

SUPREME COURT OF ARIZONA

) Arizona Supreme Court
) No. R-14-0025
In the Matter of)
)
RULES 19, 23, 37, 40.1, 41,)
45, 48.1, 50, 60-61, 63.1-64,)
68, 77, 78, 79, 82, 84, 85,)
95-96, 98, 100, 102, 103,)
RULES OF PROCEDURE FOR THE)
JUVENILE COURT; RULES 49, 95, AND)
FORM 7, RULES OF FAMILY)
LAW PROCEDURE; FORM 2, LOCAL)
RULES OF PRACTICE SUPERIOR COURT,)
PIMA COUNTY; RULE 31, RULES OF)
THE SUPREME COURT;)
AND RULE 30, RULES OF)
CIVIL APPELLATE PROCEDURE, TO)
CONFORM TO LEGISLATION)
)
)
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)
_____) **FILED 12/16/2014**

ORDER

AMENDING RULES 19, 23, 37, 40.1, 41, 45, 48.1, 50, 60-61, 63.1-64, 68, 77, 78, 79, 82, 84, 85, 95-96, 98, 100, 102, 103, ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT; RULES 49, 95, AND FORM 7, ARIZONA RULES OF FAMILY LAW PROCEDURE; FORM 2, LOCAL RULES OF PRACTICE SUPERIOR COURT, PIMA COUNTY; RULE 31, RULES OF THE ARIZONA SUPREME COURT; AND RULE 30, ARIZONA RULES OF CIVIL APPELLATE PROCEDURE, TO CONFORM TO LEGISLATION, ON A PERMANENT BASIS

Various rules were amended on an expedited basis due to the creation of the Department of Child Safety, effective September 1, 2014, with a comment period ending October 31, 2014. No comments having been filed, upon consideration,

IT IS ORDERED that Rules 19, 23, 37, 40.1, 41, 45, 48.1, 50, 60-61, 63.1-64, 68, 77, 78, 79, 82, 84, 85, 95-96, 98, 100, 102, 103, Arizona Rules of Procedure for the Juvenile Court; Rules 49, 95, and Form 7, Arizona Rules of Family Law Procedure; Form 2, Local Rules of

Practice Superior Court, Pima County; Rule 31, Rules of the Arizona Supreme Court; and Rule 30, Arizona Rules of Civil Appellate Procedure, be amended on a permanent basis in accordance with the attachment hereto.

DATED this 16TH day of December, 2014.

SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

David K. Byers

ATTACHMENT*

I. *Arizona Rules of Procedure for the Juvenile Court*

Rule 19. Records and Proceedings

A. Contents of Juvenile Court Files.

1. [No change in text.]

2. **Social File.** The social file shall be maintained by the probation department and may consist of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, ~~child protective services~~ Department of Child Safety records, police reports, predisposition reports, detention records, and records and reports or work product of the probation department for use by the court in formulating and implementing a rehabilitation plan for the juvenile and his or her family. The social file of the juvenile shall be confidential and withheld from public inspection except upon order of the court.

B.–C. [No change in text.]

Rule 23. Detention and Probable Cause Hearing

A.–B. [No change in text.]

C. **Length of Detention.** No juvenile shall be held in detention for more than twenty-four (24) hours unless a petition alleging incorrigible or delinquent conduct or a criminal complaint has been filed. No juvenile shall be held longer than twenty four (24) hours after the filing of a petition unless so ordered by the court after a hearing. If a hearing is not held within twenty-four (24) hours of the time of filing of the petition, the juvenile shall be released from the detention facility to a parent, guardian, custodian or other responsible person. If no parent, guardian, custodian or other responsible person can be located, the court shall release the juvenile to the Department of ~~Economic Security~~ Child Safety.

D.–J. [No change in text.]

