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## **PART I. GENERAL PROVISIONS**

### **Rule 1. Scope and Construction**

- (a) Scope.** These rules apply in all juvenile court proceedings, including delinquency, incorrigibility, diversion, dependency, emancipation, in-home intervention, extended foster care, Title 8 guardianship, termination of parental rights, and adoption.
- (b) Construction.** Parties should use these rules, and courts should construe and enforce them, in a manner that ensures a simple and fair resolution of juvenile proceedings, reduces unnecessary delay and expense, protects individual rights, and preserves the public welfare.

**Rule 2. Definitions.** A term defined in the singular includes the plural, and a term defined in the plural includes the singular.

- (a) **“ADJC”** means the Arizona Department of Juvenile Corrections.
- (b) **“ARCAP”** means the Arizona Rules of Civil Appellate Procedure.
- (c) **“Authorized transcriber”** means a certified reporter or a transcriber employed by or under contract with an Arizona court.
- (d) **“Child safety worker”** means a person who has been selected by and trained under the requirements prescribed by DCS, and who assists in carrying out the provisions of A.R.S. Title 8.
- (e) **“Civil Rule”** means a rule in the Arizona Rules of Civil Procedure.
- (f) **“Clerk”** means the superior court clerk unless specified otherwise. The Supreme Court clerk and the Court of Appeals clerk are referred to by those titles, or if the context warrants, as the “appellate clerk.”
- (g) **“Criminal Rule”** means a rule in the Arizona Rules of Criminal Procedure.
- (h) **“DCS” or “Department”** means the Arizona Department of Child Safety.
- (i) **“Family Law Rule”** means a rule in the Arizona Rules of Family Law Procedure.
- (j) **“FFPSA”** means the Family First Prevention Services Act as codified in the Bipartisan Budget Package/Continuing Resolution (Public Law 115-123).
- (k) **“Guardian ad litem” (“GAL”)** means an attorney appointed by the court to protect the best interests of a party or as otherwise directed by the court.
- (l) **“ICPC”** means the Interstate Compact on the Placement of Children under A.R.S. §§ 8-548 through 548.06.
- (m) **“ICWA”** means the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963, and Part 23 of Title 25 of the Code of Federal Regulations (“Regulations”), including any amendments to those provisions, or, if required by the context of a Juvenile Rule, either the Act or the Regulations.
- (n) **“Judicial officer”** includes a judge, a judge pro tempore, and a commissioner.
- (o) **“Juvenile”** means a person under the age of 18 years and may be referred to in these rules as a “child,” “youth,” or “minor.” For purposes of these rules, “juvenile” also includes a person within the juvenile court’s jurisdiction under A.R.S. § 8-202.
- (p) **“Juvenile court”** means a division or department of the superior court designated to preside over juvenile court proceedings, as provided in Rule 1(a).

- (q) **“Out-of-home placement”** means the placing of a child in the custody of an individual or agency other than the child’s parent or legal guardian and includes placement in temporary custody pursuant to A.R.S. § 8-821, voluntary placement pursuant to A.R.S. § 8-806, or placement due to a dependency action.
- (r) **“Parent”** means the child’s biological, adoptive, or legal mother or father whose rights have not been terminated.
- (s) **“Presiding judge”** means “presiding judge of the juvenile court” or the judge’s designee, unless these rules specify otherwise.
- (t) **“Probation officer”** as used in these rules means a juvenile probation officer.
- (u) **“State”** means the State of Arizona.
- (v) **“Supreme Court Rule”** means a rule in the Rules of the Supreme Court of Arizona.
- (w) **“UCCJEA”** means the Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 through 25-1067, which defines a “[c]hild custody proceeding” under the Act to include “a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.” A.R.S. § 25-1002(4).

### **COMMENT TO 2022 AMENDMENT**

This rule does not provide a comprehensive set of definitions. Other terms are defined throughout these rules, including Rules XX, 22, 37, 68, and 89, as well as by statute, including A.R.S. §§ 8-101 & -136 (adoption), 8-141 (adoption subsidies), 8-161 (nonrecurring adoption expenses), 8-171 (interstate adoption assistance compacts), 8-201 (juvenile court), 8-246 (juvenile), 8-248 (private service provider), 8-261 (family counseling services), 8-271, -272 & -273 (children’s mental health services), 8-291 (juvenile competency), 8-305 (detention center), 8-309 (unlawful use of an electronic communication device by a minor), 8-341, -341.01, -342, -345, -349, -350 & -350.01 (disposition and commitment), 8-351 (juvenile intensive probation), 8-382, -384, -413, -418 & -422 (victims’ rights), 8-455, -456, -461, & -466 (DCS), 8-501, -502, -509.01, -512.01, -514.06 & -528 (child welfare and placement), 8-531 & -543 (termination of parental-child relationship), 8-550.01 (child abuse prevention fund), 8-801, -804, -807, -807.01, -811, -814 & -816 (dependent children), 8-821, -822, -827, -830 & -831 (removal of child), and 8-1152 (early childhood development and health programs).

**Rule 3. Priority of Proceedings; Conducting Proceedings; Applicability of Other Rules of Procedure**

- (a) Priority.** Juvenile court proceedings have priority over other proceedings, except as otherwise provided by law.
- (b) Informality.** Juvenile court proceedings must be conducted as informally as the requirements of due process and fairness allow.
- (c) Order of Trial.** A trial under these rules proceeds like the trial of an action by the court sitting without a jury. In a delinquency or an incorrigibility proceeding, the juvenile may not be compelled to be a witness.
- (d) Applicability of Other Rules of Procedure.** The Civil, Civil Appellate, Criminal, Family Law, Probate, Protective Order, and Supreme Court Rules are applicable only as specifically set forth or incorporated by reference in these rules.

**Rule 3.1. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence and Reports**

- (a) **Contested Adjudication Hearings.** The Arizona Rules of Evidence apply in contested adjudication hearings in delinquency, dependency, termination, and Title 8 guardianship proceedings, except as otherwise provided by law or by agreement of all parties and the court.
- (b) **Other Proceedings.** Except as otherwise provided by law or by agreement of all parties and the court, in any proceeding not covered by section (a), any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the court determines the evidence lacks reliability or will cause unfair prejudice, confusion or waste time.
- (c) **Admissibility of a Child’s Statements or Conduct.** In all dependency, termination, and Title 8 guardianship proceedings, evidence of a child’s out-of-court statement or nonverbal conduct regarding acts of abuse or neglect perpetrated on the child is admissible if the time, content, and circumstances of the statement or conduct provide sufficient indicia of its reliability.
- (1) “*Child Safety Worker’s Report*” means a narrative report, as appropriate to the hearing, containing the following information:
- (A) the reasons the child was removed from the custody of the parent, guardian, or Indian custodian;
  - (B) the service provided to prevent the removal;
  - (C) the case plan goal and the services provided to achieve the goal;
  - (D) the steps taken by the parent, guardian, or Indian custodian to comply with the case plan;
  - (E) the child’s current placement and, in the case of an Indian child, whether the placement falls within the preferences as set forth in ICWA or whether good cause exists to deviate from ICWA’s preferences;
  - (F) the services provided to meet the child’s needs;
  - (G) the efforts made to ensure the educational stability of a child, including but not limited to the appropriateness of the child’s current school placement, school attendance, services to help achieve the child’s educational potential, special education services (when indicated), and grade level progress or progress toward graduation;

- (H) recommended dispositional orders;
  - (I) recommended changes to the case plan goal, services, or placement; and
  - (J) recommended permanent plan.
- (2) The report may include any appendices or reports prepared by persons other than the child safety worker. The term report does not include a social study prepared under A.R.S. § 8-536 or by court order in a termination proceeding, or the report required by A.R.S. § 8-872(E) and Rule 61(f).
- (3) Before any dependency, Title 8 guardianship, or termination hearing, the court must review a child safety worker's report and may admit the report into evidence if the worker or workers who prepared or approved the report are available for cross-examination and the report was disclosed to the parties no later than:
- (A) One day before a Rule 51 temporary custody hearing; or
  - (B) 15 days before any other hearing at which the report may be introduced.
- (4) **Evaluation Report.** Before any dependency, Title 8 guardianship, or termination hearing, an evaluation report of any psychological, psychiatric, medical, neurological, psycho-educational, psycho-sexual, substance abuse, or similar matter concerning any party or participant, or any person with whom a child is or may be residing, is admissible into evidence if the report has been disclosed to the parties under Rule 44(a)(1) and the author of the report is available for cross-examination.
- (5) **Report Ordered Under Rule 61(f).** In a Title 8 guardianship adjudication hearing, in addition to reports admitted into evidence under this section, the court must review the investigative report prepared under Rule 61(f) and may admit it into evidence.
- (6) **Social Study.** In a termination adjudication hearing, a social study prepared pursuant to Rule 66, A.R.S. § 8-536, or by court order is admissible as evidence unless a party has filed a notice of objection as required by Rule 44(d)(1)(E) . If the court sustains any objections, the court may:
- (A) admit the social study into evidence after redacting those portions to which objections were sustained; and
  - (B) allow the petitioner a reasonable opportunity to call additional witnesses to testify regarding the redacted portions of the social study.

- (7) ***Disposition Report.*** The disposition report in a delinquency proceeding is governed by Rule 30.
- (8) ***Other Reports.*** The court may admit any other report that is court-ordered or required by law, if the report has been timely disclosed and the author of the report is available for cross-examination.
- (9) ***Admission of Reports.*** If the court relies in whole or in part on a report under this section, the report must be admitted into evidence to ensure that the report is part of the appellate record.
- (10) ***Reports Not Admitted.*** If a report under this section is offered but not admitted into evidence, the report must be marked for identification to ensure that the report is part of the appellate record.
- (11) ***Available for Cross-Examination.*** For purposes of this section, a person is available for cross-examination if the person appears in court, is available for a virtual appearance under Rule 42, or is subject to the court's subpoena power, unless the person is subpoenaed and is unable or unwilling to comply with the subpoena.

#### **COMMENT TO 2022 AMENDMENT**

This new rule consolidates the standards for admission of evidence in juvenile proceedings, except for the standard in Rule 53(c)(2), into one rule. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 4. Indian Child Welfare Act (“ICWA”)**

**(a) Application.** The court must apply ICWA when required by law.

**(b) Inquiry.** At the beginning of any proceeding involving adoption, dependency, termination, Title 8 guardianship, the court must inquire if any party has reason to know that the child named in the petition is subject to ICWA. This inquiry is not necessary if the court has already determined that ICWA applies.

**(c) Excluded Proceedings.**

**(1) *Delinquency and Incurability.*** ICWA does not apply in delinquency or incurability proceedings unless there is an out-of-home placement.

**(2) *Criminal Transfers.*** ICWA does not apply to criminal transfer proceedings involving an Indian child.

**(d) Findings.** If the court determines or has reason to know the child is an Indian child as defined by ICWA and Rule 37, the court must make the findings required under ICWA. The court must then treat the child as an Indian child unless and until the court enters a determination on the record that the child does not meet the definition of an Indian child under ICWA.

**(e) Jurisdiction.** If the court determines or has reason to know a child is an Indian child and the proceeding is for out-of-home placement or termination of parental rights, the court must determine whether to order a transfer of the proceeding to a tribal court as provided by Rule 00YY.

#### **COMMENT TO 2022 AMENDMENT**

These rules acknowledge certain provisions of ICWA and the Regulations. However, not all provisions are identified in these rules, and ICWA and the Regulations should be carefully reviewed in cases in which they apply. In the event of a conflict with these rules, ICWA and the Regulations shall govern.

Under the Regulations, a court has “reason to know that a child is an Indian child upon the occurrence of any of the following: (1) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; (2) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; (3) the child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; (4) the court is informed that the domicile or residence

of the child, the child's parent, or the child's Indian custodian is on a pueblo, reservation, or in an Alaska Native village; (5) the court is informed that the child is or has been a ward of a tribal court; or (6) the court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.” 25 C.F.R. § 23.107.

The Regulations also address the criteria for ruling on petitions to transfer proceedings to tribal court, including 25 C.F.R. §§ 23.115-119. Under 25 U.S.C. § 1911(b), the court must grant a petition by a parent, Indian custodian, or the child's Tribe to transfer the foster care placement or termination of parental rights proceeding to tribal court, absent objection by either parent or tribal declination of transfer, or when there is good cause to deny transfer. The regulations provide that in determining whether good cause exists, the court must *not* consider any of the following: (1) whether the foster-care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage; (2) whether there have been prior proceedings involving the child for which no petition to transfer was filed; (3) whether transfer could affect the placement of the child; (4) the Indian child's cultural connections with the Tribe or its reservation; or (5) socioeconomic conditions or any negative perception of Tribal or Bureau of Indian Affairs (“BIA”) social services or judicial systems.

A.R.S. § 8-815 uses the words “reason to believe” that the child is an Indian child, whereas ICWA uses the phrase “reason to know.” The Court has decided to use the ICWA phrasing to be consistent with federal law. The Court does not believe that as applied, there is any distinction between these phrases. *See Ariz. Dept. of Econ. Sec. v. Bernini*, 202 Ariz. 562 (App. 2002).

**Rule 5. Court-Appointed Special Advocate (“CASA”)**

The court may appoint a CASA under A.R.S. § 8-523 to assist and advocate for a child, to assure that all appropriate services are made available to the child, and otherwise to protect the best interests of the child in the action in which the CASA is appointed. The court may appoint a CASA in a dependency, Title 8 guardianship, or termination action. CASAs are not civilly or criminally liable for good faith actions they take in connection with their responsibilities.

## **Rule 6. Change of Judge**

### **(a) Definitions.** In this rule:

- (1) the term “judge” includes a judge, a commissioner, and a judge pro tempore.
- (2) the term “presiding judge” includes the presiding judge’s designee.

### **(b) For Cause.**

- (1) **Grounds.** A party is entitled to a change of judge for cause on any of the grounds provided in A.R.S. § 12-409(B).
- (2) **Procedure.**
  - (A) Within 5 days after a party discovers grounds for a change of judge for cause, but before the start of a hearing, the party may file a motion supported by affidavit alleging specific grounds for the change. The party must provide the other parties and the presiding judge with copies of the motion.
  - (B) If the named judge is the presiding judge, the functions of the presiding judge must be performed by a judge designated by the presiding judge.
  - (C) No event occurring before the discovery of grounds constitutes a waiver of the right to a change of judge for cause. A party may preserve allegations of interest or prejudice that prevent a fair and impartial hearing for appeal.
- (3) **Hearing.** Promptly after a party files the motion, the presiding judge may hold a hearing to determine the issues raised in the affidavit or may decide the issues based on the affidavits and memoranda filed by the parties. The presiding judge must decide the issues by a preponderance of the evidence.
- (4) **Assignment.** Depending on the findings of the presiding judge, the presiding judge may assign the action to the original judge or to a new judge.
- (5) **Waiver.** A party waives the right to a change of judge for cause when the party, after learning of grounds for a challenge for cause, allows a contested proceeding to begin or continue before that judge without objection.

### **(c) Without Cause.**

- (1) **Grounds.** Every party has a right to make one request for a change of judge.
- (2) **Procedure.** A party may exercise the right to a change of judge by making a request on the record in open court, or by filing a “Notice of Change of Judge” signed by the party’s counsel, or if self-represented, signed by the party, stating

the name of the judge to be changed. A notice of change of judge must be filed within 5 days after notice to the requesting party of the assignment of the case to a judge.

(3) **Waiver.** A party waives the right to a change of judge upon request when the party participates before that judge in any contested proceeding. The waiver applies to all successive petitions or supplemental petitions that were filed regarding the same juvenile or, in the case of a dependency action, the same minor or any other minor known to have at least one parent in common with that minor, and to all proceedings after remand by an appellate court.

(4) **Remand by Appellate Court.**

(A) If the appellate court remands a case that remains assigned to the original judge, the parties do not have a renewed right to a change of judge.

(B) If upon remand the case is assigned to a new judge, a party who has not waived a right under subpart (b)(3) or who has previously filed a notice of change of judge of right, may file a notice within 10 days after notice to the requesting party of the assignment of the case to the new judge

(d) **Duty of Judge.** When a party timely files a motion or a notice for change of judge, the judge named in the motion or notice must proceed no further in the action except to make such temporary orders as may be necessary to prevent harm to the child before the action can be reassigned to another judge.

## **Rule 7. Form of Filed Documents; Proposed Orders**

- (a) Filing with the Court Defined.** The filing of documents with the court is
- (b)** accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge in open court, who must promptly transmit it to the clerk for filing and notify the clerk of the date of its receipt.

### **(c) Effective Date of Filing.**

#### **(1) Generally.**

- (A)** Except for documents submitted directly to a judge under Rule 7(a), a document is deemed filed on the date the clerk receives and accepts it.
- (B)** If a document is submitted directly to a judge under Rule 7(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.
- (C)** If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the notification from the court's electronic filing portal or as is displayed within the portal, unless the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.
- (D)** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.
- (E)** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.
- (d) Caption.** Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:
- (1)** to the left of the center of the page starting at line 1:
- (A)** the filing attorney's or self-represented person's name, address, telephone number, and email address; and

- (B) if an attorney, the attorney's State Bar of Arizona attorney identification number; any State Bar of Arizona law firm identification number, and identification of the party being represented by the attorney;
  - (2) centered on or below line 6 of the page, the title of the court;
  - (3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;
  - (4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;
  - (5) immediately below the case number, a brief description of the nature of the document; and
  - (6) below the document description, the judge to whom the case is assigned (if known).
- (e) **Document Format.** Unless the court orders otherwise, all filed documents – other than a document submitted as an exhibit or attachment to a filing – must be prepared as follows:
- (1) ***Text and Background.*** The text of every document must be black on a plain white background. All documents filed must be single-sided.
  - (2) ***Type Size and Font.*** Notwithstanding any local rule, every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.
  - (3) ***Page Size.*** Each page of a document must be 8½ by 11 inches.
    - (A) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.
    - (B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.
    - (C) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.

