notice that includes the date, time, and location of the hearing, and the name of the judge who will conduct the hearing, and

(4) Appoint an attorney for the patient if the patient does not already have an attorney.

(e) Service of the Petition.

(1) Service on the Patient. At least 72 hours before the court conducts a hearing on the petition for court-ordered treatment, the petitioner must

serve the patient with a copy of the petition for court-ordered treatment, supporting affidavits, and the notice of the hearing on the petition, as provided in A.R.S. §§ 36-510.01 and 36-536.

(2) Service on the Patient's Guardian. If the petitioner is aware that the patient has a guardian, the petitioner must use best efforts to serve the guardian with a copy of the petition, affidavits in support of the petition, and the notice of hearing no later than 2 calendar days before the hearing on the petition for court-ordered treatment. In lieu of personal service, a guardian can provide a written acknowledgment that the guardian has received the documents. As provided in A.R.S. § 36-536(E), failure to serve the guardian is not, by itself, grounds for dismissing the petition; however, the court may impose remedies or sanctions to address that failure.

(f) Response to the Petition. A party who opposes the relief requested in a petition for court-ordered treatment is not required to file a response to the petition. However, if the party does file a response, the party must file it at least 24 hours before the time set for the hearing on the petition and must promptly provide the other parties by reasonable means with a copy of the response. The response must state with specificity the basis for opposing the petition. In addition, the response may make affirmative allegations concerning, or raise defenses to, the requested relief.

2027 Comment to Rule 401

A.R.S. § 36-535(B) requires the court to hold a hearing on a petition for court-ordered treatment no later than 6 business days after a petition is filed. In setting a hearing on the petition, the court also should be mindful of the provision of A.R.S. § 36-536(A) that requires service of the petition and other documents on the patient at least 72 hours before the hearing. The service requirements cannot be waived. A.R.S. § 36-536(B); *see also In re: MH 2006-000023*, 214 Ariz. 246, 150 P.3d 1267 (App., 2007). Therefore, from a practical standpoint, setting the hearing on the fourth or fifth day may be the best practice.

Rule 402. Disclosure and Discovery

(a) Disclosure.

(1) Petitioner's Disclosure Duty. In addition to the requirements of A.R.S. § 36-537(A), the petitioner must make a good faith effort to disclose to the other parties at least 48 hours before the hearing on the petition for court-ordered treatment the names and telephone numbers of all witnesses the petitioner intends to call at the hearing, a summary of the

witnesses' anticipated testimony, and copies of any documents the petitioner intends to mark as exhibits for the hearing and that have not been previously provided.

(2) Patient's Disclosure Duty. The patient's attorney must make a good faith effort to disclose to the other parties at least 24 hours before the hearing the names and telephone numbers of all witnesses, other than the patient, whom the patient intends to call at the hearing, a summary of the witnesses' anticipated testimony, the basis of any legal defenses to the petition, and copies of any documents the patient intends to mark as exhibits for the hearing.

(3) Disclosure Duties of Other Parties. Any other party who intends to present evidence at the hearing must disclose to the other parties at least 24 hours before the hearing the names of witnesses the party intends to call at the hearing, a summary of the witnesses' anticipated testimony, the basis of any legal claims or defenses the party intends to assert, and copies of any documents the party intends to mark as exhibits for the hearing.

(b) Discovery. The parties may engage in discovery only if authorized by the court upon a showing of good cause. However, the parties may interview witnesses and use subpoenas without prior court authorization.

Rule 403. Hearing on a Petition for Court-Ordered Treatment

(a) Generally. The court must conduct a hearing on a petition for court-ordered treatment as provided in A.R.S. § 36-539 and Rule 208.

(b) Continuance. The court may continue a hearing as provided in A.R.S. § 36-535(B) and Rule 207.

Rule 404. Court Order

If the court finds that the petitioner has met the burden of proof, it must enter orders consistent with A.R.S. § 36-540. Otherwise, it must deny the petition and, unless the provisions of A.R.S. § 36-540(Q) apply, release the patient from detention.

Rule 405. Investigation of the Need for Appointment of a Guardian or Conservator for the Patient in a Court-Ordered Treatment Proceeding

(a) Generally. If the court makes findings pursuant to A.R.S. § 36-540(G), the court may appoint a suitable person or agency (the "appointee") to investigate the need for appointment of a guardian or conservator, or both, for the patient.