Rule 37. Definitions

A. **Parties.** Reference to a party to the action means a child, parent, guardian, the ~~Arizona~~ Department of ~~Economic Security~~ Child Safety or petitioner, and any person or entity who has been permitted to intervene pursuant to Rule 24, Ariz. R. Civ. P., or the Indian Child Welfare Act.

B.–C. [No change in text.]

Rule 40.1. Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem.

A.–B. [No change in text.]

* Additions to text are indicated by underscoring and deletions by ~~strikeouts~~.

- C. Attorneys and guardians ad litem shall participate in discovery and file pleadings when appropriate and attorneys must develop the child's position for each hearing. The duties of the attorney and the guardian ad litem may include identifying appropriate family and professional resources for the child, as well as subpoenaing witnesses, and the attorney and guardian ad litem shall inquire of the child regarding potential placements and communicate this information to ~~Child Protective Services~~ the Department of Child Safety as appropriate.
- D. [No change in text.]
- E. Attorneys and guardians ad litem shall also maintain contact with caretakers, ~~case managers~~ child safety investigators and workers, service providers, childcare providers, CASAs, relatives and any other significant person in the child's life as appropriate in order to meet the obligations of informed representation of the child.
- F. To the extent possible, attorneys and guardians ad litem should attend or provide input to ~~Child Protective Services~~ Department of Child Safety staffings, Foster Care Review Board reviews and Child and Family Team meetings.
- G.–J. [No change in text.]

Rule 41. Attendance at hearings

- A.–G. [No change in text.]
- H. 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 E of this rule. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may request a transcript be made of any previously closed proceeding. The person who requested the transcript shall pay the cost of the transcript. In ruling on this request, the court shall consider the factors prescribed in Section E of this rule. If the court grants a request for a transcript of any closed proceeding, the court shall redact from a transcript any information that:
 - 1. [No change in text.]
 - 2. Protects the identity and safety of a person who reports child abuse or neglect and to protect any other person if the court believes that disclosure of the ~~CPS~~ Department of Child Safety information would be likely to endanger the life or safety of any person.
 - 3. [No change in text.]

I. Notice in cases with regard to children in foster care.

(A) If the ~~Arizona~~ Department of ~~Economic Security~~ Child Safety (the Department) is a party, it shall notify the foster parents, pre-adoptive parents, relative caregivers 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)–(C) [No change in text.]

Rule 45. Admissibility of evidence.

A. [No change in text.]

B. **Definition of report.** For purposes of this rule, a written report by a ~~protective services~~ child safety worker shall mean a narrative report setting forth, as appropriate to the hearing, the following:

1.-9. [No change in text.]

The report may include any appendices or reports prepared by persons other than the ~~protective services~~ child safety worker. The term report does not include a social study prepared pursuant to A.R.S. 8-536 or by order of the court in termination proceedings, or the report required by A.R.S. 8-872(E) and Rule 61(D).

C. **Admissibility of reports.** Prior to any dependency hearing, the court may review reports prepared by the ~~protective services~~ child safety worker and shall admit those reports into evidence if the worker who prepared the report is available for cross-examination and the report was disclosed to the parties no later than:

1.– 2. [No change in text.]

D.–E. [No change in text.].

Rule 48.1. In-home Intervention Hearings

A. **Purpose.** Subject to criteria established by law, in-home intervention allows the child to stay in the home under supervision of the ~~department~~ Department of economic security Child Safety and the court after the filing of a dependency petition.

B.–C. [No change in text.]

Rule 50. Preliminary Protective Hearing

A. [No change in text.]

B. **Procedure.** At the preliminary protective hearing, the court shall:

1.–8. [No change in text.]

9. Determine whether the ~~Arizona~~ Department of ~~Economic Security~~ Child Safety 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;

10.–12. [No change in text.]

C. [No change in text.]

Rule 60. Permanency Hearing

A.–C. [No change in text]

D. **Procedure.** At the permanency hearing the court shall consider evidence from the parties, in the form of testimony or documents admitted into evidence, which may include hearsay, in whole or in part, and age-appropriate consultation with the child, in order to determine what permanent legal status is appropriate for the child. The court shall consider the final

plan prepared by the Department of ~~Economic Security~~ Child Safety, pursuant to prior order of the court.