- (4) **Margins and Page Numbers.** Margins must be set as follows: a margin at the top of the first page and each subsequent page of not less than 1½ inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than ½ inch; and a margin at the bottom of each page of not less than ½ inch. Except for the first page, the bottom margin must include a page number.
- (5) **Handwritten Documents.** Handwritten documents are discouraged, but if a document is handwritten, the text must be legible.
- (6) **Line Spacing.** Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.
- (7) **Headings and Emphasis.** Headings must be underlined or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.
- (8) **Citations.** Case names and citation signals must be in italics or underlined.
- (9) **Originals.** Parties must file original documents, except for attachments.
- (10) **Court Forms.** Printed court forms may be single-spaced, but those requiring a judicial officer's signature must provide ample space for the signature. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication or imaging.

**(f) Electronically Filed Documents.**

**(1) Format.**

- (A) **File Type.** A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, .docx format, or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified such as .odt, .docx, or other format permitted by Administrative Order, and must not be password protected.
- (B) **Size.** A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

**(2) Formats of Attachments.**

- (A) **Generally.** An exhibit or an attachment to an electronically filed document also may be filed electronically if it is attached to the same submission as

either a scanned image or an electronic copy using an approved file type and format.

- (B) *Official Records.* A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.
- (C) *Notarized Documents.* A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.
- (D) *Certified Mail, Return Receipt Card.* When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card, or electronic return receipt, are scanned and filed.
- (E) *National Courier Service.* When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

**(3) *Bookmarks and Hyperlinks.***

- (A) *Bookmarks.* A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.
- (B) *Hyperlinks.* A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Materials accessed via hyperlinks are not a part of the official court record. The use of hyperlinks is encouraged.

- (4) *Originals.* An electronically filed document or a scanned copy of a document filed in hard copy constitutes an "original" under Arizona Rule of Evidence 1002.

**(g) Proposed Orders; Proposed Judgments.**

- (1) *Required Format.* A proposed order or proposed judgment must be prepared as provided in this rule. It must be submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. On the signature page, there must be at least two lines of text above the signature.
- (2) *Service and Filing.* Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically

submitted proposed orders and proposed judgments; however, these electronically submitted documents must not be included in the publicly displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

**(3) *Stipulations and Motions; Proposed Forms of Order.***

- (A)** All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry is required.
- (B)** If a motion is accompanied by a proposed order, no minute entry is required if the order is signed and entered.

## **Rule 8. Serving Documents After Service of Case Initiating Documents**

**(a) Application of This Rule.** After service of the initial petition, charging document, or other case-initiating document that is assigned a new case number, a party who files a document with the court must provide a copy of that document to the other parties in the manner stated in this rule, unless another juvenile rule or a court order provides otherwise.

**(b) Methods of Service.** Except for documents that are confidential, including documents deemed confidential under Rule 19 or Supreme Court Rule 123, or documents that are filed under seal, a complete and exact copy of every document that a party files with the court must be provided to every other party or the party's attorney, before or promptly after the document is filed, by one of the following methods.

**(1) *Serving an Attorney.*** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders otherwise or a specific rule requires service on the party.

**(2) *Methods of Service.*** A document is served on a person under this rule by:

**(A)** handing it to the person;

**(B)** mailing it by U.S. mail or other national courier service to the person's last-known address, in which event service is complete upon mailing;

**(C)** delivering it by any other means, including electronic means other than that described in Rule 8(b)(2)(D), if the recipient consents in writing to that method of service or if the court orders service in that manner, in which event service is complete upon transmission;

**(D)** transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, or by email, if the recipient is an attorney of record in the action, in which event service is complete upon transmission;  
or

**(E)** leaving it for the person:

**(i)** if the person is represented by an attorney, at the attorney's office with a responsible person or other person in charge or, if no one is in charge, in a conspicuous place in the attorney's office;

**(ii)** if the person is not represented by an attorney, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

**(c) Noting the Method of Service.** On the last page of a document filed with the court, the party serving a document under this rule must state the date and method used to serve the other parties. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage. A statement of service may be in the following form:

“A copy has been or will be mailed/e-mailed/hand-delivered [select one]

“on [insert date] to:

“Name of opposing party or attorney

“Physical or E-mail Address of opposing party or attorney”

**(d) Documents That Are Not Filed with the Court.** A party must serve copies of the following documents on every other party as required by this rule, but those documents are not filed with the court unless the court orders:

(1) subpoenas; and

(2) discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, as well as responses to these requests.

## **Rule 9. Intervention**

### **(a) Generally.**

- (1) ***Of Right.*** The court must permit a person to intervene in any proceeding under Part III, Part IV, or Part V of these rules if the person has a right to intervene under ICWA or other law.
- (2) ***Permissive.*** The court may permit a person to intervene in any proceeding under Part III, Part IV, or Part V of these rules after considering the factors in section (b).

**(b) Factors.** The court must determine whether intervention would be in the child's best interests. In making that determination, the court should consider the following factors:

- (1) the nature and extent of the person's interest, and whether the person's interest or position is adequately represented by existing parties;
- (2) whether the person is a child's relative as defined in A.R.S. § 8-501, or is another member of the child's extended family or a person who has a significant relationship with a child under A.R.S. § 8-514(B);
- (3) whether the person has requested DCS to be placement for the child, and if so, the status of the request;
- (4) whether the person seeks to file a motion for change of physical custody to that person;
- (5) the timeliness of the motion;
- (6) whether intervention will unduly prolong or delay the case;
- (7) whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented; and
- (8) any other factors the court deems appropriate.

**(c) Scope of Intervention.** The court may grant intervention for a limited purpose, and it may limit the scope and duration of intervention. Unless the court expressly limits intervention, an order granting intervention permits the intervenor to participate on all issues as a party.

**(d) Procedure.**

- (1) ***Requirements of a Motion.*** The person who requests to intervene must file a motion that specifies facts supporting the motion. The person moving to intervene must serve the motion on all parties.
- (2) ***Motion for a Change of Physical Custody.*** If intervention is for purposes of filing a motion for change of physical custody, the intervenor must file and serve the motion no later than 10 days after entry of the order granting the motion to intervene.

## **Rule 10.0. Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings**

- (a) **Transfer to Juvenile Division.** If pending family law and dependency proceedings concern the same parties, the juvenile division has jurisdiction over the children.
- (1) *Notice.* The parties must notify the family division of a pending dependency proceeding.
  - (2) *Effect of Transfer.* If the proceedings are transferred, the juvenile division will hear custodial issues until the dependency is dismissed or the juvenile division defers jurisdiction to the family division.
- (b) **Referral to Family Division.** If the juvenile division determines that a change of legal decision-making or parenting time is appropriate, it may decide those issues or refer the matter to the family division for further proceedings.
- (c) **Support Orders.** During any dependency or guardianship proceeding in the juvenile division, the juvenile division may establish, suspend, modify, or terminate a child support order. Except in Title IV-D cases, the juvenile division also may make appropriate orders regarding any past due support or child support arrears and may direct that an income withholding order be quashed or modified. Any order regarding child support must be filed in both the family division and the juvenile division.

**Rule 11. Computing and Extending Time**

**(a) Delinquency Matters.** In delinquency matters, time is computed and may be extended as provided in Rule 17.

**(b) All Other Matters.** In all other matters, and unless these rules provide otherwise, time is computed and may be extended as provided in Civil Rule 6.

## **Rule 12. The Juvenile's Attendance at Court Proceedings; Restraints**

**(a) Personal Appearance.** A juvenile must personally appear in court for the following proceedings:

- (1) A detention hearing;
- (2) an advisory hearing;
- (3) a transfer hearing;
- (4) a change of plea hearing;
- (5) an adjudication hearing; and
- (6) a disposition hearing.

**(b) Telephonic or Video Appearance.** If the parties agree and if authorized by the court, the juvenile may personally appear by telephone or by video conferencing.

**(c) Voluntary Absence.** The court may infer that a juvenile's absence is voluntary if the juvenile:

- (1) was notified of the date, time, and place of the hearing;
- (2) was ordered to be present at the hearing;
- (3) was advised that the hearing would proceed in the juvenile's absence if the juvenile failed to appear; and
- (4) has not shown good cause for the non-appearance.

**(d) Failure to Appear.** The court may proceed with a hearing, other than a disposition hearing, if the juvenile voluntarily fails to appear. Following the juvenile's non-appearance at any hearing, the court also may issue a warrant to secure the juvenile's attendance for a future hearing.

**(e) Mechanical Restraints.** Mechanical restraints include handcuffs, leg irons, belly chains, zip ties, spit hoods and masks, and any other device used to restrain movement of the arms, legs, or torso.

- (1) When a juvenile appears before a judicial officer at a hearing in the juvenile's delinquency case, the juvenile must be free of mechanical restraints, unless there are no less restrictive alternatives that will prevent flight or physical harm. A juvenile appearing before a judicial officer may object to the use of restraints. After the judicial officer has heard from the juvenile, the State, and any detention

personnel, and considered the factors in subpart (2), the judicial officer must approve or disapprove of the use of restraints.

- (2)** Relevant factors in determining whether the use of mechanical restraints is warranted include:
  - (A)** the juvenile has displayed threatening or physically aggressive behavior;
  - (B)** the juvenile has expressed an intention to flee or has previously attempted to flee from detention; and
  - (C)** a present security situation in the courtroom or courthouse, including a risk of gang violence or gang-related conduct or a specific concern due to a witness's presence, which warrants the use of mechanical restraints.
- (3)** A prior judicial determination that the juvenile should appear free of mechanical restraints remains in effect until the court orders otherwise.
- (4)** The use of mechanical restraints outside the courtroom is governed by the Arizona Juvenile Detention Standards.
- (5)** Any restraints should allow the juvenile to read, handle documents, and write.

## **Rule 12. Virtual Proceedings; Declared Emergencies**

### **(a) Generally.**

- (1) ***Delinquency Matters.*** This rule and **Rules 12** and 13 govern virtual appearances in delinquency proceedings.
- (2) ***In Non-delinquency Matters.*** On the court's own motion or motion by a party, the court may permit virtual testimony, argument, or appearances in any non-delinquency proceeding under these rules. A party's motion must be in writing, unless otherwise authorized by the court.
- (3) ***In All Matters.*** Before granting a motion to appear or testify at or attend a proceeding virtually, the court must consider the due process rights of any objecting party and enter a case-specific due process determination in a signed minute entry or order.

**(b) Meaning of "Virtual."** When used in this rule, "virtual" means by telephone, video conferencing, or other audio or visual technology allowing two or more persons to communicate.

**(c) Non-Evidentiary Hearing.** The court may allow or direct a party to appear virtually at a non-evidentiary hearing if each person will be audible to every other person participating in the proceeding, including the judicial officer, and to the electronic recording system or court reporter.

### **(d) Request to Testify Virtually; Evidentiary Hearing.**

- (1) ***Presumption.*** Unless section (f) of this rule applies, it is presumed that evidentiary hearings will be conducted in person.
- (2) ***Time.*** A party must file a motion requesting that a party or witness give virtual testimony at an evidentiary hearing and email or deliver the motion to the staff of the assigned judicial officer.
  - (A) ***Delinquency Matters.*** A party must file a motion requesting that a party or a witness give virtual testimony at an evidentiary hearing in a delinquency matter no later than 10 days before the hearing, and an opposing party may file a response no later than 5 days after the motion is filed, unless the court orders otherwise.
  - (B) ***Non-delinquency Matters.*** If the evidentiary hearing in a non-delinquency proceeding is scheduled to occur on 21 days' notice or more, the moving party must file a motion at least 14 days before the evidentiary hearing is scheduled to occur. If the hearing is scheduled to occur on 20 days' notice

or less, the moving party must file a motion sufficiently in advance of the hearing to allow the judicial officer to consider it in a timely manner. Responses must be filed as provided by Rule 46 or Rule 74. The court may modify the time requirements in this subpart.

(C) *In All Matters.* The court may rule on the motion with or without a hearing.

(3) **Responsibility for Arrangements and Expenses.** The party requesting a virtual appearance must arrange the appearance and pay any related expenses, unless the court orders otherwise.

(e) **Introducing Documents During Virtual Testimony.** To introduce exhibits through a party or witness who testifies virtually:

- (1) the party calling the witness must make a good faith effort to contact the opposing parties to identify and provide previously disclosed exhibits that will be used during the witness's testimony;
- (2) exhibits must be provided in advance to the witness or party through counsel, as applicable, by noon on the court day before the evidentiary hearing is scheduled to occur;
- (3) the party who introduces the exhibits must affirm that they are accurate copies of the exhibits provided to the party or witness who is appearing virtually; must follow the clerk's procedures for submitting exhibits; and must email them to the staff of the assigned judicial officer by noon on the court day before the evidentiary hearing is scheduled to occur; and
- (4) if a party seeks to examine or cross-examine a witness regarding a previously identified exhibit that has not yet been provided to the testifying witness, the court must allow the party a reasonable opportunity to provide an accurate copy of the exhibit to the witness who is appearing virtually, including granting a recess or continuance if necessary.

(f) **Evidentiary Hearings During Declared Emergencies; Presumption.** When the risks associated with a public health or other emergency declared by the Governor cause restriction of physical access to court facilities, evidentiary hearings will presumptively be conducted virtually.

(1) **Objections: How Made, When Made.**

(A) **How to Object to a Virtual Evidentiary Hearing.** A party objecting to a virtual evidentiary hearing must file the objection and email or deliver it to the staff of the assigned judicial officer.

- (B) When to Object to a Virtual Evidentiary Hearing.** If the virtual evidentiary hearing is scheduled to occur on 21 days' notice or more, the objecting party must file their objection at least 14 days before the evidentiary hearing is scheduled to occur. If the hearing is scheduled to occur on 20 days' notice or less, the objecting party must file any objection sufficiently in advance of the hearing to allow the judicial officer to consider it in a timely manner. In delinquency matters, an opposing party may file a response no later than 5 days after the objection is filed. In non-delinquency matters, responses must be filed as provided by Rule 46 or Rule 74. The court may modify the time requirements in this subpart. The court may rule on the objection with or without a hearing.
- (2) Case-Specific Determinations in Evidentiary Hearings.** The court may overrule an objection to a virtual evidentiary hearing and deny a request for an in-person hearing only after making a case-specific determination that the objecting party's constitutional rights, including the right to due process, will be satisfied by the virtual evidentiary hearing. To overrule the objection and to demonstrate that due process will be satisfied, the court must specifically find that the virtual evidentiary hearing will not substantially prejudice any party, and that each person will be audible and, if practicable, visible to every other person participating in the hearing, including the judicial officer, and to the electronic recording system or court reporter. This case-specific due process determination may involve providing for certain witnesses to testify virtually, even though the hearing will primarily be in person. The case-specific due process determination must be in a signed minute entry or order and must address the following factors showing that, as applicable:
- (A)** an in-person evidentiary hearing cannot reasonably be held, given the ongoing, declared public health or other emergency;
  - (B)** one or more witnesses are unable to appear in person at an evidentiary hearing, given the ongoing, declared public health or other emergency;
  - (C)** the court can accommodate the objecting party by providing them with full access to the evidentiary hearing by video conferencing, or other audio and video technology; and
  - (D)** the objecting party is able to effectively and timely communicate confidentially with the party's counsel during the hearing as needed.

**Rule 13. Attendance of Witnesses and Appearance of Attorneys by Telephone or Video Conference**

**(a) At Adjudication Hearings.** All witnesses must personally appear for adjudication hearings, unless the court orders otherwise after considering the juvenile's constitutional right of confrontation.

**(b) At Other Proceedings.** For proceedings other than adjudications, a party may request the court to permit witness testimony or an attorney's appearance by telephone or video conferencing. Unless the court orders otherwise, the request must be in writing.

#### **Rule 14. Combining Hearings**

- (a) Delinquency Proceedings.** Except for a transfer hearing under **Rule 34**, the court may conduct at one time any combination of the advisory, adjudication, disposition, or other delinquency hearings.
- (b) Non-Delinquency Proceedings.** The court may combine and conduct at one time any hearings or conferences under Part III.
- (c) Requirements.** Any combined hearings under sections (a) and (b) must abide by any time limits set by law and any required notice to the parties for each proceeding, and must preserve the parties' rights to due process.
- (d) Crossover Youth.** If there are pending delinquency and dependency cases involving the same child, the court also may set a delinquency hearing and a dependency hearing involving that child on the same date and time.

## **Rule 15. Motions**

- (a) Form.** Unless the court permits an oral motion, motions must be in writing and contain the basis for the requested relief. A motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion.
- (b) Time for filing.** Unless otherwise ordered by the court:
- (1) Motion.** A motion must be filed and served no later than 10 days before a contested hearing.
  - (2) Response and Reply.** No later than 5 days after service, another party may file and serve a response, and no later than 3 days after service of the response, the moving party may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record.
- (c) Oral Argument.** On a party's request or on its own, the court may set a motion for argument or hearing.
- (d) Motion to Continue.** A motion to continue must advise the court of pending time limits. The court may grant a motion to continue only if there is good cause for the delay and delay is indispensable to the interests of justice. A continuance may be only for so long as is necessary to the interests of justice. In deciding the motion, the court must consider the victim's views and the victim's right to a prompt and final resolution of the case. If the court grants a continuance, it must state its reasons on the record.