The appointee may include a court-appointed guardian ad litem ("GAL"), an investigator appointed pursuant to A.R.S. § 14-5308, or, if no person is willing and qualified to conduct the conduct the investigation, the public fiduciary.

(b) **Role.** The role of the appointee under this rule is limited to investigating whether the patient may need a guardian, conservator, or other protective order under A.R.S. Title 14, Chapter 5, and, if so, initiating and prosecuting such proceedings. The appointee does not represent the patient in the mental health proceeding and may not be called to testify in that proceeding or be asked to advise the patient or the court on any pending issue in the mental health proceeding except whether the patient may need a guardian, conservator, or other protective order under A.R.S. Title 14.

(c) **Qualifications of a Guardian ad Litem.** If the court appoints a GAL under this rule, the GAL must be an attorney licensed to practice in Arizona. The GAL must not be related to any party or to a party's attorney and must not have represented any party.

(d) **Authority.** The appointee may communicate with any person or entity who has knowledge or information relevant to whether the patient needs a guardian, a conservator, or other protective order under Title 14 of the Arizona Revised Statutes and may do the following:

(1) Obtain and review all medical, substance abuse, psychiatric, psychological, and counseling records of the patient, including records that are otherwise privileged or confidential;

(2) Obtain and review financial records, including records of the patient that are otherwise privileged or confidential;

(3) Obtain and review court records in any case, including a court-ordered mental health care and treatment case, filed in any court, concerning the patient;

(4) Meet with the patient at any location where that person may be located and meet and interview other individuals living in the same household as the patient or—if the patient is at a care facility, treatment agency, or hospital—the persons in charge of providing treatment to, or care for, the patient;

(5) Consult with any person who may be entitled to initiate, or has initiated, guardianship, conservatorship, or other protective proceedings under A.R.S. Title 14, Chapter 5, and investigate and review the background of any person who is interested in becoming the guardian or

conservator, including but not limited to that person's criminal arrests and convictions and credit history; and

(6) Perform any other act specifically authorized by the court.

(e) Appointment Order. The appointment order must state the reason why the investigation is appropriate, the scope and duration of the appointment, the appointee's powers, including those described in section (d), and the deadline by which the appointee must submit a report of the investigation to the court.

(f) Report to the Court. Unless the court orders otherwise, within 21 days after appointment, the appointee must file with the court a written report of the investigation. The report must include a recommendation regarding whether a guardian, a conservator, or both, should be appointed for the patient, the findings and reasons for that recommendation, and a recommendation regarding who should be appointed.

(g) Court Action on Report. If the appointee's report indicates that the patient needs a guardian, a conservator, or both, the court may authorize an appropriate individual or entity to file a petition for the appointment of a guardian, a conservator, or both, for the patient.

(h) Privileges and Confidentiality.

(1) ***No Privilege Between the Appointee and the Patient.*** Communications between the patient and the appointee are not privileged. When the appointee first communicates with the patient, the appointee must inform the patient that their communications are not privileged.

(2) ***Confidentiality.*** The appointee under this rule may not disclose any communication with the patient except as is necessary to investigate and advise whether the patient may need a guardian, conservator, or other protective order under Title 14 of the Arizona Revised Statutes, or to initiate and prosecute proceedings under A.R.S. Title 14, Chapter 5.

(3) ***Patient's Privileges and Confidentiality.*** The appointment of a person or agency under this rule and the receipt of otherwise privileged or confidential documents or information by the appointee does not waive any of the patient's privileges or rights of confidentiality. As a result, a party to the mental health proceeding may not compel the appointee to produce any privileged documents the appointee obtains.

(i) Independent Evaluation. On the appointee's motion, or on its own initiative, the court may order an evaluation of the patient by a physician, psychologist,

or registered nurse to assist the appointee in determining whether the patient is an incapacitated person or an adult in need of protection. The physician, psychologist, or registered nurse must provide a written report of that evaluation to the appointee. The appointee then must file the report with the court within the timeframe set by the court and provide a copy of the report to all parties.

Rule 406. Appointment of a Temporary Guardian or Temporary Conservator in a Court-Ordered Treatment Proceeding

(a) Appointment Generally. Consistent with A.R.S. § 36-540(H) and (I), if the court determines that a patient needs a temporary guardian or a temporary conservator, it must do all the following in the mental health case:

(1) Enter an order appointing the temporary guardian or temporary conservator and set forth any restrictions on that fiduciary's powers as provided in A.R.S. § 36-540(I).

