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Comments on Proposed Rules for Mental Health T36 Hearings

It would be prudent to include a rule that allows any of these Mental Health (MH) rules to be altered by local rules. Arizona's counties are diverse, ranging from rural areas with only a handful of T36 hearings per month, to urban areas with hundreds of T36 hearings per month. Pima County, for example, moves upwards of 100 or more Petitions for Evaluation & Petitions for COT each week, while also serving a geographically spread-out area.

1. Rule 203- Virtual Attendance by permission on a case-by-case basis only: The proposed rule is the opposite of the way Pima county has been conducting T36 hearings for many years. T36 hearings in our jurisdiction are by default virtual, unless there is a specific request for an in-person hearing. This rule, as written and without the ability to modify it on a local level, would require our T36 hearing system to be completely redesigned. We have far too many daily MH hearings to require every participant to attend in-person unless they've requested in writing to appear virtually.

Patients here choose not to appear in-person 99.99% of the time because each time they have to go to court for a hearing, they must:

- be transported from the MH facility to one of the courts holding T36 hearings, be held by court security or law enforcement,
- and then transported back to the facility.
- This would mean patients could be waiting in the court holding areas all day since our hearings go from 9am to after 4:30 pm, and it would not be possible to transport each patient individually for each hearing.
- The patients would need to be transported similarly to how jail inmates are transported by van/bus to the court in the morning then back to their MH facilities when all the hearings for that facility for the day have concluded.
- This would mean patients would at least sometimes go without proper meals, access to restroom facilities, and would surely miss medications and/or go without critical PRN

medications such as for anxiety or panic unless a medical provider from each facility is on site at the courthouse with the patients and also with access to an array of common mental health medications.

- Some patients, perhaps many, would be bound in shackles for very long periods of time through all this.

All of these things would burden patients who are already in a fragile mental state and may not fully comprehend the situation of their surroundings. Patients would undoubtedly suffer, and it would be dangerous.

- Patients are safest in their mental health facilities, not in a holding area at a courthouse with numerous other patients also awaiting their MH hearings, each with different health needs and mental symptoms. This would be nothing short of a logistical nightmare for counties with higher MH caseloads.

Alternatively, every person required to effectuate the hearing (including both parties' attorneys, any and all witnesses, outpatient treatment provider representatives, any guardians if applicable, and all the court staff including the judge(s), clerks, security, and any other persons or representatives required for the hearing to be conducted) would need to go to each of our FIVE mental health evaluation facilities to conduct the hearings at the MH facility on any given day. As the statutes require that each MH hearing can only be set on the 4th, 5th, or 6th day following the day the Petition for COT is filed, it is not possible to divide up each facility's hearings so that each facility had hearings one day out of the week (for example, all hearings at Facility A on Mondays, Facility B on Tuesdays, etc.). Therefore, we would need all persons required for each hearing at each facility every court day. This means we would need 4 to 5 fully functioning and staffed courtrooms including judges, county attorneys, defense attorneys, etc., EACH WEEKDAY. This is in contrast to our current practice of holding virtual hearings via videoconferencing where we only need 1 to 2 fully functioning and staffed courtrooms. Therefore, requiring in-person hearings as the default would require the court, the county attorney's office, and the defender attorney's office to have 4 to 5 times the staffing that is currently needed. This is prohibitive for our county on every level.

Mandating in-person appearances as the default would require four or five times the current manpower for not only our office, but we believe also for the court, the MH facilities, police/security to watch the patients when not in hearing, transportation personnel, and defense attorney offices. It would be extremely costly in our jurisdiction. It would also substantially delay hearings since we would have to wait for each patient to be brought over to the courtroom and also back to the holding area, which can sometimes take a very long time especially if there are issues in the holding areas or if patients are not cooperative (and frequently they are not due to the underlying mental disorders and/or psychosis). The evaluating doctors, for example, would be in court all day virtually every day and would not be able to evaluate and treat other patients.

If we had hearings being delayed due to transportation issues or disruptive/uncooperative patients causing hearings to stack up, the strain to ensure that the hearings occur between the 4th and 6th day would be enormous.

The 11/07/2025 "Meeting Packet," page 7 of 63, incorrectly states: "given the logistical burden placed on entities responsible for transportation[,] [...] patients relocated for medical reasons, or matters reassigned to an overflow calendar by court administration. It was noted these concerns are specific to Maricopa County as other counties don't have more than one facility." However, Pima County also has several MH facilities. We have at least 5 facilities from which patients would need to be transported to attend court in person. We also have up to 12 Mental Health hearings on each weekday, with the judges potentially being located in different courthouse locations which can be many miles away from the other courthouses holding MH hearings on the same day. Mix-ups with taking patients to the wrong courthouse would certainly occur. The number of things that could go wrong and cause chaos with "in person attendance" being the default rule is dauting.