E. [No change in text.]

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

A. Motion. If the court determines that the establishment of a permanent guardianship is in the best interests of a dependent child, the court shall order that a motion for guardianship be filed by the Department of ~~Economic Security~~ Child Safety or by the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall contain all information required by law.

B.–C. [No change in text.]

D. Orders. Upon the filing of a motion for guardianship, the court shall order ~~that the Arizona~~ Department of ~~Economic Security~~ Child Safety, an agency or a person designated as an officer of the court to conduct an investigation and prepare a report addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship. If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required by the Act or whether good cause exists to deviate from the placement preferences. A copy of the report shall be provided to the parties and the court ten (10) days prior to the initial guardianship hearing. The court may enter any other orders, pending the hearing, as the court determines to be in the best interests of the child.

Rule 63.1. Motion, Notice of Hearing, Service of Process and Orders for Successor Permanent Guardianship

A. Motion. If a permanent guardian appointed pursuant to A.R.S. § 8-872 is unable or unwilling to continue to serve as permanent guardian, the permanent guardian, the Department of ~~Economic Security~~ Child Safety 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. [No change in text.]

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~~ Child Safety, 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 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 U.S. Secretary of the Interior pursuant to 25 U.S.C. § 1912.

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

1.–3. [No change in text.]

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~~ Child Safety and directing the Department of ~~Economic Security~~ Child Safety to provide services necessary for the safety and well-being of the child;
- b. Directing the Department of ~~Economic Security~~ Child Safety 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~~ Child Safety to conduct an investigation to determine whether dependency proceedings should be initiated.

Rule 63.2. Initial Successor Permanent Guardianship Hearing

A.–D. [No change in text.]

E. Findings and Orders. 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. [No change in text.]

2. Directing the Department of ~~Economic Security~~ Child Safety 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. 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 Department of ~~Economic Security~~ Child Safety or an agency to conduct an investigation and submit a written report before the hearing;

4. [No change in text.]

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 Department of ~~Economic Security~~ Child Safety 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 Department of ~~Economic Security~~ Child Safety 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.

Rule 64. Motion, Petition, Notice of Hearing and Service of Process and Orders.

A. Motion for Termination of Parental Rights. If the court determines that termination of parental rights is in the best interests of a dependent child, the court shall order that a motion for termination of parental rights be filed by the Department of ~~Economic Security~~ Child Safety or the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall allege the grounds for termination of parental rights as provided by law and shall state whether the child is an Indian child as defined by the Indian Child Welfare Act.

B.–E. [No change in text.]

Rule 68. Definitions

A. Definitions

1.–2. [No change in text.]

3. Investigative Report. The investigative report shall include the following:

a.–b. [No change in text.]

c. A check of records through the ~~Child Protective Service~~ Department of Child Safety Central Registry to determine whether the applicants or any adult living in the applicant's home are listed on the registry.

B. [No change in text.]

Rule 77. Certification To Adopt.

A.–D. [No change in text.]

E. Discovery. The applicant may obtain a copy of the information contained in the court's file as prescribed by law. Prior to release of the file, the results of the criminal background check, information obtained from ~~child protective services~~ the Department of Child Safety records and information provided by references, other than their names, shall be redacted.

F.–H. [No change in text.]

Rule 78. Temporary Custody

A. [No change in text.]

B. Notice of Hearing. A notice of hearing shall accompany the petition and shall set forth the location, date and time of the hearing and shall require the attendance of the prospective adoptive parent, the child, and the person, ~~division~~ department or agency responsible for preparing reports for the court if the prospective adoptive parent is not certified to adopt, unless waived by the court.