(2) Order the temporary guardian or conservator to conduct an investigation concerning whether the patient is in need of a permanent guardian, a permanent conservator, or both; to file a written report regarding the results of the investigation; and to provide a copy of the report to all parties who have appeared in the proceeding, at least 2 business days before the hearing required by subpart (a)(4).

(3) Order the clerk to issue certified copies of letters of appointment to the temporary guardian or temporary conservator.

(4) Schedule a further hearing within 14 days to consider the continued need for a temporary guardian or temporary conservator, and if the need exists, whether it would be appropriate for the temporary guardian or temporary conservator who was previously appointed to continue in that capacity.

(5) Order the appointed temporary guardian or temporary conservator to give notice of that hearing to persons entitled to notice under A.R.S. §§ 14-5309(A) or 14-5405(A).

(b) Order, Acceptance of Appointment, and Letters of Appointment.

(1) The order appointing the temporary guardian or temporary conservator must satisfy the requirements of A.R.S. Title 14, Chapter 5, and Probate Rule 36.

(2) Prior to issuance to letters of appointment, the person appointed as temporary guardian or temporary conservator must file written acceptance of the appointment.

(3) Probate Rules 37, 38, and 39 apply to the issuance of letters of appointment of temporary guardian or temporary conservator.

(c) Recommendation for Appointment of Permanent Guardian or Permanent Conservator. If the temporary guardian or temporary conservator recommends the appointment of a permanent guardian or permanent conservator for the patient, the court must order the temporary guardian or temporary conservator to initiate a new case by following the procedures established by A.R.S. Title 14, Chapter 5, and the Probate Rules for such appointments.

Rule 407. Oversight of Court Order

(a) Status Reports. The court, on any party's motion or on its own initiative, may order the outpatient treatment provider to file one or more status reports concerning the patient's treatment and compliance with treatment, and whether continued outpatient treatment is appropriate. The status reports should be in a form, and submitted at intervals, as the court deems appropriate to assist the court in enforcing its treatment order.

(b) Court Action. After reviewing the status report, the court may set a conference or a hearing or take other action described in A.R.S. § 36-540(E).

Rule 408. Motion to Alter or Amend an Outpatient Treatment Order

(a) Generally. On motion of the outpatient treatment provider's medical director, on a request of the patient's guardian, or on its own initiative, the court may alter an outpatient treatment plan or order the patient to inpatient treatment as provided in A.R.S. § 36-540(E)(5).

(b) Motion. The motion must state a detailed factual basis. If the motion requests inpatient treatment, it also must provide the court with a calculation of the days remaining for inpatient treatment under the original court order and the order's termination date.

(c) Court Action. Notwithstanding Rule 201(b)(2), the court must consider the motion at its earliest opportunity and without a response, and then take appropriate action under A.R.S. § 36-540(E)(5).

Rule 409. Enforcement, Modification, and Transfer of a Treatment Order

(a) Application. These provisions apply when a patient who is subject to a treatment order entered in one Arizona county is subsequently residing or found in another Arizona county. *See* A.R.S. § 36-540(R).

(b) Definitions. The following definitions apply in this rule.

(1) **"*Original court"*** means the superior court in the county that entered the treatment order for the patient.

(2) **"*Residing court*"** means the superior court, other than the original court, in the county where the patient resides or is found.

(c) Jurisdiction. Pursuant to A.R.S. § 36-540(R), the original court and the residing court have concurrent jurisdiction to enforce the original court's treatment order, to order changes to the treatment plan, or to amend the order by requiring the patient to undergo further inpatient treatment.

(d) Consultation Between Courts.

(1) ***Necessity; Timing.*** If a mental health proceeding is commenced in the residing court and the residing court is aware of the existence of a treatment order for the patient in another county, the residing court must use best efforts to consult with the original court. Unless prevented by an emergency, the consultation should occur as soon as possible but no later than 5 business days after the residing court becomes aware of the original court's treatment order. Neither court is required to keep a verbatim record of the consultation.

(2) ***Detention of Patient Pending Consultation.*** The residing court may order the patient detained at a behavioral health inpatient facility for a period of no more than 6 business days if, based on its review of both courts' records relating to the patient, the residing court finds:

(A) The original court's treatment order permits inpatient treatment;

(B) An emergency exists and the patient requires inpatient treatment before the residing court can consult with the original court; and

(C) Inpatient treatment is appropriate under to A.R.S. § 36-540(E)(5).

