

Honorable Pamela Sue Gates
Presiding Judge
Superior Court of Arizona in Maricopa County
125 W. Washington Street, Suite 309
Phoenix, AZ 85003

**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO ADOPT RULES FOR
COURT ORDERED MENTAL
HEALTH PROCEEDINGS

} Supreme Court No. R-25-0059
}
} COMMENT OF THE SUPERIOR
} COURT IN AND FOR MARICOPA
} COUNTY ON THE PETITION TO
} ADOPT RULES FOR COURT
} ORDERED MENTAL HEALTH
} PROCEEDINGS
}

The Presiding Judge of the Superior Court in and for Maricopa County generally supports the Petition to Adopt Rules for Court-Ordered Mental Health Proceedings. The proposed rules provide a valuable framework for standardizing procedures in proceedings conducted under Title 36. The Court respectfully submits the amendments contained in Attachment "A" to clarify the proposed rules, promote consistency with existing statutes, conform to recent legislative changes, preserve flexibility necessary for expedited mental health proceedings, and avoid unintended disruption of existing court practices. These amendments have been developed in consultation with the Honorable Geoffrey Fish, Presiding Judge of the Maricopa County Superior Court Probate and Mental Health Department, and the Honorable Dean Fink, the Department's former Presiding Judge, both of whom concur with these proposed amendments.

SUMMARY OF AMENDMENTS

While summarized below, Attachment “A” contains the complete text of the Court’s proposed amendments.

1. Rule 104. Confidentiality and Public Access to Mental Health Records.

The Court proposes amendments to Rule 104(c) to clarify that mental health records are confidential pursuant to A.R.S. §§ 36-509 and 36-509.01 but are not required to be formally sealed in the ordinary course of business.

Arizona law restricts public access to mental health case information and records, and courts currently maintain those records as confidential without requiring formal sealing procedures. The proposed amendment is intended to avoid confusion and prevent unintended changes to longstanding court practices.

2. Rule 106. Duties of Attorneys and Parties.

The Court proposes an amendment to Rule 106(j)(3) to exempt self-represented patients detained pursuant to a detention order from the requirement that self-represented parties file updated contact information. Patients are parties under Rule 105 and are often hospitalized or otherwise subject to detention during the pendency of proceedings. Requiring such patients to comply with the notice requirements is generally impractical and unnecessary.

3. Rule 201. Requests and Motions.

The Court proposes amendments to Rule 201(b)(2) and related provisions concerning responses and replies to motions. Mental health proceedings operate under compressed statutory timelines, with hearings typically occurring within four to six business days after filing. Establishing fixed deadlines for written responses and replies may unnecessarily limit the court’s ability to manage cases efficiently. The proposed amendment preserves judicial discretion to determine whether written briefing is appropriate in a particular case.

4. Rule 202. Attendance at Court Proceedings.

The Court proposes that Rule 202 be eliminated in its entirety. Title 36 protects the confidentiality of mental health records and case information but does not expressly close mental health hearings to the public. Arizona law generally favors open court proceedings, and the proposed rule would create restrictions on attendance that are not grounded in statute. Arizona's juvenile dependency proceedings provide a useful comparison. Although dependency records are confidential under Rule 313 of the Arizona Rules of Procedure for the Juvenile Court, dependency hearings are presumed open to the public, subject to the court's authority to limit access when appropriate. *See Ariz. R.P. Juv. Ct. 312*. The Juvenile Rules therefore recognize a distinction between the confidentiality of records and the openness of proceedings. Rule 202 would depart from that approach by treating mental health proceedings as closed to the public based on statutes that address only the confidentiality of records and case information.

If the Supreme Court elects to retain Rule 202, the Court proposes the following amendments. First, the Court proposes expressly permitting attendance by nursing and medical students. Many psychiatric facilities function as teaching hospitals, and attendance by students is a longstanding and customary practice that should not require case-specific findings of good cause. Second, the Court proposes revisions to the confidentiality-admonition requirement. Existing statutes already protect confidential records and information. Requiring a confidentiality advisement in every hearing imposes an administrative burden without a demonstrated need. If the Supreme Court determines that an admonition is appropriate, the Court recommends adoption of uniform language, similar to the advisement required by Rule 312(f) of the Arizona Rules of Procedure for the Juvenile Court.