## **Rule 16. Discovery**

### **(a) Disclosure by the State.**

- (1) *Time Limits.*** No later than 10 days after the advisory hearing, the State must make available to the juvenile the material and information that is in the State's possession or control.
- (2) *Material and Information.*** The State must disclose the following material and information:
  - (A)** the names, addresses, and the relevant written or recorded statements of all persons the State will call as witnesses at the adjudication hearing;
  - (B)** all statements of the juvenile and any juvenile or adult co-defendant;
  - (C)** all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;
  - (D)** for each expert who has examined a juvenile or any evidence in the case, or who the State intends to call at trial:
    - (i)** the expert's name, address, and qualifications;
    - (ii)** any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and
    - (iii)** if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;
  - (E)** a list of all papers, documents, photographs, tangible objects, or electronically stored information which the State will use at the adjudication hearing, and upon written request must make available to the juvenile any specified items contained in the list for examination, testing and reproduction. The State may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section; and
  - (F)** all material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.
- (3) *The State's Duty to Obtain Information.*** The State's obligation under this rule extends to material and information in the possession or control of the prosecutor, members of the prosecutor's staff, and any other persons and law

enforcement agencies that have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

- (4) ***Disclosure by Court Order.*** On a juvenile's motion that the juvenile has substantial need for additional material or information not otherwise covered in these rules, and the court's finding that the juvenile is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means, the court may order any person to make the material or information available to the juvenile. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

**(b) Disclosure by the Juvenile.**

- (1) ***Physical Evidence.*** At any time after the filing of a petition, on the State's written request and if ordered by the court, the juvenile, in the presence of counsel, must:

- (A) appear in a line-up;
- (B) speak for identification by witnesses;
- (C) be fingerprinted; palm printed, footprinted, or voice printed;
- (D) pose for photographs not involving re-enactment of an event;
- (E) try on clothing;
- (F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials which involve no unreasonable intrusions of the juvenile's body;
- (G) provide handwriting samples; or
- (H) submit to reasonable physical or medical examination, provided such examination does not include a psychiatric or psychological examination.

- (2) ***Notice of Defenses.*** No later than 15 days after the advisory hearing, the juvenile must provide the State with written notice of all defenses that the juvenile will introduce at the adjudication hearing including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, mistaken identity, and good character. The notice must specify for each defense the persons, including the juvenile, who will be called as witnesses at the adjudication hearing. The notice may be signed by either the juvenile or the juvenile's attorney and must be filed with the court.

- (3) ***Disclosures by Juvenile.*** Simultaneously with the filing of the notice of defenses, the juvenile must provide to the State:
- (A) the names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all the statements they made that are related to the case;
  - (B) for each expert who has examined a juvenile or any evidence in the case, or who the State intends to call at the adjudication hearing:
    - (i) the expert's name, address, and qualifications;
    - (ii) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and
    - (iii) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify; and
  - (C) a list of all papers, documents, photographs, other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing. On written request, the juvenile must make available to the State any specified items contained in the list for examination, testing, and reproduction.
- (4) ***Extent of Juvenile's Duty to Obtain Information.*** The juvenile's obligation under this rule extends to material and information within the possession or control of the juvenile, the juvenile's attorney, and the attorney's staff and agents.
- (5) ***Disclosure by Court Order.*** On the State's motion that the State has substantial need for additional material or information not otherwise covered in these rules, and the court's finding that the State is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means, the court may order any person to make the material or information available to the State. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(c) **Disclosure Standards.**

- (1) ***Materials Not Subject to Disclosure.*** The following materials and information are not subject to disclosure:

(A) *Work Product*. Disclosure is not required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecutor, members of the prosecutor’s legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel’s legal or investigative staff; and

(B) *Informants*. Disclosure of the existence or identity of an informant who will not be called to testify is not required where disclosure would result in substantial risk to the informant or to the informant’s operational effectiveness, provided the failure to disclose will not infringe on the constitutional rights of the juvenile.

(2) *Use of Materials*. Any materials furnished to an attorney pursuant to this rule must not be disclosed to the public but only to those necessary to the proper disposition of the case.

(3) *Statements*. The term “statements” means:

(A) a writing signed or otherwise adopted or approved by a person;

(B) a mechanical, electrical, or other recording of a person’s oral communications or a transcript thereof; and

(C) a writing containing a verbatim record or summary of a person’s oral communications.

(4) *Adjudication Hearing*. References to an adjudication hearing include a probation violation hearing.

**(d) Excision and Protective Orders.**

(1) *A Court’s Discretion to Deny, Defer, or Regulate Disclosure*.

(A) *Witness Identity*. For good cause, a court may grant a request to defer disclosing a witness's identity for a reasonable period of time, but no later than 5 days before the adjudication hearing.

(B) *Other Matters*. A court may order that other disclosures required by Rule 16 be denied, deferred, or regulated if it finds that:

(i) disclosure would result in risk or harm outweighing any usefulness of the disclosure to any party, and

(ii) the risk cannot be eliminated by a less substantial restriction of discovery rights.

- (2) ***A Court's Discretion to Authorize Excision.*** If the court finds that only a portion of material or other information is subject to disclosure under Rule 16, it may enter an order authorizing the disclosing party to excise the portion that is not subject to disclosure.
  - (3) ***Protective and Excision Order Proceedings.*** If a party files a motion seeking a protective or excision order or requesting the court to determine whether any material or other information is subject to disclosure, the court may conduct an *in camera* inspection of the material. Counsel for all parties have the right to be heard on the matter before any *in camera* inspection is conducted.
  - (4) ***Preserving the Record.*** If the court orders any portion of any material or information is not subject to disclosure under Rule 16, the entire text of the material or information must be sealed and preserved in the record for appeal.
  - (5) ***Claims of Privilege or Protection.*** A party who redacts a portion of a disclosed document must clearly identify the redactions and state the legal basis, if it is not clear from the context.
- (e) **Continuing Duty to Disclose.** Each party has a continuing duty to disclose all information or materials that are subject to disclosure upon discovery of such information or materials. If additional information or materials are discovered, all parties must be notified and disclosure must be promptly made.
- (f) **Sanctions.** If it brought to the court's attention that a party violated a disclosure obligation under Rule 16 or any court order, the court may impose any of the following sanctions:
- (1) ordering disclosure of the information not previously disclosed.
  - (2) granting a continuance;
  - (3) holding a witness, party, or counsel in contempt;
  - (4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed;
  - (5) dismissing all or part of a petition, with or without prejudice;
  - (6) declaring a mistrial when necessary to prevent a miscarriage of justice; or
  - (7) any other appropriate sanction.

## **Rule 17. Computation of Time**

**(a) Computation.** Time is computed as provided by Criminal Rule 1.3, unless these rules state otherwise.

**(b) Excluded Time.** The following periods are excluded from the computation of the time limits in these rules.

**(1) *Delays Occasioned by or on Behalf of the Juvenile.*** Delays occasioned by or on behalf of the juvenile are excluded including the following:

- (A)** delays caused by an examination and hearing to determine competence, and if the juvenile is found incompetent, the time for restoration to competence;
- (B)** delays resulting from continuances requested by the juvenile and granted by the court under Rule 15(d);
- (C)** delays resulting from the juvenile being referred to a diversion or community-based alternative program, and
- (D)** the juvenile's absence.

**(2) *Surrender on, or Execution of, an Arrest Warrant.*** The court must exclude a reasonable amount of time, not exceeding 30 days, for the parties to prepare for a hearing after the juvenile's surrender on an arrest warrant or a court appearance following the execution of a warrant.

**(3) *Calendar Congestion.*** Delays necessitated by the court's calendar congestion are excluded only when the congestion is attributable to extraordinary circumstances. In that event the Presiding Juvenile Judge must promptly apply to the Chief Justice of the Arizona Supreme Court for suspension of any of the Rules of Procedure for the Juvenile Court.

**Rule 18. Speedy Justice**

**(a) Duty of Counsel.** The prosecutor and the juvenile's attorney must advise the court of the impending expiration of time limits in the juvenile's case. The court may consider defense counsel's failure to do so in determining whether to dismiss a petition with prejudice.

**(b) Motion to Dismiss.** On the juvenile's motion or on its own, the court may set a hearing to determine whether the time limits in these rules have been violated. If the court finds that time limits were violated, it must dismiss the petition without prejudice, unless it finds that the interests of justice require dismissal with prejudice.

## **Rule 19. Records and Proceedings**

### **(a) Juvenile Court Delinquency Files.**

#### **(1) *Legal File.***

- (A) *Public Access.*** The legal file must be open to public inspection, except for portions of the file that are closed because they are designated by the judge as confidential. The court may close all or part of the legal file after finding a need to protect the welfare of the juvenile or the victim, or finding a clear public interest in confidentiality.
- (B) *Contents.*** The juvenile court's legal file consists of all pleadings, motions, minute entries, orders, or other documents as provided by rule or court order.
- (C) *Confidential Documents.*** Within the legal file, the clerk must file and segregate confidential documents, including any documents and information originating in the social file. *See* A.R.S. § 8-208(G).
- (D) *Disposition File.*** The disposition file includes the Rule 30 disposition report, any attachments to the disposition report, and any documents from the legal or social file that were included with the disposition report. Documents in the disposition file are confidential documents.

#### **(2) *Social File.***

- (A) *No Public Access.*** A juvenile's social file is confidential and is not open to public inspection without a court order.
  - (B) *Contents.*** The social file is maintained by the probation department and consists of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, DCS records, police reports, detention records, and records and reports or work product of the probation department.
- (b) *Proceedings.*** Delinquency proceedings are open to the public, except upon the court's written finding of a need to protect the interests of a victim, the juvenile, a witness, the State, or a clear public interest in confidentiality.

#### **(1) *Request to Close Proceeding.***

- (A) *Notice of Request.*** Any person who requests that all or a portion of a proceeding be closed to the public must give the parties reasonable notice of the request. The person also must give notice to any other person designated by the court, which may include media representatives.

(B) *Hearing.* The court must hold a hearing before the proceeding to determine whether the proceeding should be closed and must consider the positions of the parties.

(C) *Factors.* In determining whether to close all or part of proceeding, the judge may consider any relevant factor, including the likelihood that an open proceeding may:

(i) be emotionally harmful to a participant or victim; or

(ii) inhibit testimony or the disclosure or discussion of information material to the truth finding or rehabilitation process.

**(c) Release of Juvenile Court Files.**

(1) *Release to Juvenile Probation Departments.* The juvenile court may release a legal and social file to a juvenile probation department in another jurisdiction when release is necessary for the juvenile's supervision.

(2) *Release to Federal Authorities.* Upon request of the United States Attorney's Office, the juvenile court must promptly release to that office for presentment to a federal magistrate judge any records concerning a juvenile who is arrested for a criminal offense, pursuant to 18 U.S.C. § 5032.

## **Rule 19.1. Mandatory Judicial Determinations**

**(a) Application.** The procedures in this rule apply if:

- (1) the juvenile court has entered into signed agreements to obtain reimbursement under Title IV-E of the Social Security Act as implemented by the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89 (42 U.S.C. §§ 671(a)(15) through 672(a)(1)) and the implementing regulations of the Department of Health and Human Services (45 C.F.R. § 1356. 21); and
- (2) a juvenile in a delinquency case is removed from the juvenile's home or continues in a court-sanctioned placement out of the home and receives services that are eligible for federal reimbursement.

**(b) Generally.** When a juvenile has been removed from the juvenile's home by state authority in a delinquency proceeding, the court must:

- (1) protect the juvenile from abuse or neglect;
- (2) make the mandatory determinations required by this rule in writing and within the designated times; and
- (3) state in a signed minute entry or order a factual basis for each determination.

**(c) The Court's First Order.**

- (1) ***Contrary to Welfare Determination.*** In the court's first order that authorizes or sanctions the removal of a juvenile from the home in a delinquency proceeding, the court must determine in writing whether continuation of the juvenile's residence in the juvenile's home would be contrary to the welfare of the juvenile.
- (2) ***Reasonable Efforts Regarding Removal Determination.*** After the juvenile is removed from the home, the court's first order must determine in writing if reasonable efforts were made to prevent the juvenile's removal or if it was reasonable to make no efforts to prevent the juvenile's removal. If the court does not make this finding in its first order, the court must make the finding no later than 60 days after the removal.

**(d) Periodic Judicial Reviews.** The court must review a case subject to this rule at least every 6 months after the disposition hearing, or as otherwise required by law. At each review, the court must determine:

- (1) whether the juvenile is in a safe placement;
- (2) whether the placement is appropriate, and whether it is still necessary;

- (3) the extent of compliance with the case plan; and
- (4) the extent of progress that has been made toward alleviating or mitigating the causes necessitating the out-of-home placement.

The court should also project a likely date by which the juvenile may be returned to and safely maintained in the home or be placed for adoption or legal guardianship.

- (e) **Determination of Reasonable Efforts to Finalize a Permanency Plan.** No later than 12 months after the juvenile is removed from the juvenile's home, and at least once every 12 months thereafter, the court must determine whether reasonable efforts have been made to finalize the existing permanency plan. The court's findings must be in writing and contain a factual basis for each finding. Before the time by which the judicial determination must be made, the probation department must file a report outlining the efforts made to finalize the permanency plan that is then in effect.
- (f) **Basis and Legal Effect of Title IV-E Judicial Determinations.** Title IV-E judicial determinations may be based upon written or oral information received by the court. Title IV-E judicial determinations may not be used as evidence of delinquent acts by a juvenile.

## **Rule 20. Intercounty Transfers**

### **(a) Transfer of Disposition Hearing.**

- (1) The court may order the transfer of a disposition hearing to the county of the juvenile's residence if the parties agree, the victim has an opportunity to be heard and agrees to the transfer, and the juvenile waives time pending the disposition hearing. The presiding juvenile judge or the judge's designee in the sending county must also confer with, and obtain the consent of, the presiding juvenile judge or designee in the receiving county before entry of the order. The sending county must send a copy of the transfer order to the receiving county.
- (2) No later than 10 days after entry of the transfer order, the court clerk in the sending county must forward a certified copy of the legal file, together with a transmittal letter, to the court clerk in the receiving county. Upon receipt, the transmittal letter must be signed by court clerk in the receiving county and returned to the court clerk in the sending county.
- (3) No later than 10 days after entry of the transfer order, the probation department in the sending county must send copies of the social file and any other pertinent information to the probation department in the receiving county.
- (4) The court in the receiving county must set a timely disposition hearing under Rule 30 and include the court in the sending county on the notice of hearing.

### **(b) Post-Disposition Transfer of the Case.**

- (1) After disposition, the court may order the transfer of a case from the county in which the disposition occurred to the county of the juvenile's residence if:
  - (A) the juvenile and the juvenile's parent reside or will reside outside the county of original jurisdiction;
  - (B) provision is made for the victim to be heard; and
  - (C) the court in the receiving county consents to the transfer.
- (2) The court may order the transfer of a case upon request of the probation department, or upon a request or petition from a party. The court may set a hearing on the request or petition.
- (3) If the court orders transfer, the clerk of the court in the county of original jurisdiction must forward a certified copy of the legal file, together with a transmittal letter, to the clerk of the court in the receiving county no later than 10 days after the order of transfer. Upon receipt, the transmittal letter must be

signed by the clerk in the receiving county and returned to the clerk in the county of original jurisdiction.

- (4) The county probation department transferring the case must send copies of the social file and any other pertinent information to the director of court services in the receiving county for processing.
- (5) The juvenile probation officer must request the court to conduct a review hearing to affirm or modify the terms and conditions of supervision to include the payment of fees and restitution. Upon granting a transfer of probation supervision, the court in the receiving county assumes jurisdiction of the case.

**(c) Courtesy Probation Supervision.**

- (1) “Courtesy probation supervision” means the transfer of the probationer's supervision to another county. In a case with courtesy probation supervision, the sending court retains jurisdiction over the probationer and is responsible for the collection of fees, restitution, and any violations of probation.
- (2) The court may authorize a juvenile placed on probation to reside in another county upon verification that the juvenile probation department in the receiving county can provide courtesy probation supervision in accordance with the terms and conditions originally imposed upon the juvenile.
- (3) If the receiving county is unable to ensure that the terms and conditions of probation can be supervised as ordered, the court in the sending county may, after a hearing, amend the terms and conditions of probation to permit transfer.

**(d) Residential Placements.** This rule does not apply to out-of-county residential placements.

**Rule 21. Victims' Rights**

- (a) Applicable Offenses.** The rights afforded victims by law apply to an act committed by a juvenile that would be a criminal or petty offense if committed by an adult.
- (b) Enforcement.** The court must ensure that the rights of victims are enforced as provided in the Victims' Bill of Rights, Arizona Constitution, Article 2, Section 2.1, and A.R.S. §§ 8-381 through 8-422.

## **Rule 22. Referral; Diversion**

**(a) Definition of “Parent.”** “Parent” as used in the delinquency rules includes a parent, guardian, or custodian.

**(b) Referral.** A referral for incorrigible or delinquent conduct must include:

- (1) the name, age, gender, and address of the juvenile named in the referral;
- (2) the names and addresses, if known, of the juvenile’s parent or the juvenile’s spouse, if any;
- (3) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody;
- (4) a concise statement of facts – including with reasonable particularity the time, date, place, and manner of the alleged acts of the juvenile – that bring the juvenile within the court’s jurisdiction, and the law or standard of conduct that the acts allegedly violated; and
- (5) the signature of the person responsible for filing the referral.

**(c) Record of Referral.** Any authorized juvenile court personnel who receives a referral must make a record of the referral in the manner prescribed by the juvenile court in each county.

**(d) Citation.** A referral for any designated misdemeanor or petty offense may be made by the filing of an Arizona Traffic Ticket and Complaint, otherwise known as a citation, in lieu of a petition. Service of the citation upon the juvenile by a law enforcement officer serves as notice that the juvenile is to appear at the location, date, and time stated on the citation. Notwithstanding the filing of a citation, the case may be diverted by the prosecutor pursuant to section (d).

**(e) Diversion.**

- (1) **Meaning.** “Diversion” is a way of resolving a referral under A.R.S. § 8-321 without filing a petition.
- (2) **Prosecutorial Discretion.** The prosecutor has sole discretion to divert the prosecution of a juvenile to a community-based program or to a program administered by the juvenile court.
- (3) **Notice to the Victim.** If the juvenile is accepted into such a program, the victim must be notified as provided by A.R.S. § 8-388.

**(f) Submission.** If the juvenile is not eligible for diversion, the authorized juvenile court personnel must submit the referral to the prosecutor.