(3) ***Court Action.*** During the consultation, the two courts must do the following:

(A) Enter orders authorized under A.R.S. Title 36, Chapter 5, Article 5, to effectuate or enforce the current treatment order. Each of the two courts may enter orders in only their respective cases.

(B) Determine which court will preside over the pending proceeding, and whether a hearing on the pending proceeding is necessary.

(C) If any hearing is necessary and the patient does not have an attorney, determine which court will appoint an attorney to represent the patient at the hearing.

(D) Determine whether venue should be transferred to the residing court. But before the original court transfers venue, the parties have a right to a hearing on the transfer issue.

(e) Hearing Regarding Venue.

(1) Time of Hearing. If a hearing regarding venue is necessary, the original court must set, and conduct, the hearing as soon as practicable.

(2) Notice. The original court must give written notice of the hearing by reasonable means to the parties in the original court, including the patient's attorney, the county attorney, the patient's outpatient treatment provider, and the patient's guardian, if any. The residing court must give written notice of the hearing by reasonable means to the county attorney in the residing court and to the patient's attorney in the residing court, if the patient has one.

(3) Virtual Appearance. As provided in Rule 203, the original court may require any person, including the patient, to attend or testify at the hearing virtually.

(4) Record. The original court must keep a verbatim record of the hearing.

(5) Determinations. During the hearing, the original court must determine whether it will retain venue or transfer venue for further proceedings to the residing court. The original court also may determine whether other orders are necessary to facilitate enforcement or administration of the original court's treatment order.

(f) Venue Transfer Factors. When deciding whether to transfer venue, the original court must consider all relevant factors, including the following:

(1) The likelihood that the patient will return to the county of the original court during the term of the treatment order,

(2) Whether the patient has adequate support available from persons, agencies, or organizations in the county of the residing court to allow the patient to be provided with appropriate living arrangements, treatment, and supervision under the treatment order,

(3) The location of witnesses or other evidence necessary to make decisions to amend the treatment order or treatment plan, or to hear and determine an order for continued treatment under A.R.S. § 36-543,

(4) Whether proceedings such as amendment or continuation of the treatment order should be held in the original court before transfer is considered,

(5) Whether the treatment order can be better administered by the residing court,

(6) Whether a mental health treatment agency in the residing county has agreed in writing to supervise and administer the patient's treatment program pursuant to court order,

(7) Whether more or better treatment services are available in the county of the residing court compared to the county of the original court; however, this factor by itself is not a sufficient basis to transfer venue, and

(8) Whether transferring venue to the residing court is in the patient's best interests.

(g) Transfer of Venue by the Original Court.

(1) ***Venue Transfer Order.*** If the original court determines that a transfer of venue is appropriate, the original court must promptly enter an order transferring venue to the residing county and transfer the case file. The transfer order must do the following:

(A) Include the expiration date of the treatment order and the number of inpatient days used and remaining under the treatment order;

(B) Relieve the patient's attorney in the original court of any further duties to the patient; and

(C) Relieve the outpatient treatment provider ordered to oversee treatment pursuant to the original court's order of any further duty to provide or oversee treatment for the patient.

(2) ***Venue Transfer Fee.*** The change of venue is exempt from the transmittal fee under A.R.S. § 12-284.

(3) ***Delaying Transfer of Venue.*** An order transferring venue under this Rule is subject to the provisions of Rule 211.

(h) Action by the Residing Court Upon Transfer of Venue. Upon receipt of the transfer order and the original court's file, the following apply:

(1) The clerk of the residing court must file the transfer order and the case file in its case management system.

(2) The clerk of the residing court must notify the clerk of the original court and those entitled to notice under subpart (e)(2) of the residing court's case number.

(3) The residing court must enter an order affirming the expiration date of the treatment order and specifying the remaining number of inpatient treatment days under the treatment order.

(4) If appropriate, the residing court must appoint an attorney to represent the patient.

(5) The residing court must enter its order appointing the appropriate treatment agency to provide or oversee the patient's treatment consistent with any other orders.

Rule 410. Judicial Review

(a) Generally. Judicial review is an opportunity for a patient or a person acting on behalf of a patient to request the patient's release from court-ordered treatment. Judicial review is not available for an issue that has an administrative remedy under Arizona Administrative Code Title 9, Chapter 21.