C. [No change in text.]

D. [No change in text.]

1. **Attendance.** The prospective adoptive parent, the child and any person, representative of the ~~division~~department or agency responsible for preparing reports for the court shall attend the hearing, unless waived by the court for good cause shown.
2. **Granting of Custody.** If the court grants temporary custody, the court shall order that an application for certification to adopt be filed with the court within thirty (30) days of the granting of temporary custody of the child to the prospective adoptive parent if the person is not certified to adopt. If no person or representative of the ~~division~~department or agency has been identified to prepare reports for the court, the court shall set a status hearing within thirty (30) days to determine the status of the certification.

E.–F. [No change in text.]

Rule 79. Petition to Adopt

A.–B. [No change in text.]

C. **Service.** A petition to adopt and notice of hearing shall be served by the petitioner, pursuant to Rule 76, upon the following persons:

1. [No change in text.]
2. The person, ~~division~~department or agency conducting the social study;
3. Any person, ~~division~~department or agency required by law to give consent unless consent and a waiver of notice has been filed previously with the court; and
4. [No change in text.]

Rule 82. Petition and Hearing to Revoke Consent.

A.–B. [No change in text.]

C. **Service.** The petition and a notice of hearing shall be served by the petitioner, pursuant to Rule 76, on the person, ~~division~~department, or agency to whom the consent was originally given. Service upon the prospective adoptive parent is not required if the original consent was given to the ~~division~~department or an agency.

D.–J. [No change in text.]

Rule 84. Hearing to Finalize Adoption

A.–D. [No change in text.]

1. **Wards of the Court.** If the child is a ward of the court in the county where the adoption is granted, the court shall dismiss the dependency action. If the child is a ward of the court in another county or state, the court shall direct that the ~~division~~department or agency having had legal custody of the child file a motion to dismiss in the county where the child is a ward.

Rule 85. Motion and Hearing to Set Aside Adoption

A. [No change in text.]

B. Appointment of Guardian ad Litem. Upon the request of a party or the court's own motion, the court may appoint a guardian ad litem to represent the child. The court may order the guardian ad litem or the ~~division~~ department to conduct an investigation for the purpose of determining whether a dependency petition should be filed in the event the adoption is set aside. If appropriate, the guardian ad litem shall prepare the dependency petition for filing.

C.–G. [No change in text.]

Rule 95. Hearing, Service of Petition and Notice.

A.–B. [No change in text.]

C. Incorrect or Unknown Address.

1. [No change in text.]

2. If no parent or guardian can be located and the court does not grant emancipation, the court may require ~~child protective services~~ the Department of Child Safety to investigate and make a written report of the investigation to the court.

Rule 96. Allegation of Abuse or Neglect.

At any time in these proceedings, if the court reasonably believes that the petition for emancipation contains an allegation of child abuse or neglect, the court shall require ~~child protective services~~ the Department of Child Safety to investigate the allegation and make a written report of the investigation to the court.

Rule 98. Proceedings and Court Orders.

A. [No change in text.]

B. Mediation/Alternative Dispute Resolution.

1. [No change in text.]

2. [No change in text.]

(a) [No change in text.]

(b) The petitioner's parent or guardian is named as a perpetrator of abuse, neglect or abandonment in the ~~protective services~~ Department of Child Safety central registry.

(c) [No change in text.]

3.–4. [No change in text.]

Rule 100. Time Limits and Exclusions.

A.–B. [No change in text.]

C. Delays caused by ~~child protective services~~ the Department of Child Safety investigation and report pursuant to Rule 96.

D. [No change in text.]

Rule 102. Findings, Order of Emancipation.

A. [No change in text.]

B. If the court finds emancipation is in the best interests of the petitioner, the court shall:

1.–3. [No change in text.]

4. Issue a copy of the order to the department of economic security, Department of Child Safety, or ~~its~~ the department's agent, if the petitioner is a child in a title IV-D case.

C. [No change in text.]

Rule 103. Initiation of an Appeal.