### **Rule 23. Detention and Probable Cause Hearing**

**(a) Admission to Detention.** Any law enforcement officer who brings a juvenile to a juvenile court detention facility, other than a juvenile who was arrested pursuant to an arrest warrant, must provide a report or documentation that supports the juvenile's admission to detention to an authorized juvenile court officer in the manner prescribed by the juvenile court in each county.

**(b) Requirements Upon Admission.** Upon admission to the detention facility, the authorized juvenile court officer must do the following:

- (1) notify the juvenile of the reason for the admission and the location, date, and time of the detention hearing;
- (2) notify the juvenile's parent of the reason for the admission and the location, date, time of the detention hearing, and that the hearing may proceed in the absence of the juvenile's parents if they fail to appear for the hearing;
- (3) make a written record of the time and manner of notifications;
- (4) advise the juvenile of the right to telephone a parent and an attorney immediately after admission to the facility; and
- (5) advise the juvenile of the right to visitation, in private, with a parent and an attorney. After the initial visit, the juvenile may have visitation during normal visiting hours, or by special appointment if necessary to prepare for a hearing.

**(c) Length of Detention.**

- (1) ***No Petition or Criminal Complaint is Filed.*** A juvenile must not be held in detention for longer than 24 hours after admission to detention unless a petition or criminal complaint has been filed.
- (2) ***After a Petition or Criminal Complaint is Filed.*** Within 24 hours of the filing of a petition or criminal complaint, a juvenile must be brought before the court for a detention hearing under section (d). If a detention hearing is not held within 24 hours after the filing of the petition or criminal complaint, the juvenile must be released from the detention facility to a parent or other responsible person. If no parent or other responsible person can be located to assume physical custody, the court must release the juvenile to DCS.

**(d) Detention Hearing.**

- (1) ***Finding of Probable Cause.*** A juvenile may be detained only if there is probable cause to believe that the juvenile committed the acts alleged in the

petition or complaint. Probable cause may be based upon the allegations in a police report or a citation narrative prepared by a law enforcement officer, or a properly executed affidavit or sworn testimony.

(2) ***Basis for Detention.*** In addition to a finding of probable cause under subpart (d)(1), a juvenile may be detained only if there is probable cause to believe and the court finds on the record one or more of the following:

(A) the juvenile otherwise will not be present at any hearing;

(B) the juvenile is likely to commit an offense injurious to self or others;

(C) the juvenile must be held for another jurisdiction;

(D) the interests of the juvenile or the public require continued detention until a less restrictive placement for the juvenile can be found; or

(E) the juvenile must be held pending the filing of a complaint under A.R.S. § 13-501.

(3) ***Absence of the Juvenile's Parents.*** The detention hearing may be held in the absence of the juvenile's parents if they cannot be located or they fail to appear for the hearing.

(4) ***Victim's Right to be Heard.*** The victim of the offense has the right to be heard at the detention hearing, as provided by law.

(e) **Release from Detention.** The court may release the juvenile and set terms and conditions of release. Upon release from any detention facility, the court must advise the juvenile that any violation of release conditions or the failure to appear at future proceedings could result in the issuance of a warrant for the juvenile's arrest and detention, and that the court may proceed with future hearings in the juvenile's absence. A victim may request, and the court must provide to the victim, a copy of the juvenile's terms and conditions of release.

(f) **Violation of Conditions of Release.** If there is probable cause to believe the juvenile has violated a condition of release, the juvenile probation officer responsible for the juvenile's supervision or the prosecutor may file a request to revoke the juvenile's release. The request must state the substance of the conduct alleged to have violated the conditions of release. If the probation officer or prosecutor does not file a request to revoke release, the victim may file a request directly with the court, as provided by law.

**(g) Taking of DNA.**

- (1) In custody.** An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample.
- (2) Revocation of Release.** The supervising juvenile probation officer or the prosecutor may file a motion to revoke the juvenile's release if there is probable cause to believe that a juvenile who the court ordered as a condition of release to provide a DNA sample pursuant to A.R.S. § 8-238, and to provide proof of compliance, has not complied with that order. The court having jurisdiction over the juvenile may issue a warrant or summons to secure the juvenile's presence in court and must proceed in accordance with the requirements of this rule and A.R.S. § 8-238.
- (3) DNA Testing.** DNA may not be submitted to the Department of Public Safety for testing unless the juvenile has been adjudicated delinquent for an offense in A.R.S. § 13-610(O)(3).

**(h) Release to County Jail.** A juvenile may be released from a juvenile detention facility to a county jail upon the filing of a criminal complaint charging a juvenile with an offense listed in A.R.S. § 13-501. The filing of a criminal complaint is the date of arrest for purposes of Criminal Rules 4 and 8.2.

**(i) Review of Detention Status.** The court may review the detention status of a juvenile upon written motion of the juvenile, the prosecutor, or on its own. A party's motion must allege material facts not previously presented to the court. The court must hold a hearing on a motion to review detention status no later than 5 days after the motion is filed. The victim has the right to be heard concerning the release of the juvenile and the conditions of release, as provided by law. The court may accelerate a hearing on the motion upon written request demonstrating extraordinary circumstances and that acceleration is necessary in the interests of justice.

## **Rule 24. Content of a Petition**

**(a) Content.** A petition must be captioned: “In the Matter of\_\_\_\_, a person under the age of 18 years.” The petition must be under oath and include the following information:

- (1) the name, age, gender, and address of the juvenile named in the petition;
- (2) the names and addresses, if known, of the parent, guardian, or custodian of the juvenile or the juvenile’s spouse, if any;
- (3) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody; and
- (4) a concise statement of the facts, including with reasonable particularity the time, date, place, and manner of the alleged acts of the juvenile, and the law allegedly violated by such acts that bring the juvenile within the jurisdiction of the court.

**(b) Amendments to a Petition.** Before adjudication, a prosecutor may file a motion requesting a court order that permits amendments to a petition. If the court grants the motion, it must allow the parties sufficient time to respond to the new allegations.

## **Rule 25. Filing a Petition**

**(a) Filing.** All petitions must be filed with the court clerk.

**(b) Time Limits for Filing.** A petition must be filed within the following time limits:

- (1) *Detained Juvenile.*** If the juvenile is detained, the petition must be filed within 24 hours of the initial detention.
- (2) *Juvenile Not Detained.*** If the juvenile is not detained, the petition must be filed within 45 days after submission of the referral to the prosecutor. The time for filing a petition is extended for an additional 30 days pending the prosecutor's further investigation. No more than one 30-day extension is allowed unless the court for good cause orders otherwise.
- (3) *Diversion.*** The time limit for filing a petition is tolled during the period required to comply with the terms of diversion. If the juvenile does not complete diversion, a petition must be filed no later than 30 days after the matter is resubmitted to the prosecutor for action.

## **Rule 26. Attorney's Appearance and Withdrawal**

### **(a) Appearance.**

- (1) *Court-Appointed Attorney.*** A court-appointed attorney must enter an appearance by personally appearing in open court and advising the court that the attorney is representing the juvenile, or by filing a notice of appearance and providing copies to the assigned judicial officer and the prosecutor.
- (2) *Retained Attorney.*** A retained attorney must file a notice of appearance and provide copies to the assigned judicial officer and the prosecutor.

### **(b) Withdrawal.**

- (1) *Court-Appointed Attorney.*** Unless the court permits otherwise, a court-appointed attorney is automatically relieved of representing a juvenile (A) if no hearings are scheduled, and (B) the time for filing a notice of appeal has expired.
- (2) *Retained Attorney.***
  - (A) *Before the disposition hearing.*** A retained attorney may withdraw from a case before the disposition hearing only by motion.
  - (B) *After the disposition hearing.*** A retained attorney may file a notice of withdrawal (1) if no hearings are scheduled, and (2) the time for filing a notice of appeal has expired.

**Rule 26. Notice to Appear; Service; Failure to Appear**

**(a) Notice to Appear.** After the State has filed a petition, the juvenile and the juvenile's parent must be given a written notice to appear in court. The court for good cause may waive the appearance of the parent. The notice must:

- (1) contain the name and address of the person to whom the notice is directed;
- (2) contain the location, date, and time of the hearing on the petition;
- (3) contain the name of the juvenile involved in the alleged offense;
- (4) advise the person to whom the notice is directed that a failure to appear will result in sanctions against the person, which may include being held in contempt and
- (5) advise the juvenile, if the juvenile is appearing for an offense listed in A.R.S. § 13-610(O)(3), to appear at a designated time and place for taking a sample of buccal cells or other bodily substances for DNA testing, and to provide proof of compliance at the proceeding to which the juvenile has been summoned.

**(b) Service of the Petition and Notice to Appear.**

- (1) **First Class Mail.** The petition and notice to appear must be served by first class mail upon the juvenile, parent, and if the juvenile is not living with the parent, upon the juvenile's guardian or custodian. A single notice may be mailed to both the parent and the juvenile if they have the same residence address.
- (2) **Certified Mail; Personal Service.** If the court finds that the parent and the juvenile failed to appear at the advisory hearing after service by first class mail, the court may approve:
  - (A) service by certified mail, return receipt requested. Return of the receipt or an affidavit of service is prima facie evidence of service; or
  - (B) personal service by an authorized juvenile court officer or an officer authorized to serve process in a civil action. Each party must be personally served.

**(c) Failure to Appear.**

- (1) **Provisional Warrant.** Whenever it appears that the juvenile cannot be found, or the juvenile's address cannot be ascertained after reasonable efforts to do so, the court may issue a provisional warrant to ensure that juvenile's appearance.

- (2) **Warrant.** For good cause and in the interests of justice, the court may compel the juvenile's attendance by issuing a warrant for the juvenile's arrest, if it appears the juvenile's failure to appear was willful.
- (3) **Contempt.** If, without good cause, a parent fails to appear in court after being served with a notice to appear, the court may set a hearing on an order to show cause why the parent should not be held in contempt. The order to show cause must be served as required under section (b). The parent's failure to appear does not prevent the court from proceeding.

## **Rule 27. Subpoenas**

- (a) Generally.** The clerk or prosecutor may issue subpoenas to compel the attendance of witnesses. The subpoena must advise the witness of the location, date, and time of the hearing and that failure to appear will result in sanctions being entered against the witness, which may include being held in contempt. The subpoena must state that “requests for reasonable accommodation for persons with disabilities must be made to the court at least 3 working days in advance of a scheduled court proceeding.” The subpoena must advise a witness with limited English proficiency, in English and in Spanish, to request an interpreter from the court at least 10 working days in advance of the hearing.
- (b) Service.** Any person may serve a subpoena to compel the attendance of a witness at a delinquency proceeding. The witness must be personally served. If the court finds that it is impracticable to personally serve a witness, it may approve service by certified mail, restricted delivery, return receipt requested. The returned receipt or an affidavit of service is evidence of service.
- (c) Contempt.** Unless there is good cause for the non-appearance, if a person failed to appear in court after being served with a subpoena, the court may set a hearing on an order to show cause why the person should not be held in contempt and sanctioned. The order to show cause must be personally served as required under section (b).

## **Rule 28. Advisory Hearing**

(a) **Generally.** After a petition alleging a delinquent act has been filed, including a petition filed under Criminal Rule 40, the court must set an advisory hearing to advise the juvenile and the juvenile's parent of the allegations against the juvenile. Copies of the petition must be given to the juvenile and the parent, and to the juvenile's counsel, either in person or pursuant to Rule 26.

### **(b) Time Limits.**

(1) ***For a Detained Juvenile.*** If the juvenile is detained, the advisory hearing must be held no later than 24 hours after the filing of the petition. If the juvenile is already detained on a prior matter and a new petition is filed, the advisory hearing on the new petition must be held no later than 72 hours after the new petition is filed.

(2) ***For a Juvenile Who is Not Detained.*** If the juvenile is not detained, the hearing must be held no later than 30 days after the filing of the petition.

### **(c) Procedure.** At the advisory hearing:

(1) ***Advise of Rights.*** The court must advise the juvenile and the juvenile's parent of the juvenile's constitutional rights, including the rights:

(A) to be represented by counsel, and to have the court appoint counsel if the juvenile is indigent, as provided by law;

(B) to remain silent throughout the proceeding;

(C) to an adjudication hearing on the allegations in the petition;

(D) to confront witnesses presented by the State; and

(E) to call witnesses on the juvenile's behalf.

(2) ***Allow a Victim to be Heard.*** The court must determine whether the victim of the offense has requested to be present and to be heard.

(3) ***Enter the Juvenile's Admission or Denial.*** The court must determine whether the juvenile wishes to admit or deny the allegations or enter a plea. If the juvenile wishes to admit the allegations, the court may accept the admission or plea as provided in Rule 28.1.

(4) ***Set an Adjudication Hearing.*** If the juvenile denies the allegations of the petition, the court must set an adjudication hearing under Rule 29.

- (5) ***Determine Release Conditions.*** The court may set conditions of release and must advise the juvenile that a violation of the release conditions may result in a revocation of the juvenile's release and the issuance of a warrant for the juvenile's arrest. The court must provide a copy of the release conditions to the juvenile and the juvenile's parent.
- (6) ***Special Release Condition.*** If the juvenile has been arrested for an offense listed in A.R.S. § 13-610(O)(3), and the court has found probable cause, the judicial officer must order as a condition of release that the juvenile submit a DNA sample as provided by law.
- (7) ***DNA Testing.*** DNA may not be submitted to the Department of Public Safety for testing unless the juvenile has been adjudicated delinquent for an offense in A.R.S. § 13-610(O)(3).

## **Rule 28.1. Admission or Change of Plea**

(a) **Generally.** A juvenile may enter an admission to an offense charged in a petition, or may enter into a plea agreement, at any pre-adjudication or adjudication hearing.

(b) **Procedure.** The court must do the following when taking an admission or a plea agreement:

(1) ***Determine the Accuracy of a Plea Agreement.*** A plea agreement must be in writing or entered on the record in open court. Before accepting a plea agreement, the court must address the juvenile and confirm the terms of the agreement, that the plea agreement contains all the agreement's terms, and that the juvenile understands and agrees to those terms.

(2) ***Advise the Juvenile of Rights.*** Before accepting an admission or a plea agreement, the court must inform the juvenile, and determine that the juvenile understands, all the following:

(A) the nature of the charges to which the juvenile will admit or plead;

(B) the constitutional rights that the juvenile will be waiving by the admission or plea;

(C) the possible dispositional consequences of the admission or plea. If the juvenile is being adjudicated for an offense that would be a felony if the juvenile was convicted in criminal court, the court must provide the felony offender and prohibited possessor advisements; and

(D) immigration consequences. The court must specifically inform the juvenile that “If you are not a citizen of the United States, admitting to a delinquent act or entering a no contest plea may affect your immigration status. Your admission to a delinquent act or plea of no contest could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen.”

(3) ***Determine Compliance with Victim’s Rights.*** Before accepting an admission or plea agreement, the court must question the prosecutor and determine if the victim has been afforded rights provided under A.R.S. §§ 8-381 through 8-422.

(c) **Findings.** Before accepting an admission or a plea agreement, the court must find the following:

- (1) The juvenile wishes to admit the allegation or enter into the plea agreement, and that the admission or plea is knowing, intelligent, and voluntary, and not the result of force, threats or promises.
- (2) The juvenile wishes to forego the juvenile's constitutional rights.
- (3) A factual basis exists to support the adjudication for each offense that the juvenile admits or to which the juvenile pleads. The factual basis may be based on the juvenile's statement to the court, a police report, or another reliable source.

**(d) Rejecting a Plea Agreement.** If the court rejects a plea agreement, the court must set the matter for an adjudication hearing.

**(e) Accepting the Plea.** After accepting an admission or plea agreement, the court must adjudicate the juvenile and proceed to disposition or set a disposition hearing.

## **Rule 29. Adjudication Hearing**

- (a) **Generally.** At an adjudication hearing, the court determines whether the juvenile committed the acts alleged in the petition.
- (b) **Time Limits.**
- (1) ***Detained Juvenile.*** The court must hold an adjudication hearing for a detained juvenile no later than 45 days after the advisory hearing, unless the juvenile waives time or time is excluded by the court under Rule 17.
  - (2) ***Juvenile Not Detained.*** The court must hold an adjudication hearing for a juvenile who is not detained no later than 60 days after the advisory hearing, unless the juvenile waives time or time is excluded by the court under Rule 17.
  - (3) ***Exceptions.*** The time limits in subparts (b)(1) and (b)(2) do not apply if a motion for transfer or a petition to revoke probation has been filed.
  - (4) ***Reversal of Judgment.*** If an appellate court reverses a judgment and orders an adjudication hearing, the court must hold the hearing no later than 60 days after the appellate court entered its order or issued its mandate.
- (c) **Burden of Proof.** At an adjudication hearing, the State must prove the allegations in the petition beyond a reasonable doubt.
- (d) **Amendment to Conform to the Evidence.** Unless the juvenile consents to the amendment, the petition may be amended only to correct mistakes of fact or to remedy formal or technical defects that conform to the evidence presented at the adjudication hearing.
- (e) **Judgment of Acquittal.** On the juvenile's motion or on its own, after the close of the evidence the court must enter a judgment of acquittal if there is no substantial evidence to support an alleged offense.
- (f) **Findings and Orders.** The court must make one of the following findings in writing for each offense alleged in the petition:
- (1) the alleged offense was proven beyond a reasonable doubt and the juvenile is adjudicated delinquent; or
  - (2) the alleged offense was not proven beyond a reasonable doubt and the count in which the offense is alleged is dismissed.
- (g) **Disposition.** After a finding of delinquency, the court must set a disposition hearing and may address detention, set conditions of release, or enter other orders as appropriate.

### **Rule 30. Disposition**

**(a) Disposition Report.** Before the disposition hearing, the court may order the probation officer to prepare and submit a written report to the court with recommendations regarding the juvenile's disposition. The disposition report and any attachments to that report are confidential and must be withheld from public inspection except upon court order. The report must be submitted to the court and be made available to counsel for the parties, or to the juvenile if unrepresented by counsel, at least 3 court days before the disposition hearing.