(b) Procedure. A request for release by judicial review must be made in writing as provided in A.R.S. § 36-546. When the agency that receives the patient's request for judicial review files the request with the court, the agency also may file its position regarding the requested relief. Pursuant to A.R.S. § 36-546(F), if the patient is not represented by an attorney, the court must appoint an attorney within 2 business days after the request is filed. The agency must provide copies of the patient's request and the agency's position regarding the requested relief, if any, to the patient's attorney and any guardian.

(c) Disposition; Hearing.

(1) The court, without a hearing, may grant or deny the request for release based solely on the materials presented by the patient and the medical director of the agency or agencies responsible for the patient's treatment. But the court may not grant the request for release without

providing a deadline for the county attorney, and the agency or agencies responsible for the patient's treatment, to file a response.

(2) If the patient's attorney requests a hearing, the attorney must file an affidavit stating the need for an evidentiary hearing and the specific reasons why a hearing is necessary. The court may grant or deny the request for hearing.

(3) If the court sets a hearing, it must determine what disclosure and discovery orders, if any, are appropriate.

(d) **Burden of Proof.** The patient or the person acting on the patient's behalf who is requesting the patient's release has the burden of proving, by clear and convincing evidence, that the patient is entitled to release.

PART V. PROCEEDINGS FOR CONTINUED COURT-ORDERED TREATMENT

Rule 501. Commencing a Proceeding for Continued Court-Ordered Treatment

(a) **Application.** A proceeding for continued court-ordered treatment is commenced by filing an application for continued court-ordered treatment under A.R.S. § 36-543(C).

(b) **Appointment of Attorney.** Upon receipt of the application for continued court-ordered treatment, the court promptly must do one of the following:

(1) If the patient is not represented by an attorney, enter an order appointing an attorney to represent the patient, or

(2) Enter an order confirming the appointment of the patient's attorney.

(c) **Service of the Application.** Within 2 business days of receiving the order entered pursuant to subsection (b) of this rule, the applicant must provide the patient's attorney with a copy of the application and must promptly file proof of doing so with the court. The applicant must also mail a copy of the application for continued treatment to the patient's guardian, if any, as provided in A.R.S. § 36-543(C).

(d) **Patient's Response.** Consistent with A.R.S. § 36-543(D)(2), no later than 10 business days after entry of the order required by section (b), the patient's attorney must file a response to the application. The response must state whether the patient either is requesting a hearing on the application or, alternatively, is submitting the matter to the court for a ruling based on the record without a hearing. If the patient opposes continued treatment, the

response must admit or deny the allegations of the application as provided by Civil Rule 8 and provide a factual summary of the patient's reasons for opposing the application. An attorney's signature on the response constitutes an avowal that the attorney has met with the patient and fulfilled the other duties imposed by A.R.S. §§ 36-537 and 36-543(D)(2).

Rule 502. Court Action

(a) **Response Not Timely Filed.** If the patient's attorney does not file a timely response to the application, the court must deem the allegations in the application to be admitted and may rule on the application based on the information presented with the application without a hearing, or it may set a hearing on the matter.

(b) **Hearing Not Requested.** If the patient's attorney does not request a hearing on the application within the time specified in A.R.S. § 36-543(D)(2), the court may rule on the application based upon the information presented with the application and any materials provided in the patient's response without a hearing, or it may set a hearing on the matter.

(c) **Hearing Requested.** If the patient's attorney requests a hearing pursuant to A.R.S. § 36-543(D)(2), the court must hold a hearing on the application within the time specified in A.R.S. § 36-543(D)(3). At least 10 calendar days before the hearing, the court must provide the parties with a written notice of the date, time, and location of the hearing, and the name of the judge who will be conducting the hearing.

Rule 503. Duties to the Court and Opposing Parties

(a) **Applicant's Duty.** At any time before the hearing set under Rule 502(c), if the applicant determines that withdrawal of the application for continued court-ordered treatment is appropriate, the applicant's attorney must immediately notify all parties and the court in writing. Upon receiving written notice to that effect, the court must dismiss the application and vacate the hearing.