1 **5. Rule 203. Virtual Attendance and Testimony; Virtual Hearings.**

2 The Court proposes amendments to Rule 203 to conform to SB1242, which
3 permits a mental health hearing to be conducted or a witness or party to appear and
4 give testimony virtually through the use of telephone, videoconference or other
5 audiovisual technology if the court finds that the procedure will not unfairly
6 prejudice a party or witness. Mental health courts throughout Arizona operate under
7 differing logistical circumstances. Some counties conduct most hearings in person,
8 while others conduct most hearings virtually. The proposed amendments are
9 intended to preserve existing local practices and conform to recent legislative
10 changes.

11 The Court also proposes revisions concerning virtual testimony by witnesses.
12 Technical limitations affecting video conferencing are common, particularly for
13 non-professional witnesses. The proposed amendment is intended to ensure that
14 testimony is not unnecessarily excluded because of technological challenges
15 beyond a witness's control.

16 **6. Rule 204. Effect of an Existing Guardianship for a Patient.**

17 The Court proposes deleting Rule 204(c). The proposed subsection would
18 create a procedure allowing termination of a treatment order based upon the
19 existence of a guardian with authority under A.R.S. § 14-5312.01. Neither Title 36
20 nor the proposed rule establishes a procedural framework governing such relief.
21 Existing judicial review procedures under A.R.S. § 36-546 already permit
22 consideration of relevant circumstances affecting the need for continued treatment.
23 The Court is concerned that the proposed subsection would create uncertainty and
24 potentially establish a parallel review process not authorized by statute.

25 **7. Rule 206. Change of Judge.**

26 The Court proposes amendments to Rule 206(b)(2)(B). Because continuance
27 requests may be made informally and mental health proceedings are governed by
28 compressed statutory deadlines, allowing continuances to reset change-of-judge

1 deadlines could create unnecessary delay and administrative burden. The proposed
2 amendment maintains a clear and predictable deadline.

3 **8. Rule 209. Disclosure Sanctions.**

4 The Court proposes that Rule 209 be eliminated in its entirety. The rule is
5 unnecessary and risks creating collateral litigation over disclosure disputes in
6 proceedings that are required to be resolved on an expedited basis. Mental health
7 cases commonly involve late identification of witnesses and changes in witness
8 availability. These issues often arise despite good-faith efforts by the parties and are
9 not ordinarily the result of strategic delay or misconduct.

10 Because hearings are typically held within four to six business days after
11 filing, witness coordination is often fluid and unpredictable. Many witnesses are
12 health care professionals, law enforcement officers, or other individuals who work
13 limited schedules, rotating shifts, or overnight hours. In practice, coordinating
14 witness participation can be a substantial administrative burden. A separate
15 sanctions rule may therefore shift the focus away from the merits of the petition and
16 instead encourage disputes over ordinary logistical challenges inherent in these
17 proceedings.

18 If the Supreme Court elects to retain Rule 209, however, the Court proposes
19 that sanctions be limited to circumstances involving a finding of bad faith. A bad-
20 faith standard would preserve the court's authority to address truly improper
21 conduct while recognizing the practical realities of expedited mental health
22 proceedings.

23 **9. Rule 211. Delaying a Change of Venue.**

24 The Court is aware that a workgroup has been formed under the direction of
25 the Steering Committee on Mental Health to evaluate, *inter alia*, the challenges
26 associated with inter-county transfer for individuals receiving court-ordered
27 treatment and to propose potential solutions. Pending further study by the
28 workgroup and until those recommendations are made, the Court proposes deleting

1 Rule 211. Delaying venue transfer until expiration of appellate deadlines may create
2 significant practical difficulties for outpatient treatment providers and clinical
3 directors who may need to seek modifications of treatment orders shortly after entry.
4 The proposed rule as drafted would impose administrative burdens and additional
5 costs without a corresponding statutory requirement.

