

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-08-0020
PETITION TO AMEND PROPOSED RULE)
41, RULE 47.1, RULE 50, RULE 56,)
RULE 58, RULE 60, RULE 61, RULE)
63 AND RULE 79; AND PETITION TO)
ADOPT PROPOSED RULE 61.1 AND)
62.1, RULES OF PROCEDURE FOR THE)
JUVENILE COURT)
)
)
)
_____)

ORDER

A petition having been filed proposing to amend Rules 41, 47.1, Rule 50, Rule 56, Rule 58, Rule 60, Rule 61, Rule 63 and Rule 79, Rules of Procedure for the Juvenile Court, and to adopt Rules 61.1 and 62.1, Rules of Procedure for the Juvenile Court, and the petition having been granted on an emergency basis on September 16, 2008 with a comment period to follow, and comments having been received including proposals for additional amendments to Rule 61.1 and 61.2, upon consideration,

IT IS ORDERED that the amendments to Rules 41, 47.1, 50, 56, 58, 60-61, 63 and 79, Rules of Procedure for the Juvenile Court, be adopted on a permanent basis as set forth in Attachment 1 hereto, effective January 1, 2010;

IT IS FURTHER ORDERED that Rules 61.1 and 62.1, Rules of Procedure for the Juvenile Court, be re-numbered as Rules 63.1 and 63.2 and be further amended in accordance with Attachment 2 hereto, effective January 1, 2010.

DATED this _____ day of September, 2009.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution

Rule 41. Attendance at hearings.

~~A. Except as otherwise provided pursuant to statute or court rule, court proceedings relating to dependent children, permanent guardianships and termination of parental rights are open to the public. Only those persons permitted by law may attend dependency, guardianship and termination or parental rights proceedings. The court may exclude any person whose presence the court finds would impede the full and fair presentation of the evidence.~~

~~B. – C. [No change.]~~

~~D. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall ask the parties if there are any reasons the proceeding should be closed. For good cause shown, the court may order any proceeding to be closed to the public. In considering whether to close the proceeding to the public, the court shall consider: On the record, the court shall advise the parent, guardian or Indian custodian of the right to request that a hearing or trial be open to the public.~~

~~E. Upon a request or a motion made prior to a proceeding under these rules by a parent, guardian or Indian custodian of a child who is the subject of the proceeding, the court shall order that the proceeding is open to the public unless the court finds good cause for all or part of the proceeding to remain closed. Before opening a proceeding to the public, the court shall consider:~~

- ~~1. Whether doing so is in the child's best interests.~~
- ~~2. Whether doing so an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.~~
- ~~3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.~~
- ~~4. Whether all parties have agreed to allow the proceeding to be open.~~
- ~~5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.~~

~~F. The court shall consider the request of a child to close the proceeding if the child is at least twelve years of age and a party to the proceeding.~~

~~E G. At the beginning of a hearing that is open to the public, if a hearing is open, at the beginning of the hearing the court shall admonish all attendees that they are prohibited by order of the court from disclosing outside the hearing personally identifiable information about the child, the child's siblings, parents, guardians, or caregivers and any others mentioned in the hearing. A person who knowingly and voluntarily remains in the courtroom after the admonition submits to the jurisdiction of the court and shall abide by the orders of the~~

court prohibiting disclosure of that information. Failure to abide by the orders shall be deemed contempt of court. The court shall explain contempt of court to all attendees, including observers, and the possible consequences of violating an order of the court. For the purposes of this subsection, “personally identifiable information: includes name, address, date of birth, social security number, tribal enrollment number, telephone or telefacsimile number, driver license number, places of employment, school identification or military identification number or any other distinguishing characteristic that tends to identify a particular person.

E H. The court may close an open proceeding hearing at any time for good cause shown and after considering the factors prescribed in Section D ~~during the proceeding.~~

G. If a proceeding has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public. In ruling on this request, the court shall reconsider the factors prescribed in Section D.

H I. Notice.