(b) **Duty of the Patient's Attorney.** No less than 2 but not more than 5 business days before the hearing, the patient's attorney must make a good faith effort to contact the patient to determine whether a hearing is still necessary. If the patient's attorney determines that a hearing is no longer necessary, the attorney must immediately notify the court and the other parties in writing. Upon receiving written notice to that effect, the court must vacate the hearing and the matter will be deemed submitted for ruling based on the record.

(c) **Sanctions.** The court may impose monetary sanctions on any party who fails to comply with this rule.

(d) **In Writing.** For purposes of this rule, "in writing" or "written" means a document filed with the clerk or an email sent to the parties and the assigned judge's staff. If the notice is made by email, the judge's staff must provide a copy of the email to the clerk for filing.

Rule 504. Disclosure of Witnesses and Exhibits

(a) **Applicant's Initial Disclosure.** When the applicant provides a copy of the application to the patient's attorney, the applicant must also provide the patient's attorney with a list of witnesses the applicant intends to call, and exhibits the applicant anticipates using, in support of the application.

(b) **Final Disclosure.** No less than 5 business days before the hearing, the parties must exchange a final list of witnesses they intend to call, and copies of exhibits they intend to use, at the hearing.

(c) **List of Witnesses.** The list of witnesses must include the name, address, and telephone number of each witness that the disclosing party expects to call at the hearing, and a description of the substance, and not merely the subject matter, of the testimony that is sufficient to fairly inform the other parties of the witness' expected testimony.

(d) **Independent Evaluation.** Notwithstanding section (b), if the patient intends to call as a witness a person who conducted an independent evaluation, both of the following apply: (1) the independent evaluator must provide a written report that includes a summary of the person's diagnosis and findings regarding the patient; and, (2) the patient must disclose to the other parties the name, telephone number, and email address of the person who conducted the evaluation at least 5 business days before the hearing, and a copy of the report at least 3 business days before the hearing.

(e) **Ongoing Duty.** Parties have an ongoing duty to disclose. The purpose of disclosure is to ensure that, before the hearing, all parties are fairly informed of the facts, legal theories, witnesses, exhibits, and other information relevant to the application for continued treatment.

Rule 505. Records and Information

(a) **Access by the Patient's Attorney to the Patient's Medical Record.** The court may enter an order requiring a health care entity to allow the patient's attorney access to the patient's medical and behavioral health records.

(b) Access by Parties and Their Attorneys to Court Records. Unless the court has sealed an item, parties to a proceeding for continued court-ordered treatment, and their attorneys, are entitled to access and obtain copies of the following items in any mental health proceeding for the patient:

(1) Any document filed in the proceeding;

(2) Any exhibit that was admitted into evidence; and

(3) An official record of any hearing.

(c) Methods of Obtaining Information and Documents. In proceedings for continued court-ordered treatment, and without a court order, the parties are limited to the following methods for obtaining information and documents:

(1) Interviews of witnesses, including expert witnesses;

(2) Requests to parties and non-parties to provide documents, writings, or other materials in their possession or under their control; and

(3) Subpoenas and subpoenas duces tecum to non-parties pursuant to Civil Rule 45.

(d) Scope of Information and Documents. For purposes of subparts (c)(2) and (c)(3), absent a court order, each party is limited to obtaining the following categories of information and documents:

(1) Copies of the patient's medical and behavioral health records relevant to the issues for continued court-ordered treatment,

(2) A copy of any non-privileged psychiatric, psychological, neuropsychological, or medical evaluation of the patient, including an independent evaluation pursuant to A.R.S. § 36-538, and any materials relied upon by the person conducting that evaluation, and

(3) Copies of any non-privileged writings or other materials created by the patient, including but not limited to electronic or social media materials.

Rule 506. Hearing on an Application for Continued Court-Ordered Treatment

(a) Generally. The court must conduct a hearing on an application for continued court-ordered treatment as provided in A.R.S. § 36-543 and Rule 208.

(b) Continuance. The court may continue a hearing as provided in A.R.S. § 36-543 and Rule 207.

Rule 507. Investigation into the Need for a Guardianship or Conservatorship in a Proceeding for Continued Court-Ordered Treatment

If the court makes findings pursuant to A.R.S. § 36-543(D)(6), the court may appoint a suitable person or agency to conduct an investigation concerning whether the patient is in need of a guardian, a conservator, or both. Rule 405 applies to an appointment made under this rule.

PART VI. POST-HEARING RELIEF; APPELLATE REVIEW

Rule 601. Vacating a Treatment Order

(a) **Grounds.** The court, on any party's motion or on the court's initiative, may vacate a treatment order, with or without granting a new hearing, if the court finds any the following:

(1) The court did not have jurisdiction.

