APPENDIX D

Rules for Court-Ordered Mental Health Proceedings
Additional Task Force Recommendations

Appendix D

During its discussions, the Task Force on the Arizona Rules for Court-Ordered Mental Health Proceedings (the "Task Force") identified two areas requiring follow-up that are beyond the scope of the proposed Rules for Court-Ordered Mental Health Proceedings (the "Mental Health Rules") and the Task Force's mandate.

The first area relates to statutory changes. Existing references to the Civil Rules and the Evidence of Rules in A.R.S. § 36-535(D) and A.R.S. § 36-539(D) are unnecessary and could create confusion because proposed Mental Health Rule 102 specifically provides that the Arizona Rules of Evidence ("Evidence Rules") apply to mental health proceedings and that the Civil Rules apply only when specifically referenced in the Mental Health Rules. Similarly, because proposed Mental Health Rule 603 specifically incorporates the Arizona Rules of Civil Appellate Procedure and the Arizona Rules of Procedure for Special Action, existing references to those rule sets in A.R.S. § 36-546.01 are unnecessary and could also be confusing. Consequently, if this Court adopts the proposed Mental Health Rules, the following statutory amendments should be pursued:

- A new statute in Article 1, Chapter 5, Title 36, A.R.S. (e.g., A.R.S. § 36-503.04) should be enacted that reads, "**Practice in Court.** Unless specifically provided to the contrary in this chapter or unless inconsistent with its provisions, the Arizona Rules for Court-Ordered Mental Health Proceedings govern court proceedings under this chapter." (This language is similar to the language in A.R.S. § 14-1304, which provides that the Arizona Rules of Probate Procedure govern proceedings under Title 14, A.R.S.)

- The last sentence of A.R.S. § 36-535(D) should be amended as follows: "This subsection applies in addition to ~~all rules of evidence, the Arizona rules of civil procedure and~~ A.R.S. § 36-539."

- A.R.S. § 36-539(D) should be stricken in its entirety. This section currently states, "The requirements of subsection B of this section are in addition to all rules of evidence and the Arizona rules of civil procedure, not inconsistent with subsection B of this section,".

- The first sentence of A.R.S. § 36-546.01 should be amended to read as follows: "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."

The second area of follow-up relates to Rule 123 of the Rules of the Supreme Court of Arizona, which addresses access to judicial records. The Task Force identified two issues relating to Supreme Court Rule 123 and the proposed Mental Health Rules.

First, proposed Mental Health Rule 104 addresses confidentiality and public access to mental health records, and proposed Mental Health Rule 105 defines who is a party to a mental health proceeding. The Task Force understands that a group currently is reviewing, and will be recommending revisions to, Supreme Court Rule 123. That group should ensure that the provisions of Supreme Court Rule 123(d)(6) dealing with access to mental health case records are consistent with the provisions of proposed Mental Health Rules 104 and 105.

Second, several members of the Task Force expressed concern about certain patients (e.g., patients alleged to be a danger to others) having access to witnesses' contact information (e.g., address and telephone number). Disclosure of such information is addressed in proposed Mental Health Rules 402(a)(1) and 504(c). Although Task Force members generally favored a rule allowing such information to be redacted from disclosures provided to the patient, they believed the issue would be best addressed in Supreme Court Rule 123(d)(6).