(A) If the Arizona Department of Economic Security (the Department) is the petitioner, it shall notify the foster parents, pre-adoptive parents, ~~or relative caregivers of a child~~ or relative who has been identified as a possible placement for a child in foster care under the responsibility of the State of the date, time, and location of all proceedings to be held with respect to the child. Foster parents, pre-adoptive parents, or relative caregivers of a child in foster care under the responsibility of the State shall have a continuing duty to provide the Department with a current and correct mailing address, including addresses identified as protected by court order.

(B) – (D) [No change.]

Rule 47.1. Mandatory Judicial Determinations

If a child has been removed from the child’s home by the state authority, the court shall make protecting the child from abuse or neglect the first priority. The court shall make the following determinations within the time periods set forth and shall state on the record a factual basis for each determination:

A. [No change.]

B. At the preliminary protective hearing, whether the department made attempts to identify and assess placement with the child’s grandparent or another member of the child’s extended family including a person who has a significant relationship with the child.

~~C. B.~~ [No change.]

D. If the child is not placed with a grandparent or another member of the child’s extended family including a person who has a significant relationship with the child within sixty days after the child is removed from the child’s home, why such placement is not in the best interests of the child. The petitioner has the burden of presenting evidence that such placement is not in the child’s best interests at the first court hearing thereafter.

E. €. [No change.]

F. If the child is under three years of age, within six months after the child is removed from the child's home, whether reasonable efforts have been made to provide reunification services to the parent and whether a parent of a child who is under three years of age has substantially neglected or willfully refused to participate in reunification services offered by the department.

Rule 50. Preliminary protective hearing.

A. Purpose. [No change.]

B. Procedure. At the preliminary protective hearing, the court shall: ~~advise the parties of the right to request that the preliminary protective hearing and subsequent hearings be open and, if appropriate under rule 41, grant that the hearing be open and the court shall also:~~

1. [No change.]
2. [No change.]
3. [No change.]
4. [No change.]
5. [No change.]
6. [No change.]
7. [No change.]
8. [No change.]

9. Determine whether the Arizona Department of Economic Security has made arrangements for the assembly of the medical records of the child, a medical assessment of the child, the implementation of referrals and the communication of recommendations and results, as provide by law; ~~and~~

10. Make any determinations required by Rule 47.1-;

11. Inform a foster parent, pre-adoptive parent or a member of the child's extended family with whom the department has placed the child of the right to be heard in any proceeding to be held with respect to the child; and

12. Notify a relative identified as a possible placement for the child of the right to be heard in any proceeding to be held with respect to the child.

C. Findings and orders. All findings and orders, including any agreements reached by the parties, shall be in the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:

1. [No change.]

2. [No change.]
3. [No change.]
4. [No change.]

5. Address the parent, guardian, or Indian custodian in open court and advise the parent, guardian of Indian custodian that failure to attend the pretrial conference, the settlement conference of the dependency adjudication hearing, without good cause shown, may result in a finding that the parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the dependency petition. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in a finding of dependency based upon the record and evidence presented. The court shall also inform the parent that substantially neglecting or willfully refusing to remedy the circumstances that cause the child to be in an out-of-home placement, including refusing to participate in reunification services, is grounds for termination of parental rights to a child. ~~The party shall also be advised that failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child.~~ The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings and participate in reunification services;

6. [No change.]
7. [No change.]

Rule 56. Disposition Hearing.

A. – C. [No change.]

D. Findings and Orders.

1. [No change.]
2. [No change.]
3. [No change.]
4. [No change.]
5. [No change.]
6. [No change.]
7. [No change.]

8. Advise the parties present at the hearing and identified in Rule 58(B)(1) of their right to participate in periodic review hearings.

Rule 58. Review Hearing.

A. Purpose. [No change.]

B. Notice.

1. Right to participate. At a proceeding to review the disposition orders of the court, the court shall provide the following persons notices of the review and the right to participate in the proceeding and any future proceedings:

a. The authorized agency charged with the child's care and custody.

b. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for thirty days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

c. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than thirty days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

d. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. §8-107.

e. The child, if twelve years of age or older.

f. The child's relative, as defined in A.R.S. §8-501, if that relative files a written notice of right of participation with the court.

g. A person permitted by the court to intervene as a party in the dependency proceeding.

h. A physical custodian of the child within the preceding six months.

i. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

j. Any other person as the court may direct.

