

2023 RULE PETITIONS

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Petitions of Interest

Thanks to Mark Meltzer and AZ Supreme Court Staff
Attorneys Lisa Banen, John Rogers, Yolanda Fox, and
Patience Huntwork for contributing to this presentation

Search Warrants

Search warrants. The first order, [R-22-0002](#), adopted a new Criminal Rule 2.6 concerning search warrants. This rule requires a magistrate to find that a supervising law enforcement officer in the affiant's agency has approved the search warrant application, and that the no-knock warrant application includes the pertinent safety factors enumerated in the rule. The cover sheet and related data collection requirements were adopted by Administrative Directive [No. 2022-13](#).



Victims' Rights

Victims' rights. The second order, R-22-0035, integrates victims' rights contained in statute and in Rule 39 into about forty criminal rules, within a new section (v) ("victims' rights") of each of those respective rules. Note that the order did not amend or abrogate Rule 39. These amendments became effective July 1, 2023.

- **R-22-0045**
- **Criminal Rule 39(b)(12)**

Would abrogate rules 39B (b)(12)(A) & (B) of the rules of criminal procedure to allow defense counsel to make an interview request directly to a victim without going through the prosecutor.

Defense Counsel Interview of Victim

Involuntary Commitment

•R-23-0014

•Criminal Rules 11.1, 11.3, 11.4, 11.5, 11.6, and 11.7

Would amend rules 11.1 and 11.3-11.7 of the rules of criminal procedure to implement a recent statute authorizing a defendant to be involuntarily committed to a secure state mental health facility in certain circumstances if the defendant is found incompetent to stand trial.

Adopted effective January 1, 2024.

Rule of Completeness

- [R-23-0002](#)

- **Rule 106**

- **Advisory Committee on Rules of Evidence**

This petition proposed an amendment to Rule 106 (“remainder of or related writings or recorded statements”), colloquially described as the “rule of completeness,” to align the Arizona rule with pending amendments to the corresponding federal rule.

Petition was adopted as modified effective January 1, 2024.

Excluding Witnesses

- [R-23-0003](#)

- **Rule 615**

- **Advisory Committee on Rules of Evidence**

Rule 615 is a rule on “excluding witnesses.”

The petition requested amendments to conform the Arizona rule to pending amendments to the corresponding federal rule, while still maintaining Arizona’s unique rule provision regarding crime victims.

The petition to amend Arizona Rule of Evidence 615 adopted as modified.



Expert Witnesses

- [R-23-0004](#)
- **Rule 702**
- **Advisory Committee on Rules of Evidence**

Would amend Arizona Rule of Evidence 702 to conform to the anticipated 2023 amendments to federal rule of evidence 702 regarding expert witnesses.

Adopted as modified effective January 1, 2024

Rules of Protective Order Procedure

- [R-23-0010](#)
- **Rule 25(e)**
- **Mike Palmer**
- This petition requests an amendment to Rule 25 (“injunction against harassment”), section (e) (“findings required”) “to align with recent changes in Arizona law for when the state wants to seize the property of Arizonans.” Citing to specific statutes, the petition alleges that the Legislature raised the standard needed for the state to seize property in a forfeiture proceeding to “clear and convincing evidence.” The standards in Rule 25(e) are “reasonable evidence” that the defendant committed harassment, and “good cause” to believe that great or irreparable harm would result to the plaintiff. Rule 25, section (g) (“firearms”), however, does not include an evidentiary standard for prohibiting defendant’s possession of a firearm. This petition would therefore add to section (e) a “clear and convincing” standard for prohibiting possession.
- Petition to amend DENIED.

Recalling Cases

- [R-23-0027](#)

- **RPEA 11**

- **William Morris Institute, by Andrew Schaffer, and by CLS, DNA Legal, and SALA**

- This petition requests adding the following amendment to Rule 11 (“preliminary procedures”), subpart (1):

If a plaintiff or defendant does not appear or answer as present in response to the initial case call, the court shall call the case a second time later in the calendar before proceeding to the material allegations of the case. The court shall recall such cases either after one hour has passed or at the end of the calendar, whichever happens first.

- By way of explanation, the petition alleges:

Some courts make it a practice of re-calling the case at the end of the calendar, but other courts immediately dismiss the case if a plaintiff fails to show or issue a default judgment if a defendant is not present. The dismissals or default judgments stand even if the plaintiff or defendant arrives after the court calls their case but before the calendar ends. The proposed rule amendment seeks to formalize the practice of recalling cases at the end of each initial calendar call, or after an hour for longer calendar calls, to allow all parties to have their day in court and to conserve judicial resources.