APPENDIX B

Rules for Court-Ordered Mental Health Proceedings

Rule Details

Appendix B

Appendix B provides a detailed explanation of each proposed rule in Appendix A. Because this is a new rule set, Appendix B does not include any comparison.

PART I. GENERAL PROVISIONS

As noted in the rule petition, the rules are divided into seven parts. Part I, the general provisions, contains the first ten rules.

Rule 101. Applicability of These Rules

Proposed Rule 101 has two short sections and a brief comment.

Section (a) ("Scope") simply provides that the Mental Health Rules "govern procedures in court proceedings under Arizona Revised Statutes, Title 36, Chapter 5," which are the statutes relating to court-ordered mental health evaluation and treatment (the "Mental Health Statutes").

Section (b) ("Purpose and Construction") directs that the Mental Health Rules be construed and enforced "in a manner that secures the fair administration of justice, eliminates unnecessary delay and expense, and protected the patient's due process rights and the public welfare." The last clause recognizes that mental health proceedings often involve two competing interests, namely the patient's due process rights and the public welfare.

The comment to proposed Rule 101 explains that Tribal Court involuntary commitment orders are governed by the Rules of Procedure for Enforcement of Tribal Court Involuntarily Commitment Orders.

Rule 102. Applicability of Other Rules

Proposed Rule 102 explains when other court rules apply to mental health proceedings and contains two sections.

Section (a) ("Rules of Evidence") provides that the Arizona Rules of Evidence ("Evidence Rules") apply unless either (1) those rules are inconsistent with Proposed Mental Health Rule 110 or the Mental Health Statutes, or (2) the parties agree otherwise.

Section (b) ("Other Rules") states that other court rules apply only when specifically referenced in the Mental Health Rules.

Rule 103. Definitions

Proposed Rule 103 provides definitions for terms used in the Mental Health Rules.

Section (a) states that, unless the context requires otherwise, the definitions in A.R.S. § 36-501 apply to the Mental Health Rules.

Section (b) provides definitions of 14 words and phrases used throughout the Mental Health Rules. Some of those terms are merely abbreviations, or shortened versions, of commonly used words and phrases (e.g., "A.R.S." means the Arizona Revised Statutes; "Clerk" means the superior court clerk). The following definitions are unique to the Mental Health Rules:

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

(6) "Mental health proceeding" means a court proceeding under the Mental Health Statutes, 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.

(11) "Reasonable means" when used in the context of providing notice or a document 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" many include hand-delivery, email, telefax, overnight delivery, or other expedited or routine delivery services.

(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.

Proposed Rule 104, which consists of three sections, addresses the confidentiality of case records, and case information regarding mental health proceedings, as well as of health care entity records.

Section (a) ("Court Records") directs the reader to A.R.S. § 36-509.01 and Supreme Court Rule 123, both of which address the confidentiality of case records and case information regarding mental health proceedings.

Section (b) ("Other Health Care Entity Records") provides that, consistent with 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."

Section (c) ("Sealing and Unsealing Records") states that Rule 5.4, Arizona Rules of Civil Procedure ("Civil Rule"), governs the procedure for sealing and unsealing records in a mental health proceeding and that access to sealed records by court staff may be determined by local administrative order.

Rule 105. Parties

Proposed Rule 105 lists who are considered parties to a mental health proceeding.

Rule 106. Duties of Attorneys and Parties

Proposed Rule 106 sets forth the responsibilities of attorneys and parties. It has ten sections and a comment.

Section (a) ("Appointment of an Attorney for the Patient") states the patient has a right to be represented by an attorney and requires the court to appoint an attorney for the patient as required by statute unless the patient already has an attorney.

Section (b) ("Duties of Patient's Attorney") requires the patient's attorney to comply with the provisions of A.R.S. § 36-537(B).

Section (c) ("Appearance") describes the different methods by which an attorney may enter an appearance on behalf of a party.

Section (d) ("Ending an Attorney's Representation of a Patient") provides that the patient's attorney has a duty to represent that patient until one of seven events has occurred. Those events include the court granting a motion to withdraw under section (f) or for substitution under subpart (h)(1); a petition for court-ordered treatment being dismissed or denied; and expiration of the time for appealing a treatment order.

Section (e) ("Extending Representation or Re-Appointment") permits the trial court to extend the representation of the patient's attorney beyond the entry of the treatment order to re-appoint the attorney in later proceedings.

Section (f) ("Withdrawal") describes the process by which an attorney of record may seek to withdraw as the client's attorney in the case.

Section (g) ("Advisory Attorney") permits the court, when granting a patient's request to be self-represented, to order the patient's attorney to continue as the patient's advisory attorney.

Section (h) ("Substitution") contains two subparts. The first ("Generally") describes the process by which an attorney may substitute in place of another attorney. The second ("Within the Same Firm or Office") addresses the reassignment of a case within the same law firm or governmental office.

Section (i) ("Duty of Attorney After Withdrawal or Substitution") provides that, except when a reassignment occurs with the same firm or office, an attorney who has withdrawn or been substituted must promptly transfer the file and all disclosure to the new attorney or, if self-represented, to the client, and provide the client's most current contact information to the client's new attorney.

Section (j) ("Responsibility to the Court") sets forth the duties that attorneys and self-represented parties owe to the court. Subpart (j)(1) ("Attorneys and Self-Represented Parties") requires all attorneys of record and self-represented parties in a mental health proceeding to remain informed of the status of, and the deadlines in, the proceeding. Subpart (j)(2) ("Attorneys") requires an attorney who changes an office address, email address, or telephone number to promptly notify the clerk in each county in which that attorney is an attorney of record of that change. Subpart (j)(3) ("Self-Represented Parties") requires the court, when a self-represented party first appears, to instruct that 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 to all self-represented parties. Additionally, the self-represented party must file an updated notice of any change in contact information no later than seven days after the change and promptly provide a copy of the update notice to the other parties as required by proposed Rule 109.

The comment to proposed Rule 106 recommends the trial court follow the procedure set forth in *In re Jesse M.*, 217 Ariz. 74 (App. 2007) if the patient asks to be self-represented.

Rule 107. Computing and Extending Time

Proposed Rule 107 explains how to calculate time and when time may be extended or reduced. It has five sections.