2. Sibling information exchange program. If the court finds that a child is no longer dependent, before it dismisses the proceeding the court shall provide notice of the sibling information exchange program to the following:

a. An adult who is the former dependent child in the proceeding for whom the periodic review hearing is held.

b. A parent or guardian with legal custody of the former dependent child for whom the periodic review hearing is held.

C. ~~B.~~ **Reports.** [No change.]

D. ~~C.~~ **Contested Issues.** [No change.]

E. ~~D.~~ **Procedure.**

1. [No change.]

2. [No change.]

3. [No change.]

4. At the first periodic review hearing, the court shall consider whether a parent of a child who is under three years of age at the time of removal has substantially neglected or willfully refused to participate in reunification services offered by the department.

F. ~~E.~~ **Findings and Orders.** [No change.]

Rule 60. Permanency hearing.

A. – B. [No change.]

C. Time Limits. The permanency hearing shall be held:

1. [No change.]

2. Within six months of the removal of a child under three years from the child's home.

3. ~~2.~~ [No change.]

D.– E. [No change.]

4. PERMANENT GUARDIANSHIP AND SUCCESSOR PERMANENT GUARDIANSHIP

Rule 61. Motion, Notice of Hearing, Service of Process and Orders for Permanent Guardianship

A. **Motion ~~for Permanent Guardianship.~~** [No change.]

B. – D. [No change.]

*Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

Rule 61 ~~3~~.1. Motion, Notice of Hearing, Service of Process and Orders for Successor Permanent Guardianship.

- A. **Motion.** If a permanent guardian appointed pursuant to ~~law~~ A.R.S. § 8-872 is unable or unwilling to continue to serve as permanent guardian, the permanent guardian, the ~~Department of~~ Economic ~~Security~~ or any interested party may file a motion for appointment of a successor permanent guardian. The motion shall be verified by the person filing the motion and shall contain all information required by law, including the name, sex, address and date and place of birth of each child who is the subject of the motion; the name and address of the permanent guardian; the reason why the permanent guardian is no longer able or willing to serve as permanent guardian of the child; and the name and address of the proposed successor permanent guardian, if any.
- B. **Affidavit.** If the motion identifies a proposed successor permanent guardian, the motion shall be accompanied by an affidavit by the proposed successor permanent guardian that includes the information required by law, including the relationship between the proposed successor permanent guardian and the child and the proposed successor permanent guardian's agreement to assume the duties and responsibilities of permanent guardian, including compliance with all court orders.
- C. **Notice.** The court shall order the person filing the motion to give notice of the hearing and to provide a copy of the motion together with the court's temporary orders to the permanent guardian, the ~~Department of~~ Economic ~~Security~~, the child's attorney, the child's parents and any other interested person as ordered by the court. The person filing the motion shall provide notice by first class mail unless the court orders that notice be given by other means. If the child is subject to the Indian Child Welfare Act of 1978, the person filing the motion shall provide notice pursuant to ~~25 United States Code Section~~ U.S.C. § 1912, to the Indian parent, the Indian custodian and the child's tribe. If the identity or

location of the Indian child's parent cannot be determined, the person filing the motion shall provide notice to the ~~United States Secretary of the Interior~~ U.S. Secretary of the Interior pursuant to 25 ~~United States Code Section~~ U.S.C. § 1912.

D. Procedure and Orders. Upon the filing of a motion for successor permanent guardianship, the court shall:

1. Set a date for an initial successor permanent guardianship ~~review~~ hearing within thirty days after the motion is filed;
2. Appoint counsel for the proposed successor guardian if such appointment is appropriate pursuant to Rule 38(~~b~~ B);
3. Appoint counsel for the child if a guardian ad litem has not been appointed;
4. Enter any appropriate temporary orders which may include:
 - a. Placing the child in the temporary custody of an individual, agency or the ~~Department of Economic Security~~ and directing the ~~Department of Economic Security~~ to provide services necessary for the safety and well-being of the child;
 - b. Directing the ~~Department of Economic Security~~ to complete a criminal records check and home study to determine the suitability of the proposed successor permanent guardian to serve as the permanent guardian of the child;
 - c. Directing the ~~Department of Economic Security~~ to conduct an investigation to determine whether dependency proceedings should be initiated.