6 **10. Rule 401. Commencing a Proceeding for Court-Ordered Treatment.**

7 The Court proposes amendments to Rule 401(d)(2). As drafted, the proposed
8 rule creates ambiguity regarding hearing scheduling and the interaction between
9 statutory service requirements and hearing deadlines. Clarifying that hearings must
10 occur no sooner than seventy-two hours after service on the patient, while remaining
11 within statutory filing deadlines, will reduce the risk of procedural error and
12 promote consistent statewide practice.

13 **11. Rule 402. Disclosure and Discovery.**

14 The Court proposes that Rule 402(a) be eliminated in its entirety. The
15 disclosure obligations imposed by the rule exceed those required by statute and are
16 difficult to satisfy within the compressed timelines governing mental health
17 proceedings. Hearings are typically conducted within four to six business days after
18 the filing of the petition, leaving limited time for investigation, witness interviews,
19 witness coordination, and preparation for hearing. Both parties already bear
20 responsibility for identifying and interviewing witnesses within these statutory
21 timeframes, and the Court is not aware of any demonstrated need for additional
22 mandatory disclosure requirements.

23 Moreover, the proposed disclosure requirements are likely to generate
24 collateral litigation concerning compliance with disclosure obligations rather than
25 advance resolution of the merits of the petition. In particular, requiring parties to
26 disclose summaries of anticipated witness testimony invites disputes regarding the
27 adequacy, completeness, or accuracy of those summaries and whether a witness's
28 actual testimony was sufficiently disclosed. Such disputes are inconsistent with the

1 expedited nature of mental health proceedings and risk creating unnecessary motion
2 practice, evidentiary objections, and requests for continuances.

3 If the Supreme Court elects to retain Rule 402(a), however, the Court
4 proposes the amendments set forth in Attachment "A." At a minimum, the
5 requirement that parties disclose a summary of a witness's anticipated testimony
6 should be removed. Eliminating that requirement would reduce the likelihood of
7 collateral disputes regarding disclosure compliance while preserving the parties'
8 ability to identify witnesses and exhibits before hearing.

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

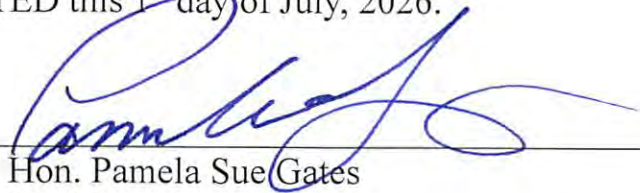
11 The Court proposes amendments to Rule 405(h)(3) concerning privileged
12 and confidential information obtained by an appointee during the course of the
13 investigation. The purpose of the proposed amendment is to clarify that the
14 appointment of an investigator, guardian ad litem, or other appointee under Rule
15 405 does not waive any privilege or confidentiality protections belonging to the
16 patient, including attorney work product and materials prepared by non-testifying
17 experts. Without this clarification, there is concern that a guardian ad litem or other
18 participant in a subsequent probate proceeding could argue that records,
19 communications, or work-product materials obtained during the mental health
20 proceeding are discoverable or subject to disclosure in a later guardianship or
21 conservatorship case. The proposed language is intended to ensure that information
22 obtained by an appointee for the limited purpose of investigating the need for a
23 guardian or conservator is not later used to circumvent otherwise applicable
24 privilege and confidentiality protections.

25 **CONCLUSION**

26 The Court believes that the amendments set forth in Attachment "A" will
27 improve the proposed Rules for Court-Ordered Mental Health Proceedings by
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1 promoting consistency with Title 36 and ensuring that the rules remain practical and
2 workable for courts, litigants, treatment providers, and counsel throughout Arizona.

3
4 RESPECTFULLY SUBMITTED this 1st day of July, 2026.