Section (a) ("Definitions") defines "business day" and "legal holiday" for purposes of proposed Rule 107. Because not every county in Arizona observes the same holiday (e.g., Maricopa County observes the day after Thanksgiving as a holiday but

does not observe Columbus Day), "legal holiday" is defined as a holiday that is observed "by the court in the county in which the proceeding is pending."

Section (b) ("General Time Computation") describes generally how time should be computed for purposes of the Mental Health Rules.

Section (c) ("Computation of 24 Hours") states that, for purposes of the Mental Health Rules, a period of 24 hours does not include hours that fall on a non-business day.

Section (d) ("Extending or Reducing Time") permits the trial court, for good cause or where justice otherwise requires, to extend or reduce time except for statutorily imposed deadlines.

Section (e) ("Time of Entry of an Order") provides that an order is entered when the clerk files it.

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

Proposed Rule 108 has three sections.

Section (a) ("Generally") states that a document is "filed" with the court by providing it to the clerk for filing. However, if a judge permits, a party in open court may submit a document to the judge for filing, in which case the judge must promptly transmit the document to the clerk and notify the clerk of the date the judge received the document.

Section (b) ("Electronic Filing") permits electronic filing of documents where such filing is available and refers to Arizona Code of Judicial Administration § 1-901.

Section (c) ("Email") prohibits parties from submitting motions and requests to the judge or the judge's staff by email for filing unless otherwise authorized by a specific Mental Health Rule. For an example of a rule that authorizes the submission of motions and requests by email, *see* proposed Rule 207 ("Request to Continue a Court Proceeding").

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

Proposed Rule 109 has three sections.

Section (a) ("Duty to Service") provides that, except as specified otherwise in the Mental Health Rules or the Mental Health Statutes, a party who files a document 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 the party is represented by an attorney, the filing party must serve the attorney unless the court orders, or a specific rule or statute requires, service directly on the party.

Section (b) ("Certificate of Service") generally requires every document filed with the court to include a certificate of service that states the date and the manner of providing the document to the other parties or their attorneys.

Section (c) ("Copy to Assigned Judge") permits, but does not require, a party who files a document to provide the assigned judge with a copy of that document.

Rule 110. Evidence

As previously mentioned, proposed Rule 102(a) provides that the Evidence Rules apply to mental health proceedings unless those rules are inconsistent with Rule 110 or the Mental Health Statutes. Proposed Rule 110 supplements the Evidence Rules and addresses evidentiary issues often encountered in mental health proceedings.

Section (a) ("Generally") requires the trial court, except as provided in the Evidence Rules, to "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." The comment to proposed Rule 110 provides examples of relevant evidence typically presented in mental health proceedings.

Section (b) ("Incorporation by Reference") states that if an affidavit is submitted pursuant to the Mental Health Statutes or to the Mental Health Rules and if that affidavit incorporates another document by reference, a copy of the incorporated document must be attached to the affidavit. The comment to proposed Rule 110 explains that this section expands the holding in *In re Pima County MH No. 20200860221*, 225 Ariz. 519 (2023), to all affidavits submitted under the Mental Health Statutes or the Mental Health Rules. The comment further observes that although that opinion permits incorporation by reference in an affidavit, the opinion goes on to state that, "it remains best practice to provide all the statutory required information in the affidavit itself."

Section (c) ("Stipulations to the Admission of Filed Documents") provides that if the parties stipulate to the admission of a document that has been filed with the trial court, the clerk does not need to separately mark a copy of that document as an exhibit and have it formally admitted into evidence. Instead, the court will consider the filed document as though it had been admitted into evidence as an exhibit.

Section (d) ("Exhibits") describes the clerk's duties with respect to exhibits.

Section (e) ("Judicial Notice") permits the trial court to take judicial notice of records contained in cases filed in the superior court in which the patient is, or was, a party if the court determines those records are relevant.

PART II. RULES RELATING TO COURT PROCEEDINGS

A single mental health case can involve several types of mental health proceedings. Each mental health case begins with the filing of a petition for court-ordered evaluation ("COE"). After the COE is completed, a petition for court-ordered treatment ("COT") might be filed if the patient meets the statutory criteria. If the court grants the petition for COT, a petition for continued COT might be filed before the treatment order expires (by statute, each treatment order can last no longer than 365 days unless the court continues it). In addition, the patient has rights regarding judicial review and habeas corpus. Each of these is a different type of mental health proceeding.

As indicated by the title of Part II, the eleven rules in Part II apply to all these different types of mental health proceedings.

Rule 201. Requests and Motions

The Mental Health Statutes use the term "request" in some places and use the term "motion" in others. To be consistent with those statutes, the Mental Health Rules also use both terms. Proposed Rule 201 governs both requests and motions.

Section (a) ("Requests") recognizes that a "request" is functionally the same as a "motion" and, thus, states that, unless a specific rule or court order provides otherwise, the requirements and procedures relating to motions also apply to requests.

Section (b) ("Motions") describes the requirements and procedures relating to motions. The requirements include stating the detailed basis for the relief sought, making a good faith effort to confer with all parties before filing the motion, and stating the other parties' positions on the issues raised in the motion. Due to the accelerated statutory timeframes in mental health cases, the time for filing a response is no more than three business days after service of the motion, and the time for filing a reply is no more than three business days after service of a response. Unless the court allows otherwise, the motion and response (including supporting memorandum) may not exceed ten pages, and the reply may not exceed five pages.

Section (c) ("Court Ruling") permits the trial court to summarily rule on a request or motion if either (1) the motion or request indicates that no party objects to the requested relief, or (2) no party has timely filed a written response objecting to the requested relief.

Rule 202. Attendance at Court Proceedings; Exceptions

Proposed Rule 202 addresses who may attend, and participate in, mental health proceedings. The rule has four sections and a comment.

Section (a) ("General") states the general rule that mental health proceedings are confidential and not open to persons other than parties and witnesses and their attorneys.

Section (b) ("Exceptions") allows the court, after considering any party's objection and the patient's privacy interest, to permit certain listed persons and their attorneys to attend a mental health proceeding.

Section (c) ("Participation") states that a person who is permitted to attend a mental health proceeding under section (b) does not become a party and, thus, is not permitted to file documents, present evidence, or cross-examine witnesses unless the court allows otherwise. However, for good cause, the court may allow a person attending the proceeding to participate in a manner that the court permits.

Section (d) ("Confidentiality") requires the trial court to 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.

The comment gives examples of the steps the court may take to satisfy the requirement of section (d).