Moreover, the rules also require a person requesting to appear virtually to file a written Motion and Order for each case. This combined with the fact that our court does not allow eFiling for MH hearings, plus the tight timeline of the T36 litigation process, would require an absurd number of filings—each of which also needs a ruling from the judge. For example, we could potentially have 7 participants each filing a Motion and Order to appear virtually for each hearing (the patient, the defense attorney, the county attorney, the two evaluating doctors, and the two acquaintance witnesses). Multiply this by up to 12 hearings in a single day, and that would equal 84 Motions and 84 Orders per day just for the requests to appear virtually, all needing to be paper-filed and delivered and served. That could be 588 Motions and 588 Orders per week, just for requests to appear virtually. This is unduly burdensome for everyone involved.

For all of the above reasons, we request that Proposed Rule 203 is not approved as it currently is written. This issue is better left to local rules for each individual jurisdiction, as the capabilities for each jurisdiction are different and dependent upon the population and geographical layout of each county. If the Committee does not want to modify this rule, we respectfully urge the committee to explicitly allow local rules to modify this rule.

2. Rule 108(c) "Parties may not submit motions and requests to the judge or judge's staff by email for filing unless authorized by a specific rule": This is vague and does not take into account the capabilities of counties that do not permit eFiling of T36 cases, where email is the only way to get a motion/request to the judge prior to the hearing due to the short timeframe of T36 hearings and the limitations inherent to paper filing & processing. Many filings, such as submitting treatment plans, requesting scheduling changes/accommodations, and now potentially requesting to appear virtually, cannot be done by regular court filing in counties without T36

eFiling due to the extremely short time frames under which T36 hearings are set and heard. There are many documents and requests that must be initially "submitted" via email due to the court clerks not being able to process officially filed paper motions and documents as quickly as T36 timelines require for turnaround. This issue would be better addressed by local rules.

3. Rule 109(b): County attorneys do not know who the patient's attorney is when filing the Petition for COE, nor do we know when filing the Petition for COT, so this is not practical in our jurisdiction. We have never had an issue with service that would be resolved by requiring a certificate of service on all documents. Perhaps it would make more sense for this rule to apply to filings only after the Petition for COT has been filed?

4. Rule 110(c): "Stipulation to the admission of filed documents." The Court can already take judicial notice of the 1st and 2nd evaluating doctors' affidavits, addenda, and evaluations filed with the Petition for Court Ordered Treatment, rather than have them marked as exhibits. See Matter of Commitment of Alleged Mentally Disordered Person, MH-1049-3-85, 147 Ariz. 313, 315, 709 P.2d 1372, 1374 (App. 1985).

5. Rule 201- all Motions and requests must be filed in writing or made orally on the record: This would also best be left to local rules. "Requests" is too broad/vague to require that all "requests" be filed in writing, along with a proposed form of order. This is also not possible when a hearing is set 4 days after the Petition for COT is filed, as a party might only find out 2 hours before a hearing that a situation has arisen wherein they would need to draft a written motion or request an order and file it, as well as to make sure the clerk gets it filed and to the judge before the hearing. The court clerks cannot even process filings this quickly; it's simply not logistically possible in some jurisdictions, particularly those processing hundreds of Petitions for Evaluation & COT each week. It is not possible to turn every request into a written motion to be filed with a proposed order, neither the attorney's offices nor the court could keep up with the pace that would be required if we had to do this. As a result, justice would be harmed as many requests would go unmade simply because it would not be possible to accomplish what this rule requires. Many counties do not allow electronic filing of T36 cases due to the security issues presented. As such, the filing process is not instant as it is with electronic filings; it requires substantial human time and work to draft and file hard copies and distribute them in a timely manner.

6. 201(b)(2) on 3 days to file Response and Reply: It is difficult to see how this is logistically feasible, especially with regard to a Hearing on a Petition for COT. The hearing is set between the 4th and 6th day following the Petition being filed. If a party filed a motion even the same day

that the petition is filed, the response would be due on the 4th day which could also be the day the hearing occurs. In that situation, there would not be any time for a Reply to be filed. And, if a party insisted on filing a reply and taking the 3 days to do so, the hearing would not be held until the 7th day, which is 1 day beyond the date by which the hearing must be held and therefore is a violation of the statute. Perhaps this rule needs to specify what motions would be entitled to a 3-day response and 3-day reply time? Think of a motion to continue a hearing for 3 days, when the hearing is set later the same day the motion is filed… how would that even work?