**(1) *Contents of the Report.*** The disposition report must include:

- (A)** the juvenile's delinquency referral and detention history;
- (B)** an evaluation of the juvenile's risk of reoffending and identified needs including the strengths of the juvenile and family;
- (C)** a victim impact statement;
- (D)** any information furnished by the victim regarding restitution; and
- (E)** a disposition recommendation.

**(2) *Availability of Report to the Victim.*** On request, the court must provide the victim with the following information contained in the disposition report:

- (A)** the juvenile's delinquency referral and detention history; and
- (B)** the probation officer's case assessment and recommendations for treatment and disposition.

**(3) *Waiver of Report.*** If the victim has provided or has had an opportunity to provide a written or oral impact statement, the parties with court approval may waive the disposition report.

**(4) *Evaluation of Juvenile.*** Before the disposition hearing, the court may order the juvenile to submit to a physical, psychiatric, or psychological evaluation, or any combination of evaluations.

**(5) *Release of Information.*** The court may withhold from the parties any material that might be psychologically damaging to them, or that might be destructive of relationships between family members.

**(6) *Disposition Reports and Records.*** Disposition reports and any Rule 19(a)(2) social file records included with the report must be retained in a confidential and

segregated disposition file pursuant to Rule 19(a)(1)(D). In the event of an appeal, the file must be transmitted by the clerk as part of the record on appeal.

**(b) Disposition Hearing.**

**(1) Time Limits.**

**(A) Juvenile Who is Detained.** If the juvenile is detained, the court must hold a disposition hearing no later than 30 days after the adjudication, unless the juvenile waives time or time is excluded by the court under Rule 17.

**(B) Juvenile Who is Not Detained.** If the juvenile is not detained, the court must hold a disposition hearing no later than 45 days after the adjudication, unless the juvenile waives time or time is excluded by the court under Rule 17.

**(C) Continuance.** The court on its own or on a party's motion may continue a disposition hearing for good cause. If the juvenile is detained, the disposition may be continued for more than 30 days after the date initially set for disposition, but only if the juvenile consents in open court.

**(2) Procedure.** When the court makes a finding that a juvenile is delinquent, the court must make a disposition of the matter as provided by law or set the matter for a disposition hearing. The court may assign the matter to another judge or a juvenile hearing officer. The victim has the right to be present and to address the court.

**(3) Findings and Orders.** At the close of the disposition hearing, the court must make findings in a signed minute entry or written order. If the disposition is probation, the order must include the conditions of probation.

**(4) Advisals.** Following the entry of its disposition order, the court must advise the juvenile, and provide written notice of, the following:

**(A)** the right to appeal and the method of appeal;

**(B)** the right to set aside the adjudication;

**(C)** the right to destruction of records;

**(D)** if appropriate, a felony offender warning; and

**(E)** if the disposition is for a felony offense, the prohibition concerning firearms.

### **Rule 31. Probation**

**(a) Imposition of Probation.** The court may place a juvenile on probation at the time of disposition. The court must impose conditions of probation designed to promote the juvenile's positive development, assure accountability, and protect the public. In addition, the probation officer may impose directives that are consistent with and necessary for implementing the conditions imposed by the court.

**(b) Notice.** All conditions imposed by the court and directives imposed by a probation officer must be given to the juvenile in writing, unless exigent circumstances require the probation officer to give oral notice directly to the juvenile. When oral notice is given, the juvenile must also be provided with prompt written notice that confirms the oral notice.

#### **(c) Modification of Probation.**

- (1)** A probation officer may modify or clarify any directive that the probation officer has imposed.
- (2)** After notice to the prosecutor and the juvenile, and after the parties have had an opportunity to be heard, the court may modify any condition it has imposed or any directive imposed by a probation officer.
- (3)** The juvenile, probation officer, or the State may ask the court to modify or clarify any condition or directive. The court may hold a hearing at the request of any party. The court must give the juvenile a written copy of a modification or clarification.
- (4)** Upon a victim's request, the court must notify the victim of any proposed modification of the terms of probation if the modification will substantially affect the juvenile's contact with, or the safety of the victim, or if the modification affects restitution or incarceration of the juvenile. The court must afford the victim an opportunity to be heard, as provided by law.

#### **(d) Termination of Probation.**

- (1)** The court may terminate the juvenile's probation at any time, but no later than the following:
  - (A)** no later than one year after the disposition, except as provided by A.R.S. § 8-341(B);
  - (B)** upon the juvenile's eighteenth birthday; or

- (C) for cases filed pursuant to A.R.S. § 8-202(H), upon the juvenile's nineteenth birthday.
- (2) If the victim requests notice, the court must notify the victim of any proceeding in which the court is asked to terminate the juvenile's probation. The court must afford the victim an opportunity to be heard, as provided by A.R.S. §§ 8-381 through 8-422.

## **Rule 32. Revocation of Probation**

- (a) Initiation.** The probation officer responsible for supervising the juvenile, or the prosecutor, may petition the court to revoke probation if there is probable cause to believe that the juvenile has violated a condition or directive of probation. If the victim requests notice, the court must notify the victim of any probation revocation proceeding and afford the victim an opportunity to be heard, as provided by A.R.S. §§ 8-381 through 8-422.
- (b) Petition.** The petition must state the substance of the conduct alleged to have violated the conditions or directives previously imposed, and in all other respects must conform to Rule 24(a).
- (1) Notice to Appear.** Promptly after the petition to revoke probation has been filed, the juvenile, the juvenile's attorney, and the juvenile's parent must be given written notice that they are required to appear before the court. For good cause, the court may waive the parent's appearance. The notice to appear must:
- (A)** contain the name and address of the person to whom the notice is directed;
  - (B)** contain the location, date, and time of an advisory hearing on the petition; and
  - (C)** advise that a failure to appear may result in sanctions, including contempt.
- (2) Service and Failure to Appear.** The juvenile, the juvenile's attorney, and the juvenile's parent must be served with a copy of the petition and a copy of the notice to appear in the manner provided by Rule 26(b). The court may address a failure to appear as provided by Rule 26(c).
- (3) Amendment to the Petition.** A petition to revoke probation may be amended as provided in Rule 24(b).
- (c) Warrant.** If a probation officer, when or after a petition to revoke probation is filed, requests an arrest warrant for the juvenile, the court must determine based upon allegations in the petition whether there is probable cause to believe that the juvenile violated a condition or regulation of probation.
- (d) Advisory Hearing: Time Limits.**
- (1) Juvenile Who is Detained.** If the juvenile is detained on a petition to revoke probation, the court must hold an advisory hearing no later than 24 hours after the initial detention.

- (2) **Juvenile Who is Not Detained.** If the juvenile is not detained, the court must hold an advisory hearing no later than 14 days after the filing of the petition and notice to appear.

**(e) Advisory Hearing: Procedure.** At the advisory hearing:

- (1) **Advise of Rights.** The court must advise the juvenile and the juvenile's parent of the juvenile's constitutional rights, including the rights:
  - (A) to be represented by counsel, and to have the court appoint counsel if the juvenile is indigent, as provided by law;
  - (B) to remain silent throughout the proceeding;
  - (C) to an adjudication hearing on the allegations in the petition;
  - (D) to confront witnesses presented by the State; and
  - (E) to call witnesses on the juvenile's behalf.
- (2) **Confirm Disclosure.** The court must confirm that the probation officer has disclosed to the attorneys for the parties any documents, notes, and evidence related to the violation, other than confidential information protected under Supreme Court Rule 123.
- (3) **Allow a Victim to be Heard.** The court must determine whether the victim of the offense has requested to be present and to be heard.
- (4) **Juvenile's Statements at Revocation Proceeding.** The court must advise the juvenile that if the alleged violation involves a delinquent act for which the juvenile has not yet been adjudicated, regardless of the outcome of the probation revocation proceeding, the juvenile may still be adjudicated for the alleged offense, and any statement made by the juvenile at the probation revocation proceeding may be used against the juvenile at the adjudication hearing.
- (5) **Enter the Juvenile's Admission or Denial.** The court must determine whether the juvenile wishes to admit or deny the violations of probation. If the juvenile wishes to admit a violation of probation, the court may accept the admission or plea agreement as provided in Rule 28.1.
- (6) **Set an Adjudication Hearing.** If the juvenile denies the violations of probation, the court must set a probation violation hearing.
  - (A) **Determine Release Conditions.** The court may set conditions of release. It must advise the juvenile that a violation of the release conditions may result in a revocation of the juvenile's release and the issuance of a warrant for the

juvenile's arrest, and it must provide a copy of the release conditions to the juvenile and the juvenile's parent.

**(f) Probation Violation Hearing.**

- (1) ***Time Limits.*** The court must hold a probation violation hearing no later than 21 days after the advisory hearing unless the juvenile waives time or time is excluded by the court under Rule 17.
- (2) ***Burden of Proof.*** The State must prove a violation of probation by a preponderance of the evidence.
- (3) ***Procedure.*** Each party may present evidence. The court may admit any evidence as provided by Rule 3.1(b), which may include hearsay.
- (4) ***Amendment to Conform to the Evidence.*** Unless the juvenile consents to the amendment, the petition may be amended only to correct mistakes of fact or to remedy formal or technical defects that conform to the evidence presented at the probation violation hearing.
- (5) ***Findings and Orders.*** The court's findings must be in writing in the form of a signed minute entry or order and state specifically:
  - (A) whether each allegation in the revocation petition has been proven; and
  - (B) findings of fact that establish a violation of probation.
- (6) ***Disposition.*** If the court finds a violation of a condition or directive of probation, then the court may proceed directly to disposition, or it may set a disposition hearing pursuant to Rule 30. The court may impose any disposition provided under A.R.S. § 8-341.
- (7) ***Subsequent Acts.*** If a juvenile who is on probation subsequently commits a new act and is thereafter adjudicated delinquent or incorrigible, the juvenile is deemed to have violated the terms of probation. No violation petition or hearing is required, and the court may proceed directly to disposition or set a disposition hearing pursuant to Rule 30.

**Rule 33. Disposition of Non-felony Offenses [Abrogated]**

### **Rule 34. Transfer for Criminal Prosecution**

- (a) Generally.** The prosecutor may file a motion requesting the juvenile court to waive jurisdiction and order the transfer of the juvenile to the criminal division of the superior court for prosecution as an adult.
- (b) Motion and Complaint.** A motion to transfer must be accompanied by a criminal complaint that identifies the offense or offenses for which transfer is sought. Copies of the motion and complaint must be served pursuant to Rule 15.
- (c) Amending the Complaint.** On the prosecutor's motion, the court may allow amendments to the complaint to conform to the evidence, but the amendments must be made before entry of an order to transfer, and the juvenile may not be transferred or held to answer for an offense other than one for which the court found probable cause at the transfer hearing. An amended complaint must be served on the parties in the same manner as the original motion and complaint.
- (d) Time Limits.** The motion and complaint must be filed no later than 15 days after the date of the advisory hearing, except the court on a finding of good cause for delay may allow a later filing if the juvenile will not be substantially prejudiced as a result of the delay.
- (e) Transfer Investigation.** On receipt of the motion for transfer, the probation officer must conduct a transfer investigation and prepare a written report addressing the factors specified in A.R.S. § 8-327. The juvenile probation officer must provide a copy of the report to the parties at least 7 calendar days before the transfer hearing, unless the time is waived by the parties.

  - (1) Evaluation of Juvenile.**

    - (A) Order.** At any time after the filing of the motion to transfer, the court on a party's request or on its own may order the juvenile to submit to physical, psychological, or psychiatric evaluations, or any combination thereof.
    - (B) Report.** The experts must submit their reports to the court at least 7 calendar days before the transfer hearing. Upon receipt, court staff will provide the expert's report to the juvenile's counsel. The juvenile's counsel is responsible for editing the report by redacting any statement or summary of the juvenile's statements concerning the charged offense. Juvenile's counsel must then return the edited copy to court staff no later than 24 hours after receipt and provide the edited version to the prosecutor.
    - (C) Prior Transfer.** If the juvenile has previously been transferred for criminal prosecution by any juvenile court of this state, at any time before the hearing

the court may waive the juvenile probation officer's transfer investigation or the experts' evaluations. Any prior orders of transfer, probation reports, or reports pertaining to physical, psychological or psychiatric evaluations conducted as part of the prior transfer proceedings must be provided to the parties and counsel.

(2) ***Incompetence.*** As provided in A.R.S. §§ 8-291 through 8-291.11, the court must not transfer a juvenile for criminal prosecution who is not competent.

(f) **Transfer Hearing.** A transfer hearing must be conducted by a judicial officer. The transfer hearing must be conducted in two phases. The first phase includes a determination of probable cause that an offense was committed and whether the juvenile committed the alleged offense. The second phase determines whether public safety would best be served by the transfer of the juvenile for prosecution. The two phases may be heard consecutively or on separate dates as the court determines.

(1) ***Time Limits.*** A transfer hearing must be held no later than 30 days after the filing of the motion to transfer. The court may continue the hearing for good cause.

(2) ***Waiver.*** The juvenile may waive an evidentiary hearing on either phase of the transfer proceeding. A waiver of the evidentiary hearing on the probable cause phase of the transfer proceeding must be in writing and signed by the juvenile, the juvenile's counsel, and the prosecutor. Before accepting a waiver, the court must inform the juvenile of the consequences of a waiver and the rights under Criminal Rules 5.3 and 5.4(c) that the juvenile is waiving. The court must make written findings concerning the waiver.

(3) ***Probable Cause Determination.***

(A) ***Applicable Rules.*** The probable cause phase must be conducted on the record and as provided in Criminal Rules 5.3 and 5.4(c). The probable cause phase of the transfer hearing, or a waiver of that phase under these rules, constitutes compliance with the defendant's right to a preliminary hearing under Criminal Rule 5.1.

(B) ***Unlawfully Obtained Evidence.*** A court must not exclude evidence during a probable cause hearing solely on the ground that it was obtained unlawfully.

(C) ***Probable Cause Finding.*** If the court finds there is probable cause to believe that the charged offense has been committed and that the juvenile committed it, the court must proceed to the public safety determination. If the court does not find probable cause for the charged offense, it may find probable cause as to lesser included offenses.

(D) *No Probable Cause Finding.* If the court finds that probable cause does not exist, the court must dismiss the complaint without prejudice.

- (4) *Public Safety Determination.* In determining whether public safety would best be served by transferring the juvenile, the court must consider the factors specified in A.R.S. § 8-327.
- (5) *Order of Transfer.* If the court determines that transfer is appropriate, the court must state its reasons in writing in a signed minute entry or order. The court also must order that a certified transcript of the probable cause phase of the hearing be filed with the clerk no later than 20 days after the hearing was completed.
- (6) *No Transfer.* If the court determines that transfer is not appropriate, the court must deny the motion to transfer and set an adjudication hearing no later than 30 days after entry of the order denying the motion. The complaint will serve as the petition for purposes of further juvenile proceedings.

### **Rule 35. Post Transfer**

**(a) Court Actions.** Once the juvenile court finds that the juvenile should be transferred to the criminal division of the superior court, the juvenile court must:

- (1) *Hold to Answer.*** Designate the counts of the criminal complaint on which the juvenile will be held to answer in the criminal division and order that no preliminary hearing or grand jury occur.
- (2) *Amendments.*** Order that the complaint must not be amended to add additional or different charges unless the juvenile consents. The complaint may be amended to correct mistakes of fact in the complaint or to remedy technical defects.
- (3) *Initial Appearance.*** Conduct an initial appearance as required by Criminal Rule 4.2. At the initial appearance the court must:
  - (A)** order the juvenile to appear before the criminal division for an arraignment at a specific location, date, and time;
  - (B)** appoint counsel if the juvenile is indigent to represent the juvenile in all further criminal proceedings;
  - (C)** determine the conditions of release under Rule 7.2, unless the court determines that release on bail is prohibited;
  - (D)** provide the juvenile with a copy of the conditions of release, including the next court date and location, and have the juvenile acknowledge an understanding by signing a copy of the conditions of release in the court's presence;
  - (E)** inform the juvenile that a violation of the conditions of release or the failure to appear for an arraignment could result in the issuance of a warrant for the juvenile's arrest; and
  - (F)** determine, if the juvenile is not released, the facility that will have custody of the juvenile pursuant to A.R.S. § 8-305(C) and (D) and remand the juvenile to the custody of an appropriate officer.

**(b) Time Limits.** Criminal Rule 8.2 applies for determining time limits for trying a juvenile in the criminal division after transfer.

## **PART III: DEPENDENCY, TITLE 8 GUARDIANSHIP, AND TERMINATION OF PARENTAL RIGHTS**

### **BEGINNING OF SUBPART 1 [“GENERAL PROVISIONS”]**

#### **Rule 36. Scope of Rules**

- (a) Application.** Rules in Part III govern procedures in dependency, in-home intervention, extended foster care, Title 8 guardianship, and termination of parental rights cases.
- (b) Interpretation.** The court should interpret the rules in Part III in a manner that protects the rights of the parties and the child’s best interests and gives paramount consideration to the child’s health and safety.

### **Rule 37. Definitions**

- (a) **“Parent”** as used in Part III, and in addition to the definition in Rule 2, includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian.
- (b) **“Party”** means a child, parent, guardian, DCS, any petitioner, and any person, Indian tribe, or entity that the court has allowed to intervene.
- (c) **“Participant”** includes any person permitted by the court or authorized by law to participate in the proceedings. Participants must be notified of all applicable proceedings as required by law or court order. A participant is not a party.
- (d) **“Child’s Attorney”** means an attorney who provides legal representation for a child and who owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child as is due an adult client.
- (e) **“Guardian ad Litem” (“GAL”)** means an attorney appointed to protect the best interests of a minor or an individual who may be incompetent or in need of protection, or as otherwise directed by the court. A GAL is not bound by the client’s expressed preferences or the attorney-client privilege.

#### **(f) Definitions Under ICWA.**

- (1) **“Parent”** means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.
- (2) **“Indian Child”** means any unmarried person under the age of 18 and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe. *See* 25 C.F.R. § 23.2. If there is reason to know that the child is an Indian child, the court must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child pursuant to 25 C.F.R. § 23.107.
- (3) **“Indian Child’s Tribe”** means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.
- (4) **“Indian Custodian”** means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody and control has been transferred by the parent of the child.