Rule ~~62-3.12~~. Initial Successor Permanent Guardianship ~~Review~~ Hearing.

A.Purpose. ~~If the court finds that the proposed successor permanent guardian is suitable to assume the responsibilities of permanent guardian and that appointment would be in the child's best interests, the court shall grant the motion, terminate the appointment of the current permanent guardian and enter any other orders as may be necessary for the safety and well-being of the child. At the initial successor permanent guardianship hearing, the court shall determine whether service has been completed, whether notice of the hearing has been provided to those persons identified pursuant Rule 63.1(C) and the parent or Indian custodian and the child's tribe and whether the parent, guardian or Indian custodian admits, denies or does~~

not contest the allegations contained in the motion for appointment of a successor permanent guardian.

B. Burden of Proof. The moving party has the burden of proving the allegations contained in the motion by clear and convincing evidence.

~~(B)~~**C. Procedure.** At the initial successor permanent guardianship ~~review~~ hearing, the court shall:

1. Inquire if any party has reason to believe that the child at issue is subject to the Indian Child Welfare Act;
2. Determine whether notice of the hearing has been provided to those persons identified in Rule 613.1~~(b)~~(c) in addition to the parent, Indian custodian and the child's tribe.

~~(C)~~**D. Considerations.** If the child is at least twelve years of age, the court shall consider the child's objection and may consider the child's wishes to the proposed successor permanent guardian.

~~(D)~~**E. Findings and Orders.** ~~At the hearing, if the court finds that the proposed successor permanent guardian is suitable to assume the responsibilities of permanent guardian and that appointment would be in the child's best interests, the court shall grant the motion, terminate the appointment of the current permanent guardian and enter any other orders as may be necessary for the safety and well-being of the child, including~~ At the hearing, if the court finds that the movant has met its burden of proof that the proposed successor permanent guardian is suitable to assume the responsibilities of permanent guardian and that appointment would be in the child's best interests, the court shall grant the motion, terminate the appointment of the current permanent guardian and appoint the proposed successor permanent guardian as permanent guardian of the child. At the hearing, the court may enter any orders as may be necessary for the safety and well-being of the child, including:

1. Appointing the proposed successor permanent guardian as a provisional permanent guardian of the child for a period not to exceed nine months

and setting a hearing to determine whether the appointment should be made permanent;

2. Directing the ~~d~~DePARTMENT of ~~e~~ECONOMIC ~~s~~SECURITY to monitor the placement during the period of provisional appointment and to provide necessary services to support the provisional placement, including assisting the provisional permanent guardian to make an application for guardianship subsidy and other available benefits;
3. ~~Appointing the proposed successor permanent guardian as permanent guardian of the child if the court finds by clear and convincing evidence that the proposed successor permanent guardian is suitable to serve as the child's permanent guardian and that the appointment would be in the child's best interests;~~

~~4.~~4. If the court enters an order appointing a successor permanent guardian, the court shall set a review hearing within one year after the appointment and may order the ~~d~~DePARTMENT of ~~e~~ECONOMIC ~~s~~SECURITY or an agency to conduct an investigation and submit a written report before the hearing;

~~5-4.~~5-4. The order appointing the successor permanent guardian may provide for contact between the child and the natural or adoptive parents, siblings and other relatives or kin if contact is in the child's best interests. The court may order the parent to contribute to the support of the child and to pay any costs for visitation to the extent it finds the parent able to contribute;

~~6-5.~~6-5. If the motion to appoint a successor permanent guardian does not comply with law, or if the court does not appoint a provisional or permanent successor permanent guardian, the court may order the ~~d~~DePARTMENT of ~~e~~ECONOMIC ~~s~~SECURITY or the child's attorney to file a dependency petition regarding the child and may enter temporary orders that are necessary for the safety and well-being of the child. In that case, the court may direct the ~~d~~DePARTMENT of ~~e~~ECONOMIC ~~s~~SECURITY not to provide reunification services to the child's parents unless the court finds by clear and convincing evidence that it would be in the child's best interests and shall provide direction unless such services are required.

*Changes or additions to text previously adopted on an emergency basis are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.