Rule 203. Virtual Attendance and Testimony

Proposed Rule 203, which has six sections, governs virtual attendance and testimony during mental health proceedings. Consistent with Administrative Order 2022-88, the rule presumes that evidentiary hearings will be in-person. However, the rule authorizes the trial court to permit, or even require, virtual attendance or testimony if certain conditions are satisfied.

Section (a) ("Definitions") provides definitions of "proceeding" and "virtual" (and "virtually") as those terms are used in Rule 203. "Proceeding" is defined as "a court event that parties, or their attorneys, have an opportunity to attend." "Virtual" and "virtually" are defined as "by telephone, videoconference, or other audio or audiovisual technology allowing two or more persons to communicate."

Section (b) ("When Permitted or Required") allows the trial court to permit, or require, a person to attend or testify virtually if the court determines that all the following are true:

(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 testify will not unfairly prejudice any party.

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

Section (d) ("Time for Making Request") requires the request to be made "in a timely manner, considering the circumstances at the time the request was made." It then provides several examples of applicable circumstances that should be considered when determining whether the request was made "in a timely manner."

Section (e) ("Use of Exhibits During Virtual Testimony") provides that, unless the court orders otherwise, before a party may question a person testifying virtually about an exhibit, that party must (1) provide the witness and all parties, in advance, with a copy of the exhibit, which must have been marked so it easily can be identified by the witness, all parties, and the court; and (2) confirm to the court that the copy of the exhibit provided to the witness is identical to the exhibit provided to the court.

Section (f) ("Instructions for Virtual Attendance or Testimony; Video Conference Preferred") requires the court, if it permits or requires virtual attendance or testimony, to 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. In addition, when both video conferencing and audio conference are available, the court—absent good cause—must require the person attending or testifying virtually to do so by video.

Rule 204. Effect of an Existing Guardianship for a Patient

Proposed Rule 204 addresses the impact an existing guardianship for the patient may have on a mental health proceeding. The rule has four sections, the first three of which deal with different points in time, and the last of which deals with a guardian who was appointed in a county other than the one in which the mental health proceeding is pending. It also has a brief comment.

Section (a) ("Before a Hearing") permits the trial court to dismiss a petition for COT or an application for continued COT if (1) before the hearing on the petition or application, the patient's guardian already has been granted the additional authority under A.R.S. § 14-5312.01 (i.e., the authority to consent for the patient/ward to receive inpatient mental health care and treatment); (2) the court finds the patient's needs can be adequately met by the guardian; and (3) the court finds that a court order for treatment is not necessary to ensure the patient's compliance with necessary treatment or to protect the public safety.

Section (b) ("During Hearing") permits the trial court, during a hearing on a petition for COT or application for continued COT, to grant the patient's guardian the additional authority under A.R.S. § 14-5312.01 if the court finds (1) the guardian has not already been granted that authority; and (2) the patient meets the criteria for COT under A.R.S. § 36-540(A). If the court grants the guardian that additional authority, 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.

Section (c) ("After Entry of an Order for Treatment") permits the court to 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.

Section (d) ("Out-of-County Guardian") requires the trial court, if it grants a guardian appointed in another county the additional authority under A.R.S. § 14-5312.01(B), to transmit a copy of the order granting that authority to the court in the other county. The court in the county that appointed the guardian then must file the order and issue the guardian amended letters of appointment that reflect the additional authority.

The comment to section (d) recommends that the two courts consider whether a transfer of venue of the guardianship is appropriate under A.R.S. § 14-5313.

Rule 205. Independent Evaluation

A.R.S. § 36-538 grants the patient the right to have an independent evaluation of the patient's mental condition prior to a hearing for COT, continued COT, or judicial review. Proposed Rule 205 addresses that right.

Section (a) ("Generally") states the patient's statutory right to an independent evaluation.

Section (b) ("Procedure") permits the patient to exercise that right by making an oral or written motion and prohibits the other parties from responding to the motion.

Section (c) ("Disclosure") provides that if the patient intends to call as a witness the person who conducted the independent evaluation, the independent evaluator must provide a written report that includes a summary of the person's diagnosis and findings regarding the patient. The patient then must timely disclose to all 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

Proposed Rule 206 addresses requests for change of judge both for cause and as a matter of right.

Section (a) ("For Cause") incorporates Civil Rule 42.2 by reference but, due to the accelerated statutory timeframes for mental health proceedings, provides different deadlines than those in the Civil Rule. Under proposed Rule 206(a), an affidavit for change of judge for cause must be filed no later than two business days after discovering the grounds for the change, and any party may file a response or controverting affidavit no later than two business days after the filing of the affidavit.

Section (b) ("As a Matter of Right") describes when, and how, a party may request a change of judge as a matter of right. Under subpart (b)(1) ("When Available") each side in the mental health proceeding is entitled to file one notice of change of judge in the case. A mental health proceeding has only two sides, one being the party who files the petition for COT or the application for continued COT and the other being the patient. The notice may be filed only with respect to the judge assigned to a petition for COT or an application for continued COT. Subpart (b)(2) ("Time Limits") sets forth the deadlines for filing a notice of change of judge. A notice of change of judge filed with respect to a petition for COT must be filed no later than 48 hours before the hearing on that petition. A notice of change of judge filed with respect to an application for continued COT must be filed no later than five days after the court provides notice of the hearing on the application. Under subpart (b)(3) ("Waiver"), a side waives the right to a change of judge if the judge considers any contested issue; however, waiver does not occur when a judge considers a petition for COE. Subpart (b)(4) ("Procedures on Notice") prohibits the judge named in the notice, if the notice is timely filed and no waiver has occurred, from proceeding 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 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.

Section (c) ("Effect on Hearing") provides that 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 COT and *may* constitute good cause for continuing a hearing on an application for continued COT. Upon receiving an affidavit for change of judge for cause or entering an order changing a judge as a matter of right, the court (1) *must* vacate any scheduled hearing on a petition for COT, 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 COT and provide the parties with at least five business days' notice of the new hearing date.

Rule 207. Request to Continue a Court Proceeding

Proposed Rule 207, which has four sections, addresses the procedure relating to requests to continue a hearing. The procedure is specifically tailored to accommodate the short statutory deadlines in mental health proceedings (e.g., holding a hearing on a petition for COT no more than six business days after the petition is filed).