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7 Hon. Pamela Sue Gates
8 Presiding Judge
9 Superior Court in Maricopa County

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11 Electronic copy filed with
12 the Clerk of the Arizona Supreme Court
13 this 1st day of July, 2026.
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1 ATTACHMENT “A”

2 *(For ease of review, proposed amended language is underlined and proposed*
3 *deleted language is ~~struck through~~.)*

4 **Rules for Court-Ordered Mental Health Proceedings**

5 **Rule 101 – 103. [no changes]**

6 **Rule 104. Confidentiality and Public Access to Mental Health Records**

7 **(a) Court Records.**

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

12 **(2) Access by Parties and Their Attorneys.** Case records of, and case
13 information regarding, a mental health proceeding generally are open to
14 access and inspection by the parties to the proceeding and their attorneys.
15 The court may prevent parties and their attorneys from accessing and
16 inspecting court records in a mental health proceeding if, after following the
17 procedure described in (c), the court orders those records to be sealed.

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

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

27
28 **2027 Comment to Rule 104**

1 Because A.R.S. § 36-509.01 generally restricts public access to court records in a
2 mental health proceeding, those records do not need to be sealed to prevent public
3 access and inspection. Case records in a mental health proceeding should be sealed
4 only when the court finds it necessary to restrict access to those records by the
5 parties and their attorneys, such as when privileged communications are submitted
6 to the court for inspection.

7 **Rule 105. [no changes]**

8 **Rule 106. Duties of Attorneys and Parties**

9 **(a) – (i) [no changes]**

10 **(j) Responsibility to the Court.**

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

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

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

1 represented patients held pursuant to a detention order are excused
2 from this requirement.

3 **Rule 107 – 110. [no changes]**

4 **Rule 201. Requests and Motions**

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

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

15 **(1) Filing.** A written motion must be filed with the clerk. The movant must
16 provide a copy of the motion, along with a proposed form of order, to
17 the assigned judge. This may be done through an electronic filing
18 system if the system has that functionality. If a judge has not yet been
19 assigned to the matter, a copy of the motion must be provided to the
20 presiding judge. Pursuant to Rule 109, the filing party must provide all
21 other parties with a copy of the motion and any proposed order by
22 reasonable means.

23 **(2) Response and Reply.** ~~A party may file a response to a motion no later~~
24 ~~than 3 business days after service under subpart (b)(1). The movant~~
25 ~~may file a reply no later than 3 business days after service of a~~
26 ~~response. The reply must be limited to the matters raised in the~~
27 ~~response. The parties may file a responsive pleading as allowed by the~~

1 court and according to a briefing schedule set by the court, in its
2 discretion, in light of statutory time limits for mental health hearings.

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

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

10 **Rule 202. Attendance at Court Proceedings; Exceptions**

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

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

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

21 ~~(2) The patient's conservator,~~

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

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

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

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

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

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

~~(9) Any other person for good cause.~~

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

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

[Or, in the alternative]

Rule 202. Attendance at Court Proceedings; Exceptions

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

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

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

- (2) The patient's conservator,
- (3) Anyone nominated in a then-pending petition to serve as the patient's guardian or conservator,
- (4) The patient's guardian ad litem if not appointed in the mental health proceeding,
- (5) The patient's attorney in any other court proceeding,
- (6) Any person entitled to notice of the proceeding pursuant to A.R.S. Title 36, Chapter 5,
- (7) Those persons necessary to ensure the safety and health of the patient and the safety of others who are present during the proceeding,
- (8) Any person who the court determines has a significant nexus to the care, treatment, or maintenance of the patient, including the patient's family members and inpatient and outpatient behavior health care providers, and
- (9) Any nursing or medical student, and
- (10) Any other person for good cause.

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

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

Rule 203. Virtual Attendance and Testimony; Virtual Hearings

(a) **Definitions.**

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

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

6 (b) **Virtual Attendance and Testimony, When Permitted or Required.** On its
7 own or for good cause shown by a party, tThe court may permit, or require,
8 a person to attend or testify virtually if the court determines:

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

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

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

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

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

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

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

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

9 **(f)(d) Instructions for Virtual Attendance or Testimony or Virtual Hearings;**

10 **Video Conferencing Preferred.** If the court permits or requires virtual
11 attendance or testimony, or a virtual hearing, the court must either provide
12 instructions for how to attend or testify virtually or require the party who
13 requested the virtual attendance or testimony to provide those instructions.
14 When both video conferencing and audio conferencing are available to the
15 person testifying virtually, and absent good cause, the court must require ~~the~~
16 ~~person attending or testifying virtually to do so~~ participation by video. Good
17 cause exists if the court finds that the person testifying virtually has made a
18 reasonable effort to participate via video conferencing but is unable to do so.

