

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-17-0041
PETITION TO AMEND RULES 11.2,)
11.3, 11.5, AND 11.7, ARIZONA)
RULES OF CRIMINAL PROCEDURE,)
) **FILED 12/13/2017**
)
)
)
_____)

ORDER

**AMENDING RULES 11.4, 11.5, AND 11.7, ARIZONA RULES OF CRIMINAL
PROCEDURE, ON A PERMANENT BASIS**

A petition having been filed proposing to amend Rules 11.2, 11.3, 11.5, and 11.7, Arizona Rules of Criminal Procedure, and that proposal having been adopted on an emergency basis, effective August 9, 2017 with a comment period ending October 11, 2017; and Rules 11.2, 11.3, 11.4, 11.5, and 11.7 having been amended by the Court on August 31, 2017, effective January 1, 2018; and one comment to the instant petition having been received on October 11, 2017, upon consideration,

IT IS ORDERED that Rules 11.4, 11.5, and 11.7, Arizona Rules of Criminal Procedure, as restyled in R-17-0002 to be effective January 1, 2018, be amended in accordance with the attachment hereto, effective April 2, 2018.

DATED this 13th day of December, 2017.

_____/s/_____
SCOTT BALES
Chief Justice

ATTACHMENT*

(* additions to the rules as amended in R-17-002 are indicated by underscoring;
deletions by ~~strikeouts~~)

Rule 11. Incompetence and Mental Examinations

Rule 11.2. Motion for an Examination of a Defendant's Competence to Stand Trial
[No change]

Rule 11.3. Appointment of Experts

[No change]

Rule 11.4. Disclosure of Experts' Reports

(a) Reports of Appointed Experts Under Rule 11.3.

(1) *Deadline.* An expert appointed under Rule 11.3, or under A.R.S. § 13-4517, must submit a report to the court no later than 10 business days after the expert's examination is completed. The expert must inform the court if the report cannot be made available at least 7 days before the scheduled hearing.

(2) [No change]

(b) [No change]

Rule 11.5. Hearing and Orders

(a) [No change]

(b) **Orders.**

(1) [No change]

(2) [No change]

(3) *If Incompetent and Not Restorable.* If the court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months, the court may on request of the examined defendant or the State do one or more of the following:

(A) remand the defendant to an evaluating agency approved and licensed under Title 36 to begin civil commitment proceedings under A.R.S. §§ 36-501 et seq.;

(B) order appointment of a guardian under A.R.S. §§ 14-5301 et seq.; or

(C) release the defendant from custody and dismiss the charges without prejudice; or

(D) retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

(4) [No change]

(c) [No change]

(d) [No change]

Rule 11.7. Privilege and Confidentiality

(a) [No change]

(b) Privileged Statements of the Defendant.

(1) [No change]

(2) [No change]

(3) *In Title 36 Proceedings.* Notwithstanding (b)(1) and (b)(2), a statement of the defendant obtained in a Rule 11 matter, or evidence resulting from that statement, may be used by any party in a hearing to determine whether the defendant is eligible for court-ordered treatment under A.R.S. §§ 36-501 et seq. ~~Title 36, Chapter 5,~~ or is a sexually violent person.

(c) Confidentiality of Reports.

(1) *Generally.* The court and counsel must treat reports of Rule 11 experts as confidential in all respects. They may, however, disclose other expert reports to mental health experts in proceedings related to A.R.S. §§ 13-4501 et seq., § 13-4518, and §§ 36-501 et seq., or as otherwise excluded in A.R.S. §§ 13-4508 and 13-4516.

(2) [No change]

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TO:

Rule 28 Distribution

David K Byers