- (5) ***“Indian Tribe”*** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c).
- (6) ***“Extended Family Member”*** means a person as defined by law or custom of the Indian child’s tribe, or, in the absence of such law or custom, means a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, sister or brother, sister-in-law or brother-in-law, niece or nephew, first or second cousin, or step-parent.

## **Rule 38. Assignment and Appointment of an Attorney; Advisory Attorney**

### **(a) Assignment of an Attorney.**

- (1) **Assignment.** The court must assign an attorney in a dependency proceeding to persons who are entitled to representation by law, including ICWA.
- (2) **Duration.** The assigned attorney must provide representation from notice of the assignment until the court formally appoints or otherwise relieves the assigned attorney.
- (3) **Limitation.** The assigned attorney is not attorney of record for purposes of accepting service of process for a parent, guardian, or Indian custodian who does not appear.

**(b) Appointment of an Attorney for Parent or Guardian.** The court must appoint an attorney for an indigent person in a dependency proceeding who is entitled to an attorney under A.R.S. § 8-221. In determining whether a person is indigent, the court may order the person to provide proof of financial resources by completing and filing the court's financial questionnaire. The court also may question the person under oath concerning their financial resources. If the court determines the person is not indigent, the court may order the person to pay a reasonable portion of the cost of an attorney, or it may deny the request to appoint an attorney.

**(c) Appointment of an Attorney for a Child.** Children in dependency and termination cases are presumed indigent and are entitled to a court-appointed attorney. The appointment of a child's attorney should be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing.

**(d) Manner of Appointment.** The court must enter an order or issue a minute entry assigning, appointing, or denying a person an attorney or guardian ad litem.

**(e) Advisory Attorney.** If authorized by a county, an attorney may be assigned to provide legal advice to a parent or guardian before a petition is filed.

### **Rule 39. Appearance, Substitution, and Withdrawal; Responsibility of Parties**

**(a) Applicability.** As used in this rule, the term “attorney” includes a guardian ad litem.

#### **(b) Attorney’s Duties.**

**(1) Appearance.** An attorney may appear as attorney of record by filing a notice of appearance, a petition, or a motion to intervene. An attorney may also enter an initial appearance either by appearing personally or telephonically and advising the court that the attorney is representing a party. An attorney may not file a document in any action or act on behalf of a party without appearing first as attorney of record.

**(2) Representation.** After an attorney has appeared of record in any action, the attorney will be responsible for all matters involving the action until:

**(A)** another attorney is substituted as attorney of record for a party;

**(B)** the action is dismissed and the time for filing a notice of appeal has expired;

**(C)** the court enters an order terminating representation and, if applicable, any time for filing a notice of appeal has expired; or

**(D)** if an attorney represented the party on appeal, the issuance of an appellate mandate.

**(c) Withdrawal.** An attorney of record may withdraw only by court order. The attorney’s written or oral motion must state the reasons for withdrawal. A written motion must list the future hearing dates and must be accompanied by a proposed order.

**(1) Client Consent.** A written motion that contains the client’s written consent may be presented to the court *ex parte* and must be accompanied by a proposed order. The withdrawing attorney must promptly provide the signed order to the other parties’ attorneys. If an oral motion is presented on the record, and the client is present and consents to a withdrawal, the court may rule on the motion at that time.

**(2) No Client Consent:** If the attorney does not move to withdraw under subpart (1), the attorney must move to withdraw in writing and serve the client with the motion. The attorney also must provide a copy of the motion to the other parties’ attorneys. The attorney must provide the court with the reasons for the withdrawal and the client’s last known address, email address, and telephone number. The motion must include the attorney’s certification that the client has been notified in writing of the status of the case including dates and times of any

court hearings or trial settings, and advised to comply with any existing court orders or face the possibility of sanctions. If a client cannot be located, the attorney may move to withdraw orally on the record or in writing. The court must endorse the client's last known address on the minute entry.

- (3) **Attorney or Guardian ad Litem for a Child.** Subparts (1) and (2) do not apply to attorneys or guardians ad litem for children. An attorney or guardian ad litem representing a child may withdraw or substitute only by court order.
- (4) **Limited Purpose.** An attorney who appears for a limited purpose must file a notice of withdrawal upon completion of the limited purpose.

**(d) Attorney Substitution.**

- (1) **Generally.** Except as provided in subpart (2), an attorney may substitute as attorney of record in a pending action only by court order. The attorney must file a motion that contains the client's written consent and a proposed order. The motion and proposed order may be presented to the court *ex parte*. The substituting attorney must promptly provide the signed order to the other parties' attorneys.
- (2) **Within the Same Firm or Office.** If a pending case is transferred within the same law firm or governmental office, the court must be notified of the new attorney of record, including any changes in the physical or email address. An order of substitution is not required.

**(e) Withdrawal or Substitution of Counsel When Matter Set for Trial.** The court may not permit an attorney to withdraw or substitute after a matter has been set for trial, unless the court finds ethical grounds or good cause for the withdrawal. If applicable, the motion must provide:

- (1) **From a new or substituting attorney:** the name and address of the attorney and a signed statement from that attorney acknowledging the trial date and avowing that the attorney will be prepared for trial; or
- (2) **From a Self-Represented Party:** when a client wishes to self-represent and the attorney is withdrawing, the client must put into writing or state on the record that the client has been advised of the trial date and has made suitable arrangements for self-representation and will be prepared for trial.

**(f) Duty of Attorney After Withdrawal or Substitution.** Within 7 days after withdrawal or substitution, other than a substitution from within the same firm or office, the former attorney must transfer the file and provide the client's most current contact information and all disclosure to the new lawyer or to the client, if self-

represented. The attorney must preserve the file if the client's whereabouts are unknown.

**(g) Responsibility to the Court.**

- (1) ***Attorneys and Self-Represented Litigants.*** Each attorney of record, guardian ad litem, and self-represented litigant must remain informed of the status of, and the deadlines in, pending actions in which that attorney or self-representative litigant has appeared.
- (2) ***Attorneys.*** An attorney who changes an office address, email address, or telephone number must notify the clerk in each of the counties in which that attorney has pending actions of the attorney's current office and email address and telephone number and must file a notice in each case in which the attorney has appeared containing that information.
- (3) ***Self-Represented Litigants.*** Self-represented litigants must file a notice containing their mailing address, telephone number, and any email address, and provide copies of the notice to the other parties' attorneys. It is the responsibility of a self-represented litigant to file an updated notice of any change in contact information within 7 days after the change, and to promptly provide a copy of the updated notice to the parties' attorneys.

**Rule 40. Appointment of a Guardian Ad Litem**

In addition to the appointment of an attorney, the court may appoint a guardian ad litem for a child or an individual who may be incompetent or in need of protection. A guardian ad litem appointed under this rule must be an attorney.

## **Rule 40.1. Duties and Responsibilities of an Attorney and GAL for a Child**

**(a) Explain the Role.** An attorney or GAL appointed for a child must explain to the child and the child's caregivers their role and the ethical obligations associated with their role. A GAL must explain that the GAL has no attorney-client privilege with the child.

**(1) Attorney.**

**(A) Relationship.** The child's attorney must maintain a normal attorney-client relationship with the child in accordance with the rules of professional conduct when the child is capable of directing the representation by expressing the child's objectives.

**(B) Diminished Capacity.** The child's attorney must determine whether the child has the capacity to make adequately considered decisions pursuant to E.R. 1.14. In making the determination, the attorney should consult the child and may consult other individuals or entities to determine the child's ability to direct the representation. When a child has diminished capacity, the child's attorney must make a good faith effort to determine the child's needs and wishes. The attorney must, as far as reasonably possible, maintain a normal attorney-client relationship with the child.

**(C) Substituted Judgment.** During any period in which a normal attorney-client relationship is not reasonably possible to maintain, the child's attorney must make a substituted judgment. The attorney must advise the court of the determination of capacity that requires substituted judgment and any subsequent change in that determination. A substituted judgment includes determining what the child would decide if the child was capable of making an adequately considered decision and representing the child in accordance with that determination. The attorney should take direction from the child as the child develops the capacity to direct the attorney.

**(2) GAL.** The child's GAL must assist the court in determining what is in the child's best interests and is not bound by the client's expressed preferences.

**(b) Provide Information About Court Proceedings.** An attorney and GAL must keep the child informed, in an age and developmentally appropriate manner, of the nature of each court proceeding, the child's right to attend hearings and speak with the judge, any benefits or consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights regarding the dependency proceeding, and must explain the outcome of each hearing to the child.

- (c) Participate in the Proceeding.** When appropriate, an attorney and GAL must participate in discovery, file pleadings, and subpoena witnesses. An attorney and GAL must develop a position for each hearing. The duties of an attorney and GAL include identifying appropriate family and professional resources for the child. The attorney and GAL must inquire of the child regarding potential placements and communicate this information to DCS and the court as appropriate.
- (d) Meet with the Child.** The attorney and GAL must meet in person with the child before the preliminary protective hearing, or if that is not possible, within 14 days after the preliminary protective hearing. Thereafter, the attorney and GAL must have meaningful in-person communication with the child before every substantive hearing. Substantive hearings include all preliminary protective hearings, all review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship, or termination. Upon a showing of extraordinary circumstances, a judge may modify the requirements of this section for a particular substantive hearing. At each substantive hearing the attorney and the GAL must inform the court of the child's position concerning pending issues and the GAL must inform the court of what is in the child's best interests. If the child is not present, the attorney or GAL must provide an explanation for the child's absence.
- (e) Observe Placements.** In all cases, if practicable and appropriate, an attorney and GAL should observe the child's residential environment and the child's interaction with the caregiver.
- (f) Confer with Others.** To meet the obligation of informed representation, an attorney and GAL must maintain appropriate contact and communications with caregivers, child safety investigators and workers, service providers, childcare providers, CASAs, relatives, and any other significant persons in the child's life.
- (g) Attend Meetings.** To the extent possible, a child's attorney and GAL should attend or provide input at a DCS staffing, Foster Care Review Board review, and Child and Family Team meeting.
- (h) Use Support Staff.** Except for the initial meeting with the child, an attorney and GAL may use appropriately trained support staff to assist in the performance of the duties listed in this rule, unless the law requires otherwise. Support staff performing these duties must adhere to this rule.
- (i) Possess General Knowledge.** An attorney and GAL must have knowledge of the child welfare agencies, governmental programs, and community-based service providers and organizations serving children (e.g., behavioral health, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services, and juvenile justice). An attorney

and GAL must be knowledgeable about how to access these services and advocate for appropriate services for the child.

### **COMMENT TO 2022 AMENDMENT**

In developing the standards on which this rule is based, the Court considered best practices within Arizona and well-accepted standards developed by nationally recognized organizations. In particular, the standards for representation outlined in the American Bar Association's Standards for Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, the National Association for Counsel for Children's Revised Version of the ABA Standards, and the Resource Guidelines published by the National Council for Juvenile and Family Court Judges were instructive in developing the Standards for Arizona. In addition to adhering to this rule, Arizona attorneys and GALs should be familiar with and consult these national standards and references to ensure the highest standard of practice in this important area of the law.

## **Rule 40.2. Duties and Responsibilities of Attorneys Who Represent Parents, Guardians, and Indian Custodians**

- (a) Meaning of “Parent.”** For purposes of this rule only, “parent” means a parent as defined in Rule 2 as well as a court-appointed guardian and an Indian custodian.
- (b) Communicate with the Parent.** The parent’s attorney must communicate with the parent before the preliminary protective hearing or as soon thereafter as possible. The attorney must communicate with the parent before every hearing. The attorney must establish procedures for regular communications with the parent and must timely respond to the parent’s communications.
- (c) Explain the Role.** The attorney must explain to the parent the attorney’s role and the ethical obligations associated with that role.
- (d) Provide Information and Explain Requirements.** The attorney must review the allegations of the dependency petition and explain to the parent the nature of the proceedings including terminology, timelines, courtroom protocol, the parent’s legal rights in the dependency action, various parties and participants associated with the action, ways that the parent can affect case outcomes, consequences of the parent not attending hearings, and possible consequences of being placed on the DCS Central Registry. The attorney must also explain the court’s orders and the case plan.
- (e) Participate in the Proceeding.** The attorney must, as appropriate, participate in discovery, file pleadings, motions, and other documents, subpoena witnesses, provide the parent with disclosure and court documents, and develop the parent’s position for each hearing. The attorney must advocate for appropriate services for the parent and explain to the parent the procedural and substantive status of the case. The attorney must notify the court when an interpreter is needed. Except for the preliminary protective hearing, if a parent is incarcerated, the attorney must ensure that the proper notice or motion is filed to enable the parent to participate in the hearing.
- (f) Possess General Knowledge.** The attorney must be familiar with the child and public welfare systems, community-based organizations serving parents, and how to obtain services. Examples of such services are behavioral health, substance abuse treatment, domestic violence services, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, and permanency services.

**Rule 40.3. Duties and Responsibilities of Guardian Ad Litem for a Parent, Guardian, or Indian Custodian**

- (a) Appointment.** When the court appoints a GAL for a parent, guardian, or Indian custodian, the court must clearly define the purpose and scope of the appointment, the GAL's role in contested proceedings, including disclosure and discovery proceedings, and the court's expectation of the GAL's role in the case. The court must order the parties to disclose all relevant information to the GAL.
- (b) Confer with the Client.** The GAL must meet with the client and clearly explain the GAL's role and the absence of the attorney-client privilege between the GAL and the client.
- (c) Investigate the Case.** The GAL must review all relevant information regarding the client and investigate the issues in the case. If appropriate, the GAL must contact the client's service providers or others who might have information that would assist the GAL in their role. The GAL may assist in determining appropriate services for the client.
- (d) Attend the Hearings.** The GAL must attend all hearings, meet with the client before each substantive hearing, and report to the court on what is in the client's best interests. With the court's permission, the GAL may call and cross-examine witnesses. The GAL's position must not be substituted for the client's position as advocated by the client's attorney.

#### **Rule 40.4. Education Requirements for a Court-Appointed Attorney or Guardian ad Litem**

- (a) **Scope.** This rule applies to an attorney or GAL appointed by the court in a proceeding under Part III of these rules, and who is or will be subject to the requirements of Rule 40.1, Rule 40.2, or Rule 40.3.
- (b) **Generally.** An attorney and GAL must be familiar and stay current with substantive juvenile law, changes and developments in relevant federal and state laws—including laws concerning education and advocacy for children in schools— procedural rules, court decisions, and regulations.
- (c) **Initial Training.** An attorney or GAL must complete:
- (1) an introductory 6 hours of court-approved training before the first appointment, unless the presiding juvenile court judge in the county in which the attorney or GAL is practicing determines otherwise for good cause; and
  - (2) an additional 2 hours within the first year of practice in juvenile court.
- (d) **Later Training.** Each year, an attorney or GAL must complete at least 8 hours of continuing education on the relevant state and federal juvenile laws described in section (b). This continuing education may include topics such as ICWA, child welfare policy, child and adolescent development (including infant/toddler mental health), bonding and attachment, behavioral health services, effects of parental incarceration, educational opportunities and challenges, parent and child immigration issues, the need for timely permanency, the impact of out-of-home placements, the traumatic effects of domestic violence, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, the effects of trauma and trauma-informed practices, cultural awareness, issues surrounding families involved in the dependency process, and other related topics and issues concerning abused or neglected children.
- (e) **Affidavit of Completion.**
- (1) **Initial Training.** An attorney or GAL must provide to the presiding juvenile court judge an affidavit of completion of the initial 6-hour, court-approved training requirement before appointment as an attorney or GAL, unless the juvenile court presiding judge in which the appointment is made waives this requirement.
  - (2) **Later training.** Concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or GAL must provide an affidavit of completion to the presiding juvenile court judge of the later training required by

section (d). An initial and a later affidavit of completion must contain a list of courses, including the dates and number of hours for each course, and the name of the training provider.

## **Rule 41. Public Attendance at Hearings**

### **(a) Definitions.**

- (1) “Public” includes anyone who is not a party, an attorney, or a CASA.
- (2) “Personal identifiable information” includes a person’s name, address, date of birth, social security number, tribal enrollment number, telephone numbers, driver’s license number, places of employment, school or military affiliation, or any other distinguishing characteristic that tends to identify a specific party, participant, or person involved in the case.

**(b) Open Hearings.** As required by A.R.S. § 8-525, court hearings concerning dependent children, permanent guardianships of children, and termination of parental rights are open to the public, except as required by A.R.S. § 8-537. This includes court hearings concerning child abuse, abandonment, or neglect that resulted in a fatality or near fatality subject to the requirements in section (c).

**(c) Request for Closed Hearings and Considerations.** At the first hearing in any dependency, permanent guardianship, or termination of parental rights hearing, the court must ask the parties if there are any reasons the hearings should be closed. If the court determines there is good cause to order the hearing closed, the court must enter written findings that include the following factors:

- (1) whether doing so is in the child’s best interests;
- (2) whether an open hearing 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 need protection;
- (4) whether all the parties have agreed that the hearing should be open;
- (5) the wishes of a child at least 12 years of age who is a party to the hearing; and
- (6) whether an open hearing could cause specific material harm to a criminal investigation.

### **(d) Subsequent Proceedings.**

- (1) For good cause, the court may order any subsequent open hearing closed to the public after consideration of the factors above.
- (2) If the court has closed a hearing, a person may request the court to reopen a specific hearing to the public. The court must consider the factors above.

**(e) Request for a Transcript.** If the court has closed a hearing relating to child abuse, abandonment, or neglect that has resulted in a fatality or near fatality, any person may request a transcript of the previously closed hearing pursuant to A.R.S. § 8-525(G). The person who requested the transcript must pay the cost of the transcript. If the court grants a request for a transcript of a closed hearing, the court must redact from the transcript any information that:

- (1) is essential to protect the privacy, well-being or safety interests described in section (c);
- (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 DCS information would likely endanger the person's safety; and
- (3) is confidential by law, which the court must maintain according to applicable law.

