

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 14, 2017	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Fair Justice Issues

FROM:

Mr. Dave Byers, Director, Administrative Office of the Courts
Mr. Don Jacobson, Senior Special Projects Consultant, Arizona Supreme Court, AOC

DISCUSSION:

Mr. Byers will provide a history of FARE issues and present proposed modifications that will be take up at the March 2018 Arizona Judicial Council meeting.

RECOMMENDED COUNCIL ACTION:

Approve the Presiding Judges' draft administrative order template and policies for implementation of Rule 11 Legislation.

SUPERIOR COURT OF ARIZONA
[XXXXXXXXX] COUNTY

IN THE MATTER OF)
IMPLEMENTATION OF MENTAL)
COMPETENCY PROCEEDINGS IN)
CRIMINAL MATTERS IN LIMITED)
JURISDICTION COURTS)
_____)

ADMINISTRATIVE ORDER
No. [year] - ____

On August 9, 2017, legislation amending A.R.S. § 13-4503 became effective granting the Presiding Judge in each county the authority to authorize a municipal court or justice court to exercise jurisdiction over competency hearings in misdemeanor cases that arise out of the municipal court or justice court. It further provides that the limited jurisdiction court may refer a competency hearing to another limited jurisdiction court in that county with the approval of the Presiding Judge. Thereafter, the Supreme Court amended Rule 11 of the Arizona Rules of Criminal Procedure (hereinafter (“Rule 11”) to conform to the jurisdictional changes the legislature made to A.R.S. § 13-4503.

Having considered A.R.S. § 13-4503 and Rule 11, this Order addresses how *[insert name of court(s)]* may conduct Rule 11 competency proceedings in *[name of]* County.

IT IS ORDERED *[insert name of court(s)]* shall exercise jurisdiction over competency hearings in misdemeanor cases that arise out of its court in compliance with the policies and procedures set forth below.

IT IS FURTHER ORDERED that beginning on *[insert date]*, *[insert name of court(s)]* shall:

1. Conduct Rule 11 proceedings in compliance with the policies and procedures approved by the Presiding Judge and attached to this Order.
2. Ensure an accurate and complete recording of all Rule 11 courtroom proceedings is taken and maintained in accordance with applicable retention schedules. This

includes completion of all automation tasks to ensure the local case management system is properly configured for docketing and retaining case records.

3. Establish a process approved by the Presiding Judge for the issuance, filing, and distribution of minute entries and orders, and for the handling of evaluations and medical reports as required by law and court rule.
4. Appoint mental health experts who meet the requirements set by statute and rule, and who are appointed pursuant to statutory and local procurement requirements.
5. Transmit necessary findings to the Administrative Office of the Courts for the Department of Public Safety for firearm background checks as required by state and federal law.
6. Pay any costs associated with holding Rule 11 competency proceedings as dictated by applicable statute, rule, or local practice at their court.

IT IS FURTHER ORDERED:

7. In accordance with A.R.S. § 13-4508, and Arizona Supreme Court Rule 123, judges shall take all necessary steps to ensure the confidentiality of Rule 11 evaluations and ensure that those records are to be treated as confidential records by all who have access to them, including attorneys. Judges who conduct Rule 11 proceedings shall have the authority to order the unsealing of past Rule 11 evaluations for the limited purposes of the Rule 11 proceedings held in their court.
8. The Superior Court and the Clerk of the Superior Court shall ensure that when *[insert name of court(s)]* conducts Rule 11 competency proceedings, *[insert name of court(s)]* has access to any records necessary to conduct the proceeding, including past Rule 11 evaluations in the Superior Court.
9. *[Name of court(s)]* shall provide to a requesting court access to any records necessary to conduct Rule 11 proceedings in that court if the requesting court is authorized to conduct Rule 11 proceedings.

IT IS FURTHER ORDERED if [*insert name of court(s)*] wishes to refer competency hearings to another court authorized to conduct Rule 11 hearings pursuant to A.R.S. § 13-4503(F), [*insert name of court(s)*] shall submit to the Presiding Judge for approval its policies and procedures regarding referral of these matters.

IT IS FURTHER ORDERED the Presiding Judge may revoke the [*insert name of court(s)*] authorization to conduct or refer Rule 11 competency proceedings if the Presiding Judge determines that the court fails to comply with the conditions of this Order or any subsequent related order.

Dated this ____ day of _____, 20__.

[NAME]
Presiding Judge

Document Name: Rule 11 Proceedings
Effective Date: Select effective date.
Document Status:

1.0 Appointment of Counsel

This section should contain language clarifying that counsel should be appointed for all defendants that enter into Rule 11 proceedings and should delineate how that appointment should take place.

2.0 Assignment of Judicial Officer

Courts should decide how they want to assign Rule 11 proceedings to judicial officers, they may wish to consolidate into a single division within the court, move through a rotation, or assign on whatever manner they currently assign criminal cases. Courts should consider expertise and training as part of the assignment matrix.

3.0 Assignment of Judicial Staff

Since limited jurisdiction courts have not managed Rule 11 proceedings in the same manner as this new jurisdiction permits, judicial staff likely will be unfamiliar with various requirements such as sealing or otherwise marking as confidential certain documents, new event codes, and other case management topics. Courts should assign appropriately trained or experienced staff to management of Rule 11 proceedings.

4.0 Rule 11 Calendar and Proceedings

Courts should consider the timing of events in relationship to availability of experts and information as well as judicial workload. Courts may consider discussing these topics with other limited jurisdiction courts that have already begun conducting Rule 11 proceedings for ideas and best practices.

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5.0 Access to Prior Rule 11 Mental Health Expert Reports

Procedures for gaining access to previous Rule 11 reports will need to be negotiated with the Superior Court Clerk and other local courts who are authorized to conduct Rule 11 proceedings. A process to have access to reports from other counties should also be considered.

6.0 Access to Rule 11 Reports

The court should establish procedures by which other courts who may perform Rule 11 evaluations may access the expert reports that they have on record.

7.0 Procurement Process of Mental Health Experts for Rule 11

All contracts for services must be obtained through appropriate local, county or state procurement procedures. Should the court use a contract from other agencies it should be sure that procurement policies have been complied with in the process.

8.0 Appointment of Mental Health Experts for Rule 11

Depending on the availability of experts and the volume of Rule 11 cases, the court should establish a process by which Mental Health Experts are appointed to cases. Court should ensure they are familiar the requirements of Rule 11.3 as to who is qualified to be appointed as a mental health expert.

9.0 Mental Health Experts Report Format and Filing

For consistency, courts should provide a template or format for the filing of Rule 11 evaluations. The court should work with other courts within the county that are

performing Rule 11 evaluations and seek to use the same or similar formats to improve readability across jurisdictions.

10.0 Record Keeping

Policies will need to be established regarding the making of the record of Rule 11 events and of the maintenance of those records within appropriate retention schedules. This should include recordings, transcripts, dockets, register of actions, the case record and all other related court records.

11.0 Training

With Rule 11 events being unique within criminal case types, appropriate training and refreshers should be required of all assigned experts, judicial officers and court staff.

12.0 Competing Rule 11 Matters

Should the court become aware that a Rule 11 evaluation is being ordered in another court there is to be a process where a single evaluation or a consolidation or transfer of the case(s) may take place in accordance with A.R.S. § 13-4503(F).

13.0 Restoration

Procedures are to be developed that outline the process by which restoration to competency is to be accomplished. This should include the mechanism for funding of the restoration.