(2) The court erred in deciding a matter of law.

(3) Misconduct of the opposing party.

(4) Newly discovered evidence that could not have been discovered by reasonable diligence before the hearing.

(5) For any reason not the fault of a party, the party did not receive a fair hearing.

(b) **Time.** A motion to vacate a treatment order must be filed no later than 15 calendar days after the order is entered.

(c) **Procedure.** The parties may not file a response or a reply, unless the court orders otherwise. The court may deny the motion without a response or oral argument; however, the court must not grant the motion without providing the other parties an opportunity to respond.

(d) **Effect on Appeal Time.** If a patient timely files a motion under this rule, the time to file a notice of appeal begins to run from the entry of a signed written order denying the motion.

Rule 602. Corrections Based on Clerical Mistakes or Oversight and Omission

A court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in an order or other part of the record. The court may do so on motion or on its own, with notice. But after a notice of appeal has been filed and

while the appeal is pending in the appellate court, such a mistake may be corrected only with leave of the appellate court.

Rule 603. Review by Appeal or Special Action

(a) **Treatment Orders.** A treatment order as defined in Rule 103 may be reviewed by appeal to the Court of Appeals, or by special action, as provided in A.R.S. § 36-546.01. Those proceedings are governed by the Arizona Rules of Civil Appellate Procedure or the Rules of Procedure for Special Actions, whichever may apply. If the review is by appeal, the appealing party must file a notice of appeal no later than 30 calendar days after the date from which the signed treatment order is entered, except as provided by Rule 601(d).

(b) **Other Orders.** No orders made in a mental health proceeding other than treatment orders may be reviewed by appeal, but those other orders may be subject to appellate review by special action.

(c) **Effect of Appeal on Order for Treatment.** While an appeal or special action is pending, the trial court retains jurisdiction to do any of the following:

(1) Rule on a motion to alter or amend an outpatient treatment order,

(2) Enforce, modify, or transfer a treatment order,

(3) Rule on a request for judicial review, and

(4) Rule on an application for continued treatment.

PART VII. HABEAS CORPUS

Rule 701. Habeas Corpus Proceeding

(a) **Generally.** Habeas corpus is a proceeding under A.R.S. §§ 13-4121, et seq. to compel the release of a person who is unlawfully detained under the color of law of A.R.S. Title 36, Chapter 5.

(b) **Application for a Writ.** An application for a writ of habeas corpus must include, to the extent available to the person filing the application, the following:

(1) The applicant's full name and relationship to the person who is being detained;

(2) The full name of the person who is being detained (the "detainee");

(3) The name of the authority, officer, or entity allegedly detaining the person;

(4) The address and specific location where the person is being detained;

(5) The legal grounds on which the application for the writ is based and the facts supporting those grounds;

(6) The name of the detainee's lawyer and guardian, if any, and their contact information;

(7) If the person being detained is the subject of an application for involuntary evaluation and the court has not entered an order for evaluation:

(A) A copy of the evaluation application,

(B) The name and address of the entity to whom the evaluation application was submitted, and

(C) The date the evaluation application was submitted; and

(8) If the detainee is subject to a mental health evaluation or treatment order, the case number and name of the court that entered the order.

(c) **Venue.** The applicant must file the application for the writ in the county where the person identified in subpart (b)(2) is being detained.

(d) **Issuing the Writ.** The court must review the application at its earliest opportunity and, if appropriate, it must issue the writ commanding the individual or entity having custody or confining the detainee to bring that person to the court that issued the writ, at a time and place specified in the writ, for a hearing on whether the detainee should be released. If the detainee is represented by an attorney, the attorney may waive the detainee's appearance at that hearing, or the court may direct that the detainee appear virtually.

(e) **Notice of Hearing.** The applicant must cause copies of the application, the writ, and notice of the hearing to be personally served on the individual or entity having custody of or confining the detainee, and on any entity on whose ostensible authority the detainee is being held, at least 24 hours before the hearing. If that individual or entity already is a party, service may be accomplished by reasonable means; otherwise, the applicant must personally serve that individual or entity. In addition, the applicant must provide copies of the application, the writ, and the notice of hearing by reasonable means to the patient, the patient's attorney (if any), and the patient's guardian (if any).