19 **Rule 204. Effect of an Existing Guardianship for a Patient**

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

23 (1) Prior to the hearing on the petition or application, the patient has a
24 guardian who has been granted additional authority under A.R.S. § 14-
25 5312.01;

26 (2) The court finds the patient's needs can be adequately met by the
27 guardian; and
28

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

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

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

9 (2) The patient meets the criteria for court-ordered treatment under A.R.S.
10 § 36-540(A).

11 If the court grants the guardian the additional authority under A.R.S. § 14-
12 5312.01, the court then may either (A) deny the petition or application after
13 finding that the patient's needs can adequately be met by the guardian, or (B)
14 grant the petition and enter an order for treatment or continued treatment.

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

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

27 **Rule 205. [no change]**

28 **Rule 206. Change of Judge**

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

- 3 (1) A party must file the affidavit for change of judge for cause no later
4 than 2 business days after discovering the grounds for the change,
5 (2) The party filing the affidavit must provide a copy of the affidavit to the
6 other parties by reasonable means, and
7 (3) A party may file a response or controverting affidavit no later than 2
8 business days after the filing date of the affidavit.

9 (b) **As a Matter of Right**

10 (1) ***When Available.*** Each side in a mental health proceeding has a right
11 to file one notice of change of judge in the case. The notice may be
12 filed only with respect to the judge assigned to a petition for court-
13 ordered treatment or to an application for continued court-ordered
14 treatment. For purposes of this rule, a mental health proceeding has
15 only two sides: one side is a party who files the petition for court-
16 ordered treatment and any party who files an application for continued
17 court-ordered treatment constitute one side; the other side is the
18 patient.

19 (2) ***Time Limits.***

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

25 (B) **Application for Continued Court-Ordered Treatment.** A
26 notice of a change of judge with respect to an application for
27 continued court-ordered treatment must be filed no later than 5
28 days after the court first provides notice of the hearing and must

1 be provided to the other parties by reasonable means. A
2 continuance of the hearing does not extend this deadline.

3 (3) **Waiver.** A side waives the right to a change of judge if the judge
4 considers any contested issue, including a hearing under rule 304.
5 Waiver does not occur when a judge considers a petition for court-
6 ordered evaluation.

7 (4) **Procedures on Notice.**

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

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

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

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

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

6 **Rules 207 – 208. [no changes]**

7 **~~Rule 209. Disclosure Sanctions~~**

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

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

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

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

20 ~~(3) Do both.~~

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

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

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

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

28 ~~(4) Exclude evidence.~~

1 [Or, in the alternative]

2 **Rule 209. Disclosure Sanctions**

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

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

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

13 (5) After conducting a hearing, sanction the offending party or attorney if
14 it determines that the offending party or attorney acted in bad faith, or

15 (6) Do both.

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

17 (5) Order the offending party or attorney to pay a monetary sanction to the
18 clerk.

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

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

23 (8) Exclude evidence.

24 **Rule 210. [no changes]**

25 ~~**Rule 211. Delaying a Change of Venue**~~

26 ~~If the court orders a change of venue, venue may not be transferred until the time~~
27 ~~for appealing a treatment order has expired under Rule 603. If a timely notice of~~
28 ~~appeal is not filed, venue may be transferred the day after that deadline. If a timely~~

1 ~~notice of appeal is filed, venue may not be transferred until the record has been~~
2 ~~transmitted to the appellate court under the Arizona Rules of Civil Appellate~~
3 ~~Procedure.~~

4 **Rules 301 – 304. [no changes]**

5 **Rule 401. Commencing a Proceeding for Court-Ordered Treatment**

6 **(a) Petition.** A proceeding for court-ordered treatment is commenced by filing a
7 petition for court-ordered treatment that meets the requirements of A.R.S. §
8 36-533.