**(f) Admonition at Public Hearings.** At the beginning of a hearing that is open to the public, the court must admonish all public attendees as follows: "You are prohibited from disclosing outside this hearing personal identifiable information about the child, the child's siblings, parents, guardians, caregivers, and others mentioned in the hearing. You are advised that by remaining in the courtroom or by remaining present by telephone or video conference after this admonition, you have submitted yourself to the power of the court for purposes of this order. Failure to follow this order is contempt of court for which you could be fined or given time in jail."

**(g) Limitations for Order and Decorum.** The court may impose reasonable restrictions on the public's attendance to maintain order and decorum in the courtroom.

**Rule 41.1. Child's Rights**

- (a) Initial Hearing.** A child who is the subject of a dependency, permanent guardianship, or termination of parental rights action has the right to attend court hearings and to speak to the judge. At the first hearing, the court must determine that the child was informed of and understands these rights.
- (b) Later Hearings.** At every hearing thereafter, if the child is not present, the court must inquire whether the child requested to attend the hearing.

## **Rule 41.2. Participants' Rights**

- (a) Right to Notice.** If DCS is a party, it must provide notice of the date, time, and location of all hearings that will be held concerning the child to:
- (1)** the child's current out-of-home placement;
  - (2)** pre-adoptive placement or any relative identified as a possible placement for a child who is in out-of-home care and under the responsibility of DCS;
  - (3)** for any periodic review hearings under A.R.S. § 8-847, any placements where the child has resided for more than 10 days during the past 6 months; and
  - (4)** a participant Indian tribe that has not intervened or is not endorsed on the court's minute entries. *See* 25 C.F.R. § 23.111.
- (b) Right to be Heard.** Participants have a right to be heard at any hearing regarding a child.
- (c) Status.** Although participants have the right to notice and the right to be heard, they do not have the status of parties.
- (d) Duties.** Participants with whom a child is placed by DCS have a continuing duty to provide DCS with a current and correct mailing address, including any address protected by court order.
- (e) Review Hearings.** This rule does not limit the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.
- (f) Limiting a Participant.** The court may limit the presence of a participant to the time the participant is heard or testifies, if:
- (1)** it is in the best interest of the child; or
  - (2)** it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

## **Rule 42. Telephonic Testimony, Video Conferencing**

- (a) **Generally.** Upon the court’s own motion or motion by a party, the court may permit telephonic testimony or argument or video conferencing in any dependency, Title 8 guardianship or termination of parental rights hearings. The motion must be in writing pursuant to Rule 46, unless otherwise authorized by the court. Before granting the motion, the court must consider the due process rights of any objecting party.
- (b) **Meaning of “Telephonic.”** When used in this rule, “telephonic includes an appearance or testimony by telephone, by video conferencing, or by other available audio and video technology.
- (c) **Appearance of a Party at a Non-Evidentiary Proceeding.** The court may allow or direct a party to appear telephonically at a non-evidentiary hearing in any dependency, Title 8 guardianship, or termination of parental rights proceeding, if each person will be audible to every other person participating in the proceeding, including the judge, and, if applicable, to the electronic recording system or court reporter.
- (d) **Testimony of a Party or Witness at an Evidentiary Proceeding.** On request of a party or witness or on its own, the court may allow or direct a party or witness to testify telephonically in any dependency, Title 8 guardianship, or termination of parental rights proceeding if the court finds it would not substantially prejudice any party and the testifying party or witness:
- (1) is not reasonably able to attend the hearing or trial;
  - (2) would be unduly inconvenienced by attending the hearing or trial; or
  - (3) would incur burdensome expense to attend the hearing or trial in-person.
- (e) **Request to Testify by a Telephonic Appearance.**
- (1) **Time.** A party must file a request to have a party or witness give telephonic testimony within a time that allows the opposing party a reasonable opportunity to respond.
  - (2) **Hearing.** The court may rule on the request with or without a hearing.
- (f) **Introducing Documents During Telephonic Testimony.** To introduce exhibits through a party or witness who testifies telephonically:
- (1) the party calling the witness must make a good faith effort to contact the opposing parties to identify exhibits that will be used during the witness’s testimony;

- (2) the exhibits must be provided in advance to the party or witness;
- (3) the party who introduces the exhibits must affirm that they are accurate copies of the exhibits provided to the party or witness who is appearing telephonically; and
- (4) if the party seeks to examine or cross-examine a witness regarding a previously introduced exhibit that has not yet been provided to the testifying witness, the court must allow the party a reasonable opportunity to provide an accurate copy of the exhibit to the witness who is appearing telephonically, including granting a recess or continuance if necessary.

**(g) Responsible Party.** The party requesting a telephonic appearance, or who presents a witness's testimony telephonically, must arrange to pay the related cost, unless the court orders otherwise.

### **Rule 43.1. Change of Venue**

**(a) Generally.** On its own motion, a party's motion, or by joint motion of all parties, the court may transfer the venue of a dependency, termination, or Title 8 guardianship proceeding to a different county.

**(b) Factors.** The court must consider the following factors before ordering a change of venue:

- (1) whether it would serve the convenience of the parties and witnesses;
- (2) whether it would preserve the orderly administration of the case;
- (3) the positions of the parties; and
- (4) any other factor that promotes the interests of justice.

**(c) Procedure in the Sending County.**

- (1) The court in the sending county must set a hearing before ordering a change of venue. The parties must attend the hearing.
- (2) Before the hearing, the court in the sending county must contact the court in the receiving county and obtain a date, time, and location for the first court proceeding in the receiving county. Both counties must informally confirm that the first court proceeding in the receiving county is conditioned on the sending court ordering a change of venue.
- (3) If, at the hearing, the sending court orders a change of venue, it must on the record advise the parents of the next court date and time, the courthouse location in the receiving county, and the consequences of failing to appear for the next court date. The courtroom clerk must ensure that the date and time of the next hearing, as well as the courthouse address, are included in the sending court's minute entry, and must provide a copy of the minute entry to the presiding juvenile judge in the receiving county.
- (4) Within 10 days after entry of an order changing venue, the court clerk in the sending county must forward a certified copy of the legal file, together with a transmittal letter, to the court clerk in the receiving county. Upon receipt, the transmittal letter must be signed by court clerk in the receiving county and returned to the court clerk in the sending county.
- (5) If the sending court denies a change of venue, it must within 10 days request the court in the receiving county to vacate the conditional hearing date.

**(d) Procedure in the Receiving County.**

- (1) Upon receipt of an order changing venue, the receiving county must assign the matter a new case number.
- (2) Upon receipt of the order and when necessary, the court in the receiving county must appoint new counsel. New counsel must appear in the new case number as counsel of record pursuant to Rule 39. The receiving court must endorse the parties' former counsel on its order or minute entry appointing new counsel.
- (3) If the receiving court appoints new counsel, counsel in the sending county must withdraw as provided in Rule 39. Counsel in the sending county must share all files, other communications and client contact information with new counsel in the receiving county within 14 days after receipt of the notice of appointment of new counsel. This sharing of information does not waive the attorney-client privilege or confidentiality claims.

**(e) Request Pending Hearing.** If an initial, adjudication, or publication hearing is pending in the sending county when a party moves to transfer venue, the court may:

- (1) deny the motion without prejudice;
- (2) defer action on the request pending a conclusion of the initial, adjudication, or publication hearing; or
- (3) grant the motion effective on a specified date after the initial, adjudication or publication hearing.

## **Rule 44. Disclosure and Discovery**

### **(a) Generally.**

- (1) ***Duty to Disclose.*** A party must disclose to other parties all relevant information that is not privileged. A party must allow other parties to inspect materials, with or without copying and regardless of whether those materials are in physical, paper, or electronic form.
- (2) ***Manner of Disclosure.*** A party should disclose information in the least burdensome and most cost-effective manner.
- (3) ***Limits on Secondary Dissemination.*** A person who receives disclosure must maintain the confidentiality of the information received and must not further disclose the information unless disclosure is authorized by A.R.S. § 8-807 or court order.

**(b) Time Limits for Disclosure for Preliminary Protective Hearings.** The parties must disclose all documents within their possession that are subject to disclosure at least 24 hours before the preliminary protective hearing. If disclosure is untimely, the court may continue the hearing.

**(c) Ongoing Disclosure Requirement.** Unless the court orders otherwise, any relevant document thereafter received by or prepared by a party must be disclosed within 10 days after its receipt or preparation. If a party receives or prepares a document fewer than 10 days before a hearing, the party must disclose it as soon as practicable before the hearing.

### **(d) Pretrial Disclosure Statements in Contested Dependency, Title 8 Guardianship, and Termination Adjudication Hearings.**

- (1) Unless the court orders otherwise, the parties must file pretrial disclosure statements containing the following information at least 30 days prior to the contested adjudication:
  - (A) the uncontested facts deemed material;
  - (B) the contested issues of fact and law that may be material or applicable;
  - (C) a statement of other issues of fact or law that the party believes to be material;
  - (D) a list of the witnesses the party intends to call at trial, including the names, addresses, email addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good cause, a party may not call a witness at trial who was not disclosed in

accordance with this rule. A disclosure statement must note if a witness's testimony will be offered in the form of a deposition; and

(E) a list and copies of all exhibits the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection stating the specific grounds for each objection within 10 days after receiving the list of exhibits. A party waives specific objections or grounds not identified in the notice of objection unless the court allows otherwise. A party may not use exhibits at trial other than those disclosed in accordance with this rule, except for good cause.

(2) Unless the court orders otherwise, parties may supplement their list of witnesses and exhibits for the adjudication hearing no later than 10 days before the hearing.

(e) **Methods of Discovery.** The parties may agree to utilize the discovery methods in Civil Rules 26-37. Absent such agreement, a party may utilize those discovery methods only after the court grants a party's motion stating why these methods are necessary. Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances under Rule 55(b).

(f) **Disclosure in Contested Hearings Other Than Adjudications.** If information is intended for use in a contested hearing other than a dependency, guardianship, or termination adjudication, parties must disclose the information as follows:

(1) if the contested hearing requires a report prepared by DCS, all parties must disclose relevant information by the date the report is due according to statute or rule; and

(2) if the contested hearing does not require a report prepared by DCS, the parties must disclose all relevant information at least 10 days prior to the hearing or as ordered by the court.

(g) **Sanctions.** Upon a party's motion or on its own, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include granting a continuance, precluding evidence, or entering any order the court deems appropriate. Any sanction should accord with the intent of these rules as set forth in Rule 36 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

**Rule 45. [Reserved; *See* Rule 3.1. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence] Abrogated**

## **Rule 46. Motions**

- (a) **Form.** Motions must be in writing, unless otherwise authorized by the court, and state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.
- (b) **Filing.** A motion must be filed with the clerk. A copy of the motion must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding juvenile judge or that judge's designee. The filing party must serve all other parties with a copy of the motion pursuant to Rule 8.
- (c) **Response.** If the moving party serves the motion by hand delivery, fax, or electronic means, a response to a motion must be filed no later than 5 days after service. If the motion is served by mail, a response is due no later than 10 days after service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.
- (d) **Court Ruling.** Except as these rules or statutes provide otherwise, if no party objects or the time for a response has expired, the court may rule on the motion with or without a hearing.

## **Rule 46.1. Altering or Amending a Final Order**

### **(a) Generally.**

- (1) ***Meaning of Final Order.*** The meaning of “final order” is provided in Rule 103(b).
- (2) ***Grounds for Altering or Amending a Final Order.*** On its own motion no later than 12 days after the entry of a final order and with notice to the parties, or on a party’s motion, the court may alter or amend a final order on the ground that the court did not enter sufficient findings of fact or legal conclusions as required by law, or for a clerical mistake or a mistake arising from oversight or omission.

### **(b) Time to File a Motion; Response.**

- (1) ***Motion.*** A party’s motion under this rule must be filed no later than 12 days after the entry of a final order. The juvenile court may extend this deadline or excuse an untimely motion only on a showing of extraordinary circumstances.
- (2) ***Response.*** No later than 10 days after a party files a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant the motion without providing the non-moving party an opportunity to file a response.
- (3) ***Contents of Response.*** The response must address any issues raised in the motion, unless limited by the court. The response should also address any issues that might arise if the motion is granted.

**(c) Court Action.** The court may deny the motion, or it may vacate a final order and enter a new or amended order.

**(d) Successive Motions.** A party may not file a motion to alter or amend an order granting or denying a party’s motion under this rule.

**Rule 46.2. Motion to Continue, for Summary Judgment, and to Set Aside a Final Order**

- (a) **Motion to Continue.** A motion to continue must be made in good faith and must state good cause for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits.
- (b) **Motion for Summary Judgment.** A motion for summary judgment must conform to the requirements in Civil Rule 56, except that if the motion would dispose of an issue set for a scheduled adjudication, the motion must be filed no fewer than 45 days before the adjudication hearing. An opposing party must file a response no later than 20 days after the filing of the motion. The court may modify the time for filing the motion and response.
- (c) **Motion to Set Aside a Final Order.** A motion to set aside a final order must conform to the requirements of Civil Rule 60(b) – (d), except that the motion must be filed no later than 6 months after entry of the final order unless the moving party alleges grounds under Rule 60(b)(1), (2), or (3), in which case the motion must be filed no later than 3 months after entry of the final order.

### **Rule 46.3. Motion for Judgment as a Matter of Law**

#### **(a) Generally.**

- (1) A party other than the petitioner may make a motion for judgment as a matter of law as to some or all of the grounds or allegations in a petition or motion at the conclusion of a petitioner's presentation of evidence. When used in this rule, "petitioner" is the party who initiated a dependency, permanent guardianship, or termination action, either by petition or motion.
- (2) A party making a motion under this rule must identify the specific ground or allegation the party is challenging and the legal and factual basis for the motion.
- (3) When considering a motion under this rule, the court must view the evidence and all reasonable inferences in the light most favorable to the petitioner.
- (4) The court may grant a motion under this rule only if the facts presented in support of the petition have so little probative value that no judge could reasonably find for the petitioner.
- (5) The court must promptly rule on the motion. The parties are not required to present further evidence until the court decides the motion.

**(b) Required Inquiry.** Before granting a motion under this rule, the court must inquire if any party other than the petitioner wishes to present evidence in support of the grounds or allegations in the petitioner's motion or petition, and if so, the court must allow the party to present evidence.

**(c) Dependency Adjudication.** The court must grant the motion if it finds that the petitioner has not provided sufficient evidence to establish that the child is a dependent child pursuant to A.R.S. § 8-201(15)(a).

**(d) Termination Adjudication.** The court must determine whether to grant a motion under this rule based on the sufficiency of the evidence for each ground or allegation challenged by the motion.

- (1) **Grounds.** The court must dismiss each ground for which there is insufficient evidence. It must proceed with the adjudication on any remaining ground.
- (2) **Best Interests.** If the court finds sufficient evidence on any of the remaining grounds, it must grant the motion if it determines that the petitioner has failed to provide sufficient evidence to establish that the termination would be in the child's best interests.

- (e) Guardianship Adjudication.** The court must grant a motion under this rule if the court finds that there is not sufficient evidence to prove the grounds for permanent guardianship.
- (f) ICWA.** If ICWA applies in any of the adjudications described in sections (c), (d), or (e), any party may move for a judgment under this rule on whether the petitioner has provided sufficient evidence as required by 25 U.S.C. § 1912 and 25 C.F.R. Part 23.
- (g) Findings.** If the court grants a motion under this rule in whole or in part, the court must make written findings in a signed minute entry or order that support granting the motion.

## **Rule 47. Release of Information**

**(a) Records Confidential Generally.** All records of proceedings under Rule 47.3 and of dependency, guardianship under A.R.S. §§ 8-871 through 8-874, termination of parental rights, and other related proceedings are confidential and must be withheld from public inspection unless authorized by law, rule, or court order.

**(1) Access without court order.** A parent, petitioner, or when named as a party, a court-appointed legal guardian or DCS, may inspect and copy case records while that individual remains a party to the case. On appeal, a party may inspect and copy records created prior to the ruling upon which the appeal is taken. The following other individuals and entities are authorized to inspect and copy case records without review by the court:

- (A)** a current party's attorney of record, and current guardian ad litem;
- (B)** Arizona judicial officers, clerks, administrators, professionals, or other staff employed by or working under the supervision of the court, including staff of the Administrative Office of the Courts, dependent children's services division, or the local foster care review boards as needed to carry out their assigned duties;
- (C)** Court Appointed Special Advocates pursuant to A.R.S. § 8-522(F);
- (D)** a designated member or staff of the Arizona Commission on Judicial Conduct performing duties under the Commission's rules;
- (E)** a court-appointed legal guardian not a party to the case who requests a certified copy of the guardian's appointment order during the term of the guardian's appointment; and
- (F)** a designee of ADJC as needed to carry out the designee's assigned duties for any individual who is subject to a commitment order.

**(2) Access by court order.** The following individuals and entities must obtain a court order before inspecting the case record:

- (A)** an individual who was the subject of a dependency, a guardianship under A.R.S. §§ 8-871 through 8-874, or a termination of parental rights action as a minor;
- (B)** an individual who is not qualified under subpart (a)(1) or whose parental rights were terminated or who was dismissed from the case;

- (C) a designee of DCS when DCS is not a party in the case upon a showing that inspection is required to carry out DCS responsibilities;
- (D) a foster parent to inspect and copy records other than records a foster parent is authorized to inspect under A.R.S. § 8-514(D)(5);
- (E) a participant as defined under Rule 37(c); and
- (F) any other individual or entity not otherwise authorized by this rule to inspect records.

**(b) Inspection of Court Records.** Any person may file a request with the court to inspect court records in a case involving child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court must consider:

- (1) whether doing so is in the child's best interests;
- (2) whether inspection of records would endanger the child's physical or emotional well-being or the safety of another person;
- (3) the privacy rights of the child, the child's siblings, parents, guardians, caregivers, and any other person whose privacy rights the court determines need protection;
- (4) whether all parties have agreed to allow the inspection;
- (5) the child's wishes if the child is at least twelve years of age and a party to the proceeding; and
- (6) whether inspection of records could cause specific material harm to a criminal investigation.