(A) Any aggrieved party may appeal from a final order of the juvenile court to the court of appeals. In an appeal in a delinquency, incorrigibility, or transfer matter, the notice of appeal shall be captioned using the first name and last initial of the minor child involved, as follows: “In re Abcde F.” In an appeal in an adoption, dependency, guardianship, emancipation or termination of parental rights (severance) matter, the notice of appeal shall be captioned in the names of the parties to the appeal, with the names of natural persons limited to the first name and last initial, and with minor children identified by only initials, for example: “Ghijk L., Appellant, v. ~~Arizona Department of Economic Security~~ Department of Child Safety and ~~Mnopq R., M.N.~~, Appellees.”

(B)–(F) [No change in text.]

II. Arizona Rules of Family Law Procedure

Rule 49. Disclosure

The requirements of this rule are minimum disclosure requirements for every family law case. Unless otherwise provided for in this rule, agreed to by the parties or ordered by the court, within forty (40) days after the filing of a response to an initial petition, each party shall disclose in writing to every other party the information set forth in this rule. The Resolution Statement described in paragraph A shall be filed with the clerk and served upon all parties. All documents and information required in paragraphs B, C, D, E, F, and G shall not be filed with the clerk but shall be served upon all parties.

A. [No change in text.]

B. Child Custody or Parenting Time.

1.–3. [No change in text.]

4. The date, description, location and documentation of any ~~Child Protective Services~~ Department of Child Safety investigation or proceeding involving any party or member of the party's household occurring within ten years of the filing of the petition.

C.–J. [No change in text.]

Rule 95. Other Family Law Services and Resources

A.–H. [No change in text.]

I. ~~Child Protective Services.~~ Department of Child Safety. The court may request or order the services of the Department of Child Safety ~~division of children and family services in the department of economic security~~ if the court believes that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

Form 7. Uniform Family Law Interrogatories

1.–9. [No change in text.]

10. ~~CHILD PROTECTIVE SERVICES-DEPARTMENT OF CHILD SAFETY~~

Have you or has any person residing in your household ever been investigated by any agency in any state for any reason related to abuse or child? (Y/N) _____. If yes, state:

a.–d. [No change in text.]

11.–14. [No change in text.]

15. DOMESTIC VIOLENCE

a.–b. [No change in text.]

c. Have there ever been allegations of child abuse, neglect, abandonment or incorrigibility filed against you, your spouse, or any person residing in your household through ~~child protective services~~ the Department of Child Safety or a similar agency, by any law enforcement agency, or by any juvenile courts in any state of the United States? (Y/N) _____. If yes, provide details regarding the nature and disposition of said allegations or investigations, including specific dates, names of investigators and other person(s) involved.

16.–26. [No change in text.]

III. Local Rules of Practice Superior Court – Pima County

Form 2. General Order to Guardian for a Minor Child

1.–6. [No change in text.]

7. Abused or Neglected Minors

If the minor has been abused or neglected, you must immediately inform ~~Child Protective Services~~ the Department of Child Safety (1-888 SOS-CHILD, 1 888 767 2445) and/or law enforcement.

8.–10. [No change in text.]

IV. Arizona Rules of Civil Appellate Procedure

Rule 30. Arizona Appellate Settlement Conference Program

(a)–(b) [No change in text.]

(c) **Applicability.** All appeals filed in the Arizona Court of Appeals are eligible for the Program except: (1) criminal appeals; (2) appeals involving habeas corpus petitions; (3) appeals in which a party is incarcerated; (4) appeals from juvenile court; (5) appeals from the Arizona Department of Economic Security; (6) appeals from the Department of Child Safety; ~~(6)~~(7) direct appeals from the corporation commission; and ~~(7)~~(8) special actions.-

(d)–(r) [No change in text.]

V. Rules of the Supreme Court of Arizona

Rule 31. Regulation of the Practice of Law

(a) –(c) [No change in text.]

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2.–12. [No change in text.]

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14.–30. [No change in text.]