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

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

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

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

21 **(2)** Set a hearing as provided in A.R.S. § 36-535(B), to be held ~~no less~~
22 ~~than 3 business days and no more~~ no sooner than 72 hours after service
23 of the petition on the patient, and no later than 6 business days after
24 the filing date of the petition,

25 **(3)** Give the parties a written notice that includes the date, time, and
26 location of the hearing, and the name of the judge who will conduct
27 the hearing, and
28

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

3 **(e) Service of the Petition.**

4 (1) *Service on the Patient.* At least 72 hours before the court conducts a
5 hearing on the petition for court-ordered treatment, the petitioner must
6 serve the patient with a copy of the petition for court-ordered
7 treatment, supporting affidavits, and the notice of the hearing on the
8 petition, as provided in A.R.S. §§ 36-510.01 and 36-536.

9 (2) *Service on the Patient's Guardian.* If the petitioner is aware that the
10 patient has a guardian, the petitioner must use best efforts to serve the
11 guardian with a copy of the petition, affidavits in support of the
12 petition, and the notice of hearing no later than 2 calendar days before
13 the hearing on the petition for court-ordered treatment. In lieu of
14 personal service, a guardian can provide a written acknowledgment
15 that the guardian has received the documents. As provided in A.R.S. §
16 36-536(E), failure to serve the guardian is not, by itself, grounds for
17 dismissing the petition; however, the court may impose remedies or
18 sanctions to address that failure.

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

27 **Rule 402. Disclosure and Discovery**

28 **(a) — Disclosure.**

1 ~~(1) *Petitioner's Disclosure Duty.* In addition to the requirements of A.R.S.~~
2 ~~§ 36-537(A), the petitioner must make a good faith effort to disclose~~
3 ~~to the other parties at least 48 hours before the hearing on the petition~~
4 ~~for court ordered treatment the names and telephone numbers of all~~
5 ~~witnesses the petitioner intends to call at the hearing, a summary of the~~
6 ~~witnesses' anticipated testimony, and copies of any documents the~~
7 ~~petitioner intends to mark as exhibits for the hearing and that have not~~
8 ~~been previously provided.~~

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

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

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

26 **[Or, in the alternative]**

27 **Rule 402. Disclosure and-Discovery**

28 **(a) Disclosure.**

1 **(1) *Petitioner's Disclosure Duty.*** In addition to the requirements of A.R.S.
2 § 36-537(A), the petitioner must make a good faith effort to disclose
3 to the other parties at least 48 hours before the hearing on the petition
4 for court-ordered treatment the names and telephone numbers of all
5 witnesses the petitioner intends to call at the hearing, ~~a summary of the~~
6 ~~witnesses' anticipated testimony,~~ and copies of any documents the
7 petitioner intends to mark as exhibits for the hearing and that have not
8 been previously provided.

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

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

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

26 **Rules 403 – 404. [no changes]**

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

1 (a) – (g). [no changes]

2 (h) **Privileges and Confidentiality.**

3 (1) *No Privilege Between the Appointee and the Patient.*

4 Communications between the patient and the appointee are not
5 privileged. When the appointee first communicates with the patient,
6 the appointee must inform the patient that their communications are
7 not privileged.

8 (2) *Confidentiality.* The appointee under this rule may not disclose any
9 communication with the patient except as is necessary to investigate
10 and advise whether the patient may need a guardian, conservator, or
11 other protective order under Title 14 of the Arizona Revised Statutes,
12 or to initiate and prosecute proceedings under A.R.S. Title 14, Chapter
13 5.

14 (3) *Patient's Privileges and Confidentiality.* The appointment of a person
15 or agency under this rule and the receipt of otherwise privileged or
16 confidential documents or information by the appointee does not waive
17 any of the patient's privileges or rights of confidentiality, including the
18 right to protect attorney work product and material prepared by an
19 expert other than one retained or specially employed to provide expert
20 testimony. As a result, a party to the mental health proceeding may not
21 compel the appointee to produce any privileged documents the
22 appointee obtains.

23 (i) [no changes]

24 **Rules 406 – 701. [no changes]**