**(c) Redaction.** If the court grants the request for inspection of court records, the court must redact any information subject to the requirements of A.R.S. § 8-525(B)(1) through (6) and A.R.S. § 8-807.01(A)(1).

### **Rule 47.1. Mandatory Judicial Determinations**

- (a) **Priority.** The court's first priority after a child is removed from the child's home is protecting the child from abuse or neglect.
- (b) **Generally.** As required by this rule, the court must make the following mandatory determinations in writing within the designated times and must state in a written order or minute entry a factual basis for each determination.
- (c) **The Court's First Order.**
- (1) In the court's first order that authorizes the removal of a child from the home in a dependency proceeding, which may be a temporary order that is entered on the filing of a dependency petition, the court must determine in writing whether continuation of the child's residence in the home would be contrary to the welfare of the child. The court must include a factual basis for its determination.
  - (2) After the child is removed from the home, the court must determine in writing if reasonable efforts were made to prevent the child's removal or if it was reasonable to make no efforts to prevent the child's removal. The court's reasonable efforts determination must also include a factual basis. If the court does not make this finding in its first order, the court must make the finding no later than 60 days after the removal.
- (d) **At the Preliminary Protective Hearing and Initial Dependency Hearing.** At the preliminary protective hearing and the initial dependency hearing, the court must determine whether DCS is attempting to identify and assess:
- (1) placement of the child with the child's grandparent or other member of the child's extended family, including a person who has a significant relationship with the child; and
  - (2) placement of the child with the child's siblings, if such placement is possible and is in the child's best interests.
- (e) **Periodic Review Hearings.** At periodic review hearings required by A.R.S. § 8-847, the court must determine whether:
- (1) DCS has identified and assessed placement of the child with a relative or person who has a significant relationship with the child;
  - (2) the parent or guardian provided the court with the names, relationships, and all available contact information of persons related to the child, or who have a significant relationship with the child, or the parent or guardian informed the

court that there is insufficient information available for locating a relative or person who has a significant relationship with the child; and

- (3) the parent or guardian immediately informed DCS of new information concerning the existence or location of a relative or person with a significant relationship with the child.

**(f) 60 Days After Removal from the Home.**

- (1) If the court did not previously make the findings required by subpart (c)(2), the court, no later than 60 days after the child's removal from the child's home, must determine if reasonable efforts were made to prevent removal of the child, or if it was reasonable to make no efforts to prevent the child's removal.
- (2) As provided by A.R.S. § 8-829(A)(4), no later than 60 days after the child is removed from the child's home, if the child is not placed with a grandparent, another member of the child's extended family, or a person with a significant relationship with the child, the court must determine why such placement is not in the best interest of the child.
- (3) If the child is not placed with a grandparent or another member of the child's extended family including a person with a significant relationship with the child within 60 days after the child is removed from the child's home, the court must determine why such placement is not in the best interest 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.

**(g) 6 Months After Removal of a Child Less Than 3 Years of Age.** If the child was less than 3 years of age at time of removal, the court must determine, no later than 6 months after the child was removed from the child's home, whether DCS made reasonable efforts to provide reunification services to the parent and whether that parent substantially neglected or willfully refused to participate in those reunification services.

**(h) 12 Months After Removal and Thereafter.** No later than 12 months after the child was removed from the child's home, and at least once every twelve months thereafter, the court must determine if reasonable efforts were made to finalize the existing permanency plan. The court's order must be in writing and contain a factual basis for the court's finding.

**(i) The Permanency Hearing.** At the permanency hearing held pursuant to A.R.S. § 8-862, the court must determine the efforts that were made to place the child with the child's siblings, or to provide the child with frequent visitation or contact with the child's siblings, unless the court determines that placement, visitation, or contact with

all or any siblings is not possible or would be contrary to the child's or a sibling's safety or well-being.

- (j) Extended Foster Care Finding.** No later than 120 days after DCS submits a qualified young adult's signed voluntary agreement to participate in an extended foster care program pursuant to A.R.S. § 8-521.02, the juvenile court must determine in writing whether participation is in the qualified young adult's best interest.

**Rule 47.2. Minute Entries**

An unsigned minute entry constitutes an order of the court. However, to be appealable, an order must be signed as required by Rule 103.

### **Rule 47.3. Court Authorized Removal**

**(a) Generally.** A child safety worker, a child welfare investigator, or a peace officer (collectively referred to in this rule as “the applicant”) may submit an application under oath requesting court authorization for DCS to take temporary custody of a child. The court must then determine whether to authorize DCS to take temporary custody of a child. *See* A.R.S. § 8-821.

**(b) Burden of Proof.** The applicant must state specific facts showing that probable cause exists to believe:

- (1)** court authorization for DCS to take temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect; and
- (2)** it would be contrary to the child’s welfare if the child remained in the home.

If the applicant has reason to know the child is an Indian child, the applicant must also state facts that support a finding that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child, as required by 25 C.F.R. § 23.113(b)(1). The applicant also must provide the information in the application and in a dependency petition, as required by 25 C.F.R. § 23.113(d).

**(c) Procedure.**

**(1) Application.** An applicant may request the court to authorize DCS to take temporary custody of a child by submitting the application to a judicial officer designated by the Maricopa County superior court presiding judge to receive and respond to applications under this rule. The application must state:

- (A)** the applicant’s professional qualifications;
- (B)** the particular reasons that each child is presently or imminently in danger of abuse or neglect;
- (C)** a detailed account of facts and circumstances that require authorization of temporary custody;
- (D)** efforts made to determine the availability of less restrictive voluntary options, including care by a parent or relative, that effectively removes or controls the danger; and
- (E)** the identity and description of each child for whom temporary custody authorization is sought.

**(2) Form.** The application must be in a written format and manner approved by the Supreme Court Administrative Director. If an applicant is unable to submit a

written application, the applicant may apply for authorization of temporary custody by a recorded oral statement or by other means acceptable to the court. The recorded oral statement or other means of communication must be submitted under oath and otherwise comply with this rule.

- (3) **Evidence.** Evidence in support of an application may include reliable hearsay, in whole or in part.
- (4) **Consideration.** As soon as possible after receipt of a written application or an oral statement, a designated judicial officer will consider the application *ex parte*. The judicial officer may question the applicant and any witnesses. Any additional information must be submitted in writing or by recorded oral statement.

**(d) Findings and Order.**

- (1) **Content.** An order granting an application must:
  - (A) identify and describe each child with reasonable particularity;
  - (B) identify the factual basis for authorizing temporary custody of each child;
  - (C) state whether there is probable cause to believe that authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect;
  - (D) state whether remaining in the child’s home is contrary to the welfare of the child as required by Rule 47.1(a); and
  - (E) if there is reason to know that the child an Indian child, find that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child, as required by 25 C.F.R. § 23.113(b)(1).
- (2) **Form.** If the applicant and judicial officer are not in each other’s physical presence, the judicial officer may do one of the following:
  - (A) sign the order authorizing temporary custody using an electronic signature to serve as the original order,
  - (B) sign an electronically transmitted version of the original order, which is then deemed to be the original, or
  - (C) orally authorize the applicant to sign the judicial officer’s name on the order, after which:
    - (i) the judicial officer must record the time and date of issuance of an orally authorized order on the original order, and

- (ii) the applicant must send a duplicate original order to the judicial officer who issued the order.
- (3) **Notice.** When the Temporary Custody Notice (TCN) is provided as required by law, DCS must provide the parent or other custodian a copy of the application and the order authorizing temporary custody unless DCS determines disclosure would cause harm under A.R.S. §§ 8-471, -807, or other provisions of state or federal law, and DCS provides notice of the order in the TCN.
- (4) **Duration, Extension, and Expiration.**
  - (A) **Duration of Order.** DCS may execute the order for 10 calendar days from the date of issuance or until a material change in the factual basis for the probable cause determination, whichever comes first.
  - (B) **Inpatient Care Extension of Order.** If the child who is the subject of the order is receiving inpatient care when the order is sought and there is no material change in the factual basis for the probable cause determination, DCS may execute the order until the later of 10 days from the issuance of the order or the child's discharge from inpatient care.
  - (C) **Expiration of Temporary Custody.** A child shall not remain in temporary custody for more than 72 hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in Rules 50 and 51.
- (5) **Filing.** The application and order must be filed if a dependency petition is filed.

**Rule 48. Petition, Temporary Orders and Findings, Notice of Preliminary Protective Hearing, Amended Petition**

**(a) Form and Content of a Petition.**

- (1) **Generally.** A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child.
- (2) **Verification.** A petition must be verified and contain a concise statement of facts to support the conclusion that the child is dependent.
- (3) **Form.** A petition must include the information described in A.R.S. § 8-841(B) and (C).
- (4) **Caption.** The petition must be captioned, “In the Matter of \_\_\_\_\_, a person under the age of 18 years.” A petition seeking in-home intervention must include in the caption the words “In-home intervention requested” in parentheses below the words “Dependency Petition.”

**(b) Temporary Orders and Findings.** If the petition establishes that the best interests of the child require immediate action, the court may enter an order that makes the child a temporary ward of the court and may enter orders that address the physical custody of the child pending the preliminary protective hearing. The court also may enter temporary orders as necessary for the child’s safety and welfare and must make determinations required by Rule 47.1 and other findings required by law.

**(c) Setting a Preliminary Protective Hearing.** The court must set a preliminary protective hearing not less than 5 nor more than 7 days after the child is taken into custody, excluding weekends and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party, or for other good cause, the court may grant one continuance that does not exceed 5 days.

**(d) Notice of the Preliminary Protective Hearing.** In addition to information required by A.R.S. § 8-841(E), a notice of hearing must inform the parent, guardian, or Indian custodian:

- (1) that a failure to appear at the preliminary protective hearing without good cause may result in a finding that the parent, guardian, or Indian custodian has waived their legal rights and is deemed to have admitted the allegations in the petition;
- (2) that the hearing may proceed in their absence and may result in an adjudication of dependency, the termination of their parental rights, or the establishment of a permanent guardianship; and
- (3) of their right to request that the hearing be closed to the public.

**(e) Amended Petition.** At least 30 days before trial, the petitioner may move for a court order permitting amendments to a petition. If the request is made less than 30 days before trial, the petitioner must show good cause for the timing. Leave to amend must be freely given when justice requires. The motion must include the proposed amended petition. An amended petition must be served under Civil Rule 5(c).

### **Rule 48.1. In-home Intervention**

**(a) Generally.** In-home intervention allows a child to stay in the home after the filing of a dependency petition, while remaining under the supervision of DCS and the court and subject to criteria established in A.R.S. § 8-891 and subpart (b)(2) of this rule.

**(b) Procedure.** The petitioner may request in-home intervention in the dependency petition. Regardless of whether the petitioner made the request in the dependency petition, the court may order in-home intervention if the court makes all the findings required by subpart (b)(2) of this rule.

**(1) Hearing.** The court may consider in-home intervention at any time prior to the dependency adjudication. At a hearing when in-home intervention is considered, the court must ask whether the parent, guardian, or Indian custodian agrees to in-home intervention and to participate in services. In open court, the court must provide Form 1A, request that the parent, guardian, or Indian custodian return the signed form, and note on the record that the form was provided. If the parent, guardian, or Indian custodian does not agree to in-home intervention, the court may allow the petitioner to file an amended dependency petition.

**(2) Findings.** Before ordering in-home intervention, the court must find all the following:

**(A)** the child has not been removed from the home pursuant to A.R.S. §§ 8-821 through 8-831;

**(B)** in-home intervention appears likely to resolve the risk issues described in subpart (b)(2)(D);

**(C)** the parent, guardian, or Indian custodian agrees to a case plan and participation in services; and

**(D)** one of the following conditions exists:

**(i)** the child is at risk of harm because the parent, guardian, or Indian custodian is unable or unwilling to provide food, clothing, shelter, or medical care; or

**(ii)** the parent, guardian, or Indian custodian is unable to provide proper care, control, and supervision of the child.

**(3) Orders.** The in-home intervention order may include a training or treatment plan for the parent, guardian, or Indian custodian and the child. The order must include a specific time for completion of in-home intervention, which may not exceed one year from the date of the filing of the petition without the court's review and approval. The petitioner must file a status report with

recommendations at least two weeks before the review hearing. The court must dismiss the dependency petition if the time for completing in-home intervention has expired without a court extension or a dependency adjudication hearing has not been set.

- (4) ***Non-compliance.*** If the parent, guardian, or Indian custodian violates the in-home intervention order, the court may take whatever steps it deems necessary to obtain compliance, or it may rescind the order and set a dependency adjudication hearing. The court may allow the petitioner to file an amended dependency petition. If the court orders removal, the court must make the determinations required by Rule 47.1.

## **Rule 48.X. Service of the Dependency Petition, Temporary Orders, and Notice of Hearing**

- (a) **Service or Acceptance of Service.** Service is complete when the dependency petition, temporary orders, and a notice of the dependency hearing:
- (1) are provided to a parent at the preliminary protective conference or at the preliminary protective hearing; or
  - (2) if the parent signs an acceptance of service any time after the dependency petition is filed.
- (b) **Other Methods of Service.** If a parent is not served pursuant to section (a), the petitioner must serve copies of the dependency petition, temporary orders, and a notice of the dependency hearing on the parent as soon as possible after the petition is filed but no fewer than 5 days before the initial dependency hearing or the continued initial dependency hearing, or 10 days before the hearing when a parent is served by publication. Service must be in the manner provided by Civil Rules 4(f), 4.1, or 4.2 or as otherwise provided by this rule. For dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows:
- (1) **No summons.** References to service of summons are inapplicable because no summons is issued.
  - (2) **Petitioner and respondent.** References to “plaintiff” mean the petitioner. References to “defendant” or “respondent” mean the parent.
  - (3) **No written response.** No responsive pleading to the petition is required. However, a party served must appear at the time and place indicated on the notice of the dependency hearing and temporary orders served with the petition.
- (c) **Service within Arizona.** If a parent is not served pursuant to section (a), service of process on a parent within Arizona must be completed pursuant to Civil Rule 4.1(d). When warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g), (k), or (l).
- (d) **Service within Arizona but Outside the County.** When the petitioner knows the address of a parent who resides outside the county where the petition is pending, the petitioner may serve the parent by mailing a copy of the petition, notice of hearing, and temporary order through the postal office or a national courier service, with a return receipt. When the post office or national courier service has returned the signed receipt, the petitioner must file with the clerk an affidavit stating:
- (1) the circumstances warranting the utilization of service by mail;

- (2) that copies of the petition, notice of hearing and temporary orders were mailed to the person being served;
- (3) that the copies were in fact received by the person to be served as evidenced by the receipt, a copy of which must be attached to the affidavit; and
- (4) the date of receipt by the party being served and the date the receipt was received by the sender.

The affidavit is prima facie evidence of personal service of the petition, notice of hearing, and temporary orders, and service is deemed complete from the date of receipt by the party being served, provided that such completion is no fewer than 5 days before the hearing and that the affidavit required by this section has been filed prior to or at the time of hearing.

- (e) **Service Outside Arizona.** Service outside the state must be completed pursuant to Civil Rule 4.2(a), (c), (f), (i), or (j).
- (f) **Service on an Incarcerated Person.** A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service, with the return or confirmation of service completed by an official of the jail, prison, or correctional facility. The signature of an official of the jail, prison, or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. In addition, the petitioner must send copies of the documents being served to the inmate, and to the inmate's assigned dependency attorney, by first class mail.
- (g) **Serving a Conservator for a Minor.** If a conservator has been appointed for the child, the conservator must be served pursuant to Civil Rule 4.1.
- (h) **Service under ICWA.**

- (1) If the petition alleges or the court has reason to know the child at issue is an Indian child, then in addition to service of process as required by these rules, the petitioner must notify the parent, Indian custodian, and child's tribe or tribes as ICWA requires. The petitioner must provide notice by registered or certified mail with a return receipt requested.
- (2) If the identity or location of the parent or Indian custodian cannot be determined, the petitioner must give notice to the Secretary of the Interior by certified mail with a return receipt requested. The Secretary of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the

tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

(3) The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

(i) **Waiver under ICWA.** The parent, Indian custodian, or the child's tribe may waive the 10-day notice requirement pursuant to ICWA and allow the preliminary protective hearing to proceed within the time limit provided by state law.

#### **COMMENT TO 2022 AMENDMENT**

The provision permitting the parent, Indian custodian, or the child's tribe to waive the 10-day notice requirement does not conflict with ICWA and reflects current practice in some counties. Inclusion of the waiver provision allows timely disposition of cases without interfering with the rights afforded the parent, Indian custodian, or the tribe under ICWA. When the preliminary protective hearing is held as an emergency hearing under ICWA § 1922 and 25 C.F.R. § 23.113 the 10-day notice requirement does not apply.

## **Rule 49. Preliminary Protective Conference**

- (a) Generally.** A preliminary protective conference must be held before the preliminary protective hearing. The conference facilitates the resolution of issues in a non-adversarial manner.
- (b) Appointment of a Facilitator.** The court must appoint a facilitator before the start of the preliminary protective conference. The facilitator may not be a party or the representative of a party to the proceeding. The facilitator must encourage all those attending the conference to participate, communicate, and identify areas on which the parties can agree.
- (c) Attendance.** Persons who are authorized by A.R.S. § 8-824(B) to attend a preliminary protective hearing may attend a preliminary protective conference. The court may impose reasonable restrictions upon those in attendance if restrictions are required by the physical limitations of the facility, to maintain order and decorum, or to ensure the ability of the parties to fully participate in the conference.
- (d) Procedure.** The facilitator, parties, and participants must meet outside the presence of a judge to try to reach agreement on the custody and placement of the child, parenting time, visitation, and the services to be provided to the child and family. The parties will proceed to the preliminary protective hearing when the conