

1 Honorable Colleen A. McNally
2 Juvenile Court Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 3131 W. Durango
5 Phoenix, AZ 85009
6 (602) 506-5961

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

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9 PETITION TO AMEND RULE 39
10 OF THE RULES OF PROCEDURE
11 FOR THE JUVENILE COURT
12 _____

} Supreme Court No. R-16-_____
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13 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
14 Judge of the Juvenile Court of the Superior Court of Arizona in Maricopa
15 County respectfully petitions this Court to adopt the attached proposed
16 amendment to Rule 39 of the Rules of Procedure for the Juvenile Court.

17 Rule 39(B) of the Rules of Procedure for the Juvenile Court governs the
18 process for which counsel may withdraw from representation of clients in
19 dependency proceedings. Under the current rule, the only requirement for
20 counsel seeking to withdraw from representation is that the request to withdraw
21 must be in writing, unless otherwise authorized by the court. This is a significant
22 difference from the rules governing withdrawal of counsel in Rule 5.1 of the
23 Rules of Civil Procedure and Rule 9 of the Rules of Family Law Procedure.
24 Under those rules, for an attorney to withdraw, he or she must submit a written
25 application setting forth the reasons for withdrawing, together with the name,
26 residence and telephone number of the client. Furthermore, the application must
27 either (1) bear the written approval of the client, or (2) be made by motion and
28 be served upon the client and all other parties or their attorneys. If the

1 withdrawal request is by motion, the rules additionally require that the motion be
2 accompanied by a certificate from the attorney indicating that the client has been
3 notified in writing of the status of the case including (1) the dates and times of
4 any court hearings or trial settings, (2) pending compliance with any existing
5 court order, and (3) the possibility of sanctions. In cases where the client cannot
6 be located or for some reason cannot be notified, the certificate accompanying
7 the motion should say as much. Ariz. R. Civ. P. 5.1(a)(2) and Ariz. R. Fam. L.
8 Proc. 9(a)(2).

9 In addition, both Rule 5.1 of the Rules of Civil Procedure and Rule 9 of
10 the Rules of Family Law Procedure place additional restrictions on an attorney's
11 request to withdraw from representation when an action has been set for trial.
12 Pursuant to the rules, no attorney shall be permitted to withdraw after a trial has
13 been set unless the application or motion contains either (1) the signature of a
14 substituting attorney indicating that the substituting attorney is advised of the
15 trial date and will be prepared for trial or (2) the signature of the client stating
16 the client is advised of the trial date and will be prepared for trial.

17 The withdrawal requirements in the Rules of Civil Procedure and the
18 Rules of Family Law Procedure ensure that represented parties in litigation are
19 on notice of (1) the fact that their counsel is seeking to withdraw from the case,
20 and (2) the parties are fully informed regarding future proceedings affecting their
21 interests, rights, and responsibilities. In actions where the government is a party,
22 these rules protect other parties who are no longer represented by counsel and
23 may be unaware of pending or future proceedings affecting their legal rights or
24 liberty or property interests. This petition seeks to amend Rule 39 of the Rules of
25 Procedure for Juvenile Court to bring these same requirements for withdrawal of
26 counsel to dependency proceedings.

27 The proposed amendment to Rule 39 excludes attorneys appointed for
28 children and attorneys appointed as guardians *ad litem* from the additional

1 requirements regarding withdrawal in light of the fact that children clients are
2 not in a position to give consent, written or otherwise, to their attorneys' request
3 to withdrawal. Furthermore, those attorneys have additional duties and
4 responsibilities under Rules 40 and 40.1 that ensure the rights of their clients are
5 safeguarded.

6 For the foregoing reasons, the Presiding Judge of the Juvenile Court of the
7 Superior Court in Maricopa County respectfully requests this Court amend Rule
8 39 of the Rules of Procedure in Juvenile Court as detailed in Exhibit A to add
9 additional requirements for attorneys seeking to withdraw from representation in
10 dependency proceedings.

11 Respectfully submitted this 7th day of January, 2016.

12 /s/ Colleen A. McNally

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Hon. Colleen A. McNally
15 Juvenile Court Presiding Judge
Superior Court of Arizona, Maricopa County

16 Electronic copy filed with the
17 Clerk of the Supreme Court
18 of Arizona this 7th day of
19 January, 2016.
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Exhibit A
(new language is underlined)

Rules of Procedure for the Juvenile Court

Rule 39. Appearance of Counsel.

A. Appearance. Counsel shall enter an initial appearance by appearing personally before the court and advising the court that counsel is representing a party or by filing a written notice of appearance with the clerk of the court and providing copies to the assigned judge and all parties.

B. Representation of Parties. ~~Withdrawal of Counsel.~~ ~~Requests to withdraw as counsel shall be in writing unless otherwise authorized by the court.~~ Counsel shall represent a party until:

1. The dependency action is dismissed and the time for filing a notice of appeal has expired; or
2. The issuance of an appellate mandate if counsel was ordered to represent the party on appeal; or
3. The court orders the termination of representation.

C. Withdrawal and Substitution. No attorney shall be permitted to withdraw, or be substituted, as attorney of record in any pending action except by formal written order of the court, supported by written application setting forth the reasons therefor together with the name, residence and telephone number of the client, as follows:

1. Where such application bears the written approval of the client, it shall be accompanied by a proposed written order and may be presented to the court *ex parte*. The withdrawing attorney shall give prompt notice of the entry of such order, together with the name and residence of the client, to all other parties or their attorneys.

1 2. Where such application does not bear the written approval of the client, it shall
2 be made by motion and shall be served upon the client and all other parties or their
3 attorneys. The motion shall be accompanied by a certificate of the attorney
4 making the motion that (i) the client has been notified in writing of the status of
5 the case including dates and times of any court hearings or trial settings, pending
6 compliance with any existing court orders, and the possibility of sanctions, or (ii)
7 the client cannot be located or for whatever other reason cannot be notified of the
8 pendency of the motion and the status of the case.

9 3. No attorney shall be permitted to withdraw as an attorney of record after an
10 action has been set for trial, (i) unless there shall be endorsed upon the application
11 therefor either the signature of a substituting attorney stating that such attorney is
12 advised of the trial date and will be prepared for trial or the signature of the client
13 stating that the client is advised of the trial date and has made suitable
14 arrangements to be prepared for trial, or (ii) unless the court is satisfied for good
15 cause shown that the attorney should be permitted to withdraw.

16 4. The provisions in paragraph C do not apply to attorneys who have been
17 appointed counsel for a child or as a guardian *ad litem* for a child.
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