7. Rule 405(b) on GALs and Investigators: This rule may too strictly limit the role of GAL or investigator. Occasionally, there is an issue that must be investigated in order to procure treatment services for a patient that can only be completed by a GAL/Investigator. For example, the patient may not have valid identification card/documents, and no family or friends to help them get the documentation, but they cannot receive treatment without this documentation. Similarly, if a patient cannot prove their citizenship to qualify for AHCCCS when they have no other health insurance options, they will be dropped by their outpatient treatment provider unless the patient can get the required documents to secure AHCCCS. In situations like these, which are not perfect examples, the only options are to appoint a GAL to assist with getting the ID/documentation or allow the patient to go indefinitely without getting treatment which defeats the purpose of an order for COT. Likewise, I have seen patients in a COT case who do not know who they are, have no identifying effects on their person, and the Court must order an investigation to determine the patient's identity. Where the MH providers/attorneys are not able to determine the person's identity, it requires a GAL or similarly appointed investigator to discover this information. The potential situations that could require something along these lines are infinite; no person or group of people could imagine every possible situation. I have seen some very strange, unimaginable situations come up in T36 cases where justice and the safety of the patient and/or the community require a judge to appoint a GAL/investigator in order to investigate or accomplish something beyond what this rule permits, but without which the patient could not get COT which potentially endangers the patient and/or the community at large.

8. Rule 106(d) on dictating when defense attorney is no longer representing patient: This may cause issues in some jurisdictions or in some cases where the patient needs their defense attorney longer. Also, is it at odds with the statutory scheme, which seems to contemplate the defense attorney remains appointed until COT terminates unless withdrawn/substituted prior to that. For example, when a patient is 6 months in to their COT and has an issue for which they need their defense attorney to step in or file something, under this rule they will not have a defense attorney at that point and will have no way to know how to get one. If the patient requests Judicial Review every 60 days, as they are entitled to do by statute, would a defense attorney need to be reappointed each time, or would the patient not have the ability to confer with a defense attorney regarding requests for judicial review?

9. Rule 211 on changing venue: States the parties must wait until appeal deadline has expired before changing venue. This will cause issues and significant delays in treatment for the patient. The patient will not be able to get treatment in the county they were petitioned in, other than inpatient treatment perhaps, and will not be able to get treatment in their "home county" either until the transfer is issued, due to the treatment restrictions applicable to the treatment providers including AHCCCS and other sources of restrictions. We want to make sure that if this rule goes into effect, patients' treatment will not be adversely affected while waiting for the appeal period to expire before changing venue.

10. Rule 701 on Habeas Corpus: This rule is greatly needed; thank you. However, there also needs to be a function which allows for an emergency hearing to occur on the same or subsequent day, for example when a person's life or limb depends on the Habeas. In these rare situations, mandating a 24-hour notice prior to the hearing (where such notice periods are generally not waivable) could result in the patient's death or irreversible injury.

11. A note for clarification of the term "Detention" as used in these Rules: "Detention" is used frequently in the proposed rules, but is not defined in the rules, nor is it adequately defined in 36-501 (where it is defined as "in custody", but does not define "custody" or specify whether it's the custody of law enforcement or the custody of the mental health hospital). It is explained in 36-535, but there is no reference to 36-535 in the Rules or in 36-501. There should be a reference to 36-535 in these MH Rules.

12. A request for a Rule on Amending the Petition for COT: None of the proposed Rules speaks to amending a Petition for COT. Is it allowed? If so, in what circumstances is it allowed? What is the proper way to request it? For example, can the Petitioner make an oral motion at the beginning of the hearing to add an allegation of DTS, DTO, PAD, GD, or does that run afoul of due process and the statute requiring 3 days notice prior to the hearing? Can the Petitioner add a request for a guardian or conservator at the beginning of the hearing? During the hearing/at the end? What about requesting an investigation by a GAL or Public Fiduciary? On the other hand, may the Petitioner make an oral motion to dismiss an allegation at the outset of the hearing? Experienced and wise attorneys have debated the various aspects of this issue at length and these debates are still ongoing. A rule speaking to this issue could really clear this up.