Section (a) ("Manner of Making the Request") requires the request to be "timely under the circumstances" and permits the request to be made orally in court, in a document filed with the clerk, or by email sent to the assigned judge's staff so long as all other parties are provided with a copy of the document or email. If the request is made by email, the judge's staff must provide a copy of the email and any attachments to the clerk for filing.

Section (b) ("Content of the Request") requires the party making the request for a continuance to state a detailed basis for the continuance and whether the other parties agree to the continuance.

Section (c) ("Response") requires any party who opposes the request to "promptly" submit a response. Like the request, the response may be submitted to the judge's staff by email, in which case a copy of the email and any attachments must be filed by the clerk.

Section (d) ("Ruling") requires the court to rule on the continuance request after allowing the other parties a "reasonable opportunity" to respond and "as far in advance of the hearing as practicable." The court may rule on the request without oral argument.

Rule 208. Conduct of Hearing

Proposed Rule 208 describes how a hearing in a mental health proceeding should be conducted.

Section (a) ("Objectives") permits the trial court, for any individual hearing, to adopt procedures as necessary or appropriate to facilitate a just, speedy, and efficient resolution of the mental health proceeding. To that end, the court may impose time limits and allocate hearing time.

Section (b) ("Sequence of Hearing") describes the order in which the hearing should proceed unless the court orders otherwise.

Rule 209. Disclosure Sanctions

Section (a) ("Purpose") explains that the disclosure requirements in the Mental Health 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."

Section (b) ("Failure to Comply with Disclosure Requirements") permits the court, if a party or attorney fails to comply with disclosure requirements, to (1) continue a 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.

Section (c) ("Sanctions") lists the available sanctions a court may impose for a disclosure violation.

Rule 210. Dismissals

Proposed Rule 210 provides that, unless the dismissal order states otherwise, all dismissals under the Mental Health Rules are without prejudice.

Rule 211. Delaying a Change of Venue

A change of venue may occur any time while a mental health case is pending. If the trial court were to order a change of venue when, or shortly after, it entered an order for treatment (or continued treatment), the patient's right to appeal that order could be impeded while venue is being transferred. Thus, proposed Rule 211 provides that venue may not be transferred until the time for appealing a treatment order has expired. If a timely notice of appeal has not been filed, venue may be transferred the day after that deadline. However, if a timely notice of appeal is filed, venue may not be transferred until the record has been transmitted to the appellate court.

PART III. COURT-ORDERED EVALUATIONS

As its title implies, Part III are rules that apply only to COE proceedings.

Rule 301. Commencing a Court-Ordered Evaluation

Proposed Rule 301 deals with the commencement of a COE proceeding and has two sections.

Section (a) ("Petition") simply states that a COE proceeding is commenced by the filing of a petition that satisfies the requirements of A.R.S. § 36-523.

Section (b) ("Response") provides that the patient is not required to file a response to the petition for COE.

Rule 302. Review of Petition and Determination

Proposed Rule 302 sets forth the trial court's responsibilities when a petition for COE is filed.

Section (a) ("Time for Court Review") requires the court to review the petition "at its earliest opportunity."

Section (b) ("Determination") describes the actions the court must take after its review of the petition. If the court determines that the petition does not meet the statutory requirements, the court must dismiss the petition and then promptly provide the petitioner with a copy of the dismissal order by reasonable means and, if the patient is detained, order the patient's release. If the court determines that the patient meets the requirements of A.R.S. § 36-529(A), the court must (A) order that the patient undergo an inpatient or an outpatient mental health evaluation at a designated time and place; (B) appoint an attorney to represent the patient; and (C) set a deadline by which the petitioner must serve a copy of the petition and a copy of the order on the patient. If the court determines that the patient meets the requirements of A.R.S. § 36-529(B), the court must (A) order that the patient be taken into custody and evaluated at an evaluation agency; and (B) appoint an attorney for the patient.

The comment to proposed Rule 302 explains that because the patient might be detained or might suffer imminent harm to self or present an imminent danger to others, the court "should" act on the petition for COE within 24 hours after it is filed. The comment also suggests that, when determining the deadline for service, the court 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

Proposed Rule 303 governs who must serve the patient with a copy of petition for COE and when the service must occur. The rule has two sections, one that addresses service if the court dismisses the petition and the other that addresses services if the court grants the petition. The rule also has a comment.

Section (a) ("Service of a Dismissal Order and Evaluation Petition") provides that if the court dismisses the petition, the clerk must mail a copy of the petition and a copy of the dismissal order to the patient at the patient's address contained in the petition. If the petition is detained, the entity detaining the patient also must provide the patient with a copy of the petition and a copy of the dismissal order.

Section (b) ("Service of an Evaluation Order and Evaluation Petition") requires the petitioner, if the court orders the patient to be evaluated, to serve the patient with copies of the petition and evaluation order as provided in statute and to serve the patient's attorney as required by proposed Rule 109(a). The section also provides that failure to timely serve the patient is not, by itself, grounds for dismissing the petition but may service as a basis for sanctions or other remedies. Two subparts address the timing of the service. Under subpart (b)(1) ("Patient Is Detained"), if the patient already is detained when the court enters the evaluation order, the petitioner must cause a copy of the required documents to be served on the patient no later than 24 hours after entry of the order. Under subpart (b)(2) ("Patient Is Not Detained"), timing of service depends on whether the court has ordered the patient be taken into custody. If so, the patient must be served when the patient is taken into custody. If not, the patient must be served by the deadline set by the court in the evaluation order.

The comment notes that A.R.S. § 36-510.01 governs the manner of service and the requirement for filing proof of service with the court and that, pursuant to A.R.S. § 36-529(c), an evaluation order expires if the evaluation is not initiated within 14 days after the date of the order.

Rule 304. Hearing on Need for an Inpatient Evaluation

A.R.S. § 36-529(D) permits a patient who has been ordered to undergo an inpatient evaluation to request a hearing to determine whether the evaluation can be done on an outpatient basis instead. Proposed Rule 304 addresses that request.

Section (a) ("Request; Disclosure") reaffirms the patient's statutory right to ask for a hearing and requires the patient to 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. The section provides that no other

disclosure is required, and it prohibits the parties from conducting discovery before the hearing but allows them to interview witnesses and use subpoenas.

Section (b) ("Procedure") requires the request for hearing to be made in writing, filed with the court, and provided to all parties by reasonable means. Parties are not required to file a response to the request. 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

Part IV sets forth the procedures for COT proceedings.

Rule 401. Commencing a Proceeding for Court-Ordered Treatment

Proposed Rule 401 describes the initial steps in a COT proceeding.

Section (a) ("Petition") explains that a COT proceeding is initiated by the filing of a petition that satisfies the requirements of A.R.S. § 36-533.

Section (b) ("Court Review of Petition") requires the trial court to review a petition for COT "at its earliest opportunity."

Under section (c) ("Dismissal"), if the court determines that dismissal is appropriate, it must enter an order dismissing the petition without prejudice and, if the patient is detained, order the patient's release. Additionally, if the court is dismissing the petition, the court must "promptly" provide the petitioner with a copy of the dismissal order by reasonable means, and the petitioner then must provide the patient with a copy of the dismissal order and a copy of the petition.

Section (d) ("Other Orders") describes the court's obligations if, after its review of the petition, the court does not dismiss the petition. Specifically, the court must (1) determine whether it should order the patient to be detained under A.R.S. § 36-535(A); (2) set a hearing as required by A.R.S. § 36-535(B), which must be held no less than three business days and not more than six business days after the petition was filed; (3) give the parties written notice of the date, time, and location of the hearing, as well as the name of the judge who will preside over that hearing; and (4) if the patient does not already have an attorney, appoint an attorney to represent the patient.

Section (e) ("Service of the Petition") states the petitioner's duty to serve the petition, supporting affidavits, and notice of hearing. Under subpart (e)(1), the petitioner must serve the patient with copies of those documents at least 72 hours

before the hearing as provided in A.R.S. §§ 36-510.01 and 36-536. Under subpart (e)(2), if the petitioner is aware that the patient has a guardian, the petitioner must "use best efforts" to serve the guardian with copies of those documents "no later than 2 calendar days before the hearing." In lieu of personal service, the guardian may provide a written acknowledgment that the guardian has received the documents. Failure to serve the guardian is not, by itself, grounds for dismissing the petition, but the court may impose remedies or sanctions to address such failure.

Section (f) ("Response to the Petition") provides that any party who opposes the relief requested in the petition is not required to file a response to the petition. However, if a party does file a response, the party must do so at least 24 hours before the hearing and must promptly provide the other parties with a copy of the response by reasonable means. In addition, the response must state with specificity the reason(s) why the party is opposing the petition and "may make affirmative allegations concerning, or raise defense to, the requested relief."

The comment to proposed Rule 401 explains the interplay of statutory time requirements relating to the deadlines for (1) holding a hearing on a COT petition and (2) serving the patient with a copy of the COT petition and notice of that hearing. Specifically, although A.R.S. § 36-535(B) requires the court to hold a hearing on a petition for COT no later than six business days after the petition is filed, A.R.S. § 36-536(A) requires that the patient be served with the petition and other documents at least 72 hours before the hearing. Additionally, A.R.S. § 36-536(B) and case law prohibit the service requirements from being waived. "Therefore, from a practicable standpoint, setting the hearing on the fourth or fifth day [after the petition is filed] may be the best practice."

Rule 402. Discovery and Disclosure

Proposed Rule 402 sets forth the parties' disclosure obligations, and the discovery methods available, for a COT proceeding.

Section (a) ("Disclosure") has three subparts. The first contains the petitioner's disclosure obligations, the second contains the patient's disclosure obligations, and the third sets forth the disclosure obligations of all other parties. Under subpart (a)(1), the petitioner, in addition to the requirements of A.R.S. § 36-537(A), must make a good faith effort to disclose to the other parties at least 48 hours before the hearing 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 submit as exhibits for the hearing and that have not previously been provided. Under subpart (a)(2), the patient's attorney must make a good faith effort to disclose to all 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 submit as exhibits for the hearing. Under subpart (a)(3), 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 submit as exhibits for the hearing.

Section (b) ("Discovery") prohibits any party from engaging in "discovery" unless permitted by the court "upon a showing of good cause" but specifically allows the parties to "interview witnesses and use subpoenas without prior court authorization." Recall that proposed Rule 103(b) defines "discovery" as "only depositions, interrogatories, requests for admissions, and requests to produce documents and things under the Civil Rules." Thus, the effect of proposed Rule 402(b) is that the parties may interview witnesses and use subpoenas without prior court authorization, but they may not use depositions, interrogatories, requests for admissions, or requests to produce documents and things without a court order.

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

Proposed Rule 403 describes how a hearing on a petition for COT must be conducted and when the trial court may continue the hearing.

Section (a) ("Generally") simply instructs the court to hold the hearing "as provided in A.R.S. § 36-539 and Rule 208."

Section (b) ("Continuance") permits the court to continue the hearing "as provided in A.R.S. § 36-535(B) and Rule 207."

Rule 404. Court Order

Proposed Rule 404 does not have any sections and merely instructs the trial court as to the two available options at the conclusion of the hearing. If the court finds that the petitioner has met the statutory burden of proof, the court must enter orders "consistent with A.R.S. § 36-540." Otherwise, the court must deny the petition and, "unless the provisions of A.R.S. § 36-540(Q) apply, release the patient from detention." (A.R.S. § 36-540(Q) applies only if a prosecutor filed the petition for COT under A.R.S. § 13-4517, which concerns a criminal defendant who is deemed not competent to stand trial and not restorable.)

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

A.R.S. § 36-540(G) provides that, if—on finding that the patient meets the criteria for COT—the trial court also finds that there is reasonable cause to believe that the patient is an "incapacitated person" as defined in A.R.S. § 14-5101 or is a person in need of protection pursuant to A.R.S. § 14-5101 and that patient is, or may be, in need of guardianship, conservatorship, or both, the court may appoint "a suitable person or agency" to conduct an investigation as to whether the patient needs a guardian, a conservator, or both. Proposed Rule 405 facilitates implementation of that statute.

Section (a) ("Generally") paraphrases the first couple sentences of A.R.S. § 36-540(G).

Section (b) ("Role") describes the role of the person or agency the court appoints to conduct the investigation (referred to as "the appointee"). That role is limited to investigating whether the patient may be in need of a guardian, a conservator, or both and, if so, to initiating and prosecuting those proceedings. Section (b) clarifies that 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, a conservator, or other protective order under A.R.S. Title 14).

Under section (c) ("Qualifications of a Guardian ad Litem"), if the court appoints a guardian ad litem ("GAL") to conduct the investigation, the GAL must be an attorney licensed to practice in Arizona and must not be related to any party or to a party's attorney and must not have represented any party.

Section (d) ("Authority") sets forth the powers of the appointee.

Section (e) ("Appointment Order") requires the appointment order to 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.

Section (f) ("Report to the Court") requires the appointee, unless the court orders otherwise, to file a written report of the investigation within 21 days after appointment. 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.

Under section (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.

Section (h) ("Privileges and Confidentiality") has three subparts. Subpart (h)(1) ("No Privilege Between Appointee and Patient") provides that communications between the patient and the appointee are not privileged and requires the appointee to inform the patient of that fact when the appointee first communicates with the patient. Section 2 ("Confidentiality") prohibits the appointee from disclosing any communication with the patient except as is necessary to satisfy the appointee's duties under the rule. Section 3 ("Patient's Privileges and Confidentiality") provides that 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; therefore, a party to the mental health proceeding may not compel the appointee to produce any privileged documents the appointee obtains.

Section (i) ("Independent Evaluation") permits the court, on the appointee's motion or on the court's own initiative, to 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 person conducting the evaluation must provide a written report of the evaluation to the appointee, who 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.R.S. § 36-540(H) and (I) permit the trial court, in "any proceeding for court-ordered treatment in which the petition alleges that the patient is in need of a guardian or conservator and states the grounds for that allegation," to appoint a temporary guardian, temporary conservator, or both for the patient if the court makes certain findings. Proposed Rule 406 facilitates implementation of that statute.

Section (a) ("Generally") sets forth the orders the court must make if it is appointing a temporary guardian, a temporary conservator, or both and requires the court to set a further hearing within 14 days.

Section (b) ("Order, Acceptance of Appointment, and Letters of Appointment") has three subparts. Subpart (b)(1) requires the order appointing the temporary guardian or temporary conservator to satisfy the requirements of A.R.S. Title 14, Chapter 5, and Probate Rule 36. Subpart (b)(2) provides that before the clerk issues letters of appointment, the temporary guardian or temporary conservator must file written

acceptance of the appointment. Subpart (b)(3) states that Probate Rules 37, 38, and 39 apply to the issuance of letters of appointment of temporary guardian or temporary conservator in the mental health case.

Under section (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

Proposed Rule 407 has two sections. Section (a) ("Status Reports") permits the court to order the outpatient treatment provider to file one or more status reports regarding the patient's treatment, the patient's compliance with treatment, and whether the treatment provider believes continued outpatient treatment is appropriate. Section (b) ("Court Action") authorizes the court, after reviewing a status report, to set a conference or a hearing or to take other action as described in A.R.S. § 36-540(E).

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

Proposed Rule 408 describes the process for modifying an outpatient treatment order.

Section (a) ("Generally") permits the outpatient treatment provider's medical director or the patient's guardian to request that the court alter the outpatient treatment plan to order the patient to inpatient treatment. Additionally, the court may take such action on its own initiative.

Under section (b) ("Motion"), any motion or request to alter an outpatient treatment order must state a detailed factual basis for the request and provide the court with a calculation of the number of days remaining for inpatient treatment under the original court order for treatment and that order's termination date.

Section (c) ("Court Action") requires the court to consider the motion "at its earliest opportunity and without a response" and then to "take appropriate action under A.R.S. § 36-540(E)(5)."

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

A.R.S. § 36-540(R) provides that if a patient under a court order for treatment is found or resides in a county other than the county in which the treatment order was entered, the superior court in both counties have concurrent jurisdiction to enforce the treatment order, modify the treatment plan, or amend the order to require the

patient to undergo further inpatient treatment. The statute generally requires the two courts to consult to determine which court should hold hearings and enter further orders and then specifically authorizes the Arizona Supreme Court to "adopt rules to govern the procedure to be used in enforcing and administering court orders for treatment in the various counties of this state and the transfer of cases between counties involving court orders for treatment." Proposed Rule 409 addresses those issues and is intended to help facilitate prompt resolution of the issues.

Section (a) ("Application") explains that the provisions of proposed Rule 409 "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."

Section (b) ("Definitions") provides definitions for two terms used throughout proposed Rule 409. The first is "original court," which means the superior court in the county that entered the treatment order for the patient. The second is "residing court," which means the superior court, other than the original court, in the county where the patient resides or is found.

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

Section (d) ("Consultation Between Courts") elaborates on the statutory consultation requirement. It has three subparts as follows:

> Subpart (d)(1) ("Necessity; Timing") requires the residing court to use "best efforts" to consult with the original court if a mental health proceeding is commenced in the residing court and the residing court is aware of the existence of the original court's treatment order. Unless prevented by an emergency, the consultation should occur as soon as possible but no later than five 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.
>
> Subpart (d)(2) ("Detention of Patient Pending Consultation") authorizes the residing court to order the patient detained at a behavioral inpatient facility for a period of no more than six business days if, based on its review of both courts' records relating to the patient, the residing court finds all of the following are true: (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 A.R.S. § 36-540(E)(5).

Subpart (d)(3) ("Court Action") requires the two courts, during their consultation, to do all the following: (A) enter orders authorized under the Mental Health Statutes to effectuate or enforce the current treatment order, with each court entering orders only in its respective case; (B) determine which court will preside over the pending proceeding and whether a hearing on the pending proceeding is necessary; (C) if a 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; and (D) determine whether venue should be transferred to the residing court (but venue may not be transferred without giving the parties the opportunity for a hearing on the transfer issue).

Section (e) ("Hearing Regarding Venue") governs any hearing on the issue of whether venue should be transferred. Subpart (e)(1) ("Time of Hearing") requires the original court to set, and hold, the hearing "as soon as practicable." Under subpart (e)(2) ("Notice"), the original court must give the parties in the original court written notice of the hearing by reasonable means, and the residing court must give written notice of the hearing by reasonable means to the county attorney in the residing court and the patient's attorney in the residing court (if the patient has one). Subpart (e)(3) ("Virtual Appearance") applies proposed Rule 203 ("Virtual Attendance and Testimony") to the venue hearing. Subpart (e)(4) ("Record") requires the original court to keep a verbatim record of the hearing. Subpart (e)(5) ("Determinations") directs the original court, at the hearing, to determine whether it will retain venue or transfer venue to the residing court and permits the original court to determine whether other orders are necessary to facilitate enforcement or administration of the original court's treatment order.

Under section (f) ("Venue Transfer Factors"), when determining whether to transfer venue, the original court must consider "all relevant factors," including the eight enumerated factors listed in the section.

Section (g) ("Transfer of Venue by the Original Court") describes the process the original court must follow if it decides to transfer venue to the residing court. It has three subparts. Subpart (g)(1) ("Venue Transfer Order") requires the original court to "promptly" enter the order transferring venue to the residing county and transfer the case file. The transfer order also must (A) include the expiration date of the treatment order and the number of inpatient days used and remaining; (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 the patient's treatment. Subpart (g)(2) ("Venue Transfer Fee") states that the change of venue is exempt from the transmittal fee under A.R.S. § 12-284. Subpart (g)(3) ("Delaying Transfer of Venue") explains that an order transferring venue under proposed Rule 409 is subject to the provisions of proposed Rule 211 ("Delaying a Change of Venue"), which delays the change of venue until the time for appeal has run and, if a timely notice of appeal is filed, until the record has been transmitted to the appellate court.

As suggested by its title, section (h) ("Action by the Residing Court Upon Transfer of Venue") provides directions to the residing court (including the clerk of the residing court) after venue has been transferred. The clerk of the residing court must file the transfer order and the case file in its case management system. The residing court clerk also must notify the original court clerk and those entitled to notice under subpart (e)(2) of the residing court's case number. The residing court must enter an order affirming the expiration date of the treatment order and specifying the remaining number of inpatient days under the treatment order. If appropriate, the residing court must appoint an attorney for the patient. Last, the residing court must enter an order appointing the appropriate treatment agency to provide or oversee the patient's treatment consistent with any other orders.

Rule 410. Judicial Review

A.R.S. § 36-546 provides the patient with a right to judicial review of the COT. Proposed Rule 410, which has four sections, governs the judicial review process.

Section (a) ("Generally") explains that 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." It further clarifies that judicial review "is not available for an issue that has an administrative remedy under Arizona Administrative Code Title 9, Chapter 21."

Section (b) ("Procedure") requires that a request for release by judicial review be made "in writing as provided in A.R.S. § 36-546." Under that statute, the request may be "presented to any member of the treatment staff of the agency providing the patient's treatment." The medical director of that agency then must file the request with the court within three days of receipt of the request. Section (b) of proposed Rule 410 permits the agency, when filing the request with the court, to also file the agency's position regarding the requested relief. If the patient is not represented by an attorney, the court must appoint an attorney to represent the patient within two business days after the request is filed. The agency must provide copies of the

patient's request and the agency's position (if any) to the patient's attorney and guardian (if any).

Section (c) ("Disposition; Hearing") has three subparts. The first permits the court, without a hearing, to grant or deny the request for release based solely on the material presented by the patient and the agency, but it prohibits the court from granting the request for relief without providing a deadline for the county attorney and the agency(ies) responsible for the patient's treatment to file a response. The second requires the patient's attorney, if requesting an evidentiary hearing, to file an affidavit that states the need for the hearing and the specific reasons why a hearing is necessary. The court then may grant or deny the request for hearing. The third requires the court, if setting a hearing, to determine what disclosure and discovery orders, if any, are appropriate.

Section (d) ("Burden of Proof") states that the person who is requesting the patient's release has the burden of proving by clear and convincing evidence that the patient is entitled to be released from the COT.

PART V. PROCEEDINGS FOR CONTINUED COURT-ORDERED TREATMENT

Pursuant to A.R.S. § 36-540(D), a treatment order may not exceed 365 days. A.R.S. § 36-543 provides a process by which that order may be continued for another 365 days. Part V governs the continuation procedure.

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

Proposed Rule 501 sets forth the initial steps for a proceeding to continue a treatment order.

Section (a) ("Application") simply states, "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)."

Section (b) ("Appointment of Attorney") requires the court, upon receipt of the application, to "promptly" either (1) appoint an attorney to represent the patient if the patient is not already represented by an attorney, or (2) enter an order confirming the appointment of the patient's attorney.

Section (c) ("Service of the Application") requires the applicant, within two business days of receiving the order appointing (or confirming the appointment of) the patient's attorney, to provide the patient's attorney with a copy of the application and "promptly" file proof of doing so. It also requires the applicant to mail a copy

of the application to the patient's guardian, if any, as required by A.R.S. § 36-543(C).

Section (d) ("Patient's Response") requires the patient's attorney, consistent with A.R.S. § 36-543(D)(2), to file a response to the application no later than 10 business days after entry of the order appointing (or confirming the appointment of) the attorney. Significantly, that statute provides that "to the extent possible," the patient's attorney must file the response within ten days after appointment. Like the statute, section (d) requires the response to 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. Section (d) elaborates by requiring the response, if the patient is opposing continued treatment, to "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." Section (d) further provides, "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

Proposed Rule 502 describes three actions the court may take, depending on whether a response is timely filed and, if so, whether the patient has requested a hearing.

Under section (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 without a hearing, or it may set a hearing.

Under section (b) ("Hearing Not Requested"), if the patient's attorney files a timely response but does not request a hearing, the court may rule on the application without a hearing, or it may set a hearing on the matter.

Under section (c) ("Hearing Requested"), if the patient's attorney files a timely response that requests a hearing, the court must hold the hearing within the time specified in A.R.S. § 36-543(D)(3) (i.e., "within three weeks after the request for hearing is filed"). At least ten 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 preside over the hearing.

Rule 503. Duties to the Court and Opposing Parties

Proposed Rule 503 sets forth the parties' duties to the court and opposing parties with respect to an application for continued court-ordered treatment.

Section (a) ("Applicant's Duty") requires the applicant to "immediately" notify all parties and the court in writing if, at any time before the hearing, the applicant determines that withdrawal of the application is appropriate. Upon receiving such notice, the court must dismiss the application and vacate the hearing.

Section (b) ("Duty of the Patient's Attorney") requires the patient's attorney, no less than two but not more than five business days before the hearing, to make "a good faith effort" to contact the patient to determine whether a hearing is still necessary. If the attorney determines the hearing is no longer necessary, the attorney must "immediately" notify the court and the other parties in writing. Upon receiving the notice, the court must vacate the hearing and deem the matter submitted for ruling based on the record.

Section (c) ("Sanctions") permits the court to impose monetary sanctions on any party who fails to comply with the rule.

Section (d) ("In Writing") defines "in writing" and "written" for purposes of the rule as a document filed with the clerk or an email sent to the parties and the assigned judge's staff. If notice is given 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

Proposed Rule 504 sets forth the parties' disclosure obligations in a proceeding for continued court-ordered treatment. It has five sections.

Section (a) ("Applicant's Initial Disclosure") requires the applicant, when providing a copy of the application for continued court-ordered treatment to the patient's attorney, to also provide a list of witnesses the applicant intends to call, and exhibits the applicant anticipates using, in support of the application.

Section (b) ("Final Disclosure") requires all parties, no less than five business days before the hearing on the application, to exchange a final list of witnesses they intend to call, and copies of exhibits they intend to use, at the hearing.

Section (c) ("List of Witnesses") requires the list of witnesses to 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.

Section (d) ("Independent Evaluation") provides that, notwithstanding section (b), if the patient intends to call as a witness a person who conducted an independent evaluation of the patient, (1) the independent evaluator must provide a written report

that includes a summary of the evaluator's diagnosis and findings regarding the patient; and (2) the patient must disclose to the other parties the independent evaluator's name, telephone number, and email address at least five business days before the hearing, and a copy of the report at least three business days before the hearing.

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

Rule 505. Records and Information

Proposed Rule 505 addresses the parties' ability to access records and information relating to the patient in a proceeding for continued court-ordered treatment.

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

Section (b) ("Access by Parties and Their Attorneys to Court Records") provides that, unless the court has sealed an item, the parties to a proceeding for continued court-ordered treatment, and their attorneys, are entitled to access and obtain copies of any (1) document filed in any mental health proceeding for the patient, (2) exhibit that was admitted into evidence in any mental health proceeding for the patient, and (3) official record of any hearing for a mental health proceeding for the patient.

Under section (c) ("Methods of Obtaining Information and Documents"), absent a court order, the parties to a proceeding for continued court-ordered treatment are limited to using the following methods for obtaining information and documents: (1) interviews of witnesses, including experts; (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.

Under section (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

Proposed Rule 506 describes how a hearing on an application for continued COT must be conducted and when the trial court may continue the hearing.

Section (a) ("Generally") instructs the court to hold the hearing "as provided in A.R.S. § 36-543 and Rule 208."

Section (b) ("Continuance") permits the court to continue the hearing "as provided in A.R.S. § 36-543 and Rule 207."

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

Proposed Rule 507 provides that, if the trial court makes the findings required under A.R.S. § 36-543(D)(6), the court (consistent with that same statute) may appoint a suitable person or agency to investigate whether the patient needs a guardian, a conservator, or both. Proposed Rule 405 applies to an appointment made under proposed Rule 507.

PART VI. POST-HEARING RELIEF; APPELLATE REVIEW

Part VI has three rules, which respectively address vacating a treatment order, correcting a treatment order, and appellate review of a treatment order.

Rule 601. Vacating a Treatment Order

Proposed Rule 601 describes the circumstances under which the trial court may vacate a treatment order.

Section (a) ("Generally") permits the court, on any party's motion or its own initiative, to vacate a treatment order if the court finds (1) it did not have jurisdiction, (2) it erred in deciding a matter of law, (3) misconduct by the opposing party, (4) newly discovered evidence that could not have been discovered by reasonable

diligence before the hearing, or (5) for any reason not the fault of a party, the party did not receive a fair hearing.

Section (b) ("Time") requires a motion to vacate a treatment order to be filed no later than 15 calendar days after entry of that order.

Section (c) ("Procedure") prohibits the parties from filing a response or reply unless the court orders otherwise and allows the court to deny the motion without a response or oral argument. However, it also precludes the court from granting the motion without provide the other parties an opportunity to respond.

Under section (d) ("Effect on Appeal Time"), the filing of a timely motion to vacate the treatment order suspends the time to file a notice of appeal until entry of a signed written order denying that motion.

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

Proposed Rule 602 requires the trial court to 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. However, the proposed rule prohibits the trial court from making the correction after a notice of appeal has been filed and while the appeal is pending unless the appellate court gives the trial court leave to make the correction.

Rule 603. Review by Appeal or Special Action

A.R.S. § 36-546.01 states, in part, "An order for court ordered treatment may be reviewed by appeal to the court of appeals as prescribed in the Arizona rules of civil procedure or by special action." Proposed Rule 603 elaborates on that statute.

Section (a) ("Treatment Orders") first sets forth the statutory right to appellate review of a "treatment order" as that term is defined in proposed Rule 103. It explains that the appellate proceedings are governed by either the Arizona Rules of Civil Appellate Procedure or the Rule of Procedure for Special Actions, whichever is applicable. Last, it requires that any notice of appeal be filed no later than 30 calendar days after entry of the treatment order being appealed, except as provided in Rule 601(d) (which extends the deadline for filing a notice of appeal if a timely motion to vacate the treatment order is filed).

Section (b) ("Other Orders") states that no orders except other than treatment orders may be reviewed by appeal, but other orders may be subject to appellate review by special action.

Section (c) ("Effect of Appeal on Order for Treatment") provides that, while an appeal or special action is pending, the trial court retains jurisdiction to (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

Part VII has one rule, which addresses habeas corpus in the context of a person who is being detained under the color of the Mental Health Statutes.

Rule 701. Habeas Corpus Proceeding

Proposed Rule 701 has five sections, which combined set forth the procedure for a habeas corpus proceeding in a mental health case.

Section (a) ("Generally") explains that 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 the Mental Health Statutes.

Section (b) ("Application") sets forth the information that must be contained in an application for a writ of habeas corpus.

Section (c) ("Venue") directs that the application for writ of habeas corpus be filed in the county where the person on whose behalf the application is being filed is detained.

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

Section (e) ("Notice of Hearing") requires the person who filed the application to cause copies of the application, the writ, and notice of the hearing to be personally served on the individual or entity have custody of, or confining, the detainee and on any entity under whose ostensible authority the detainee is being held. Service must be made at least 24 hours prior to the hearing. If the individual or entity already is a party to the mental health proceeding, service may be accomplished by reasonable means; otherwise, the applicant must personally serve the individual or entity. The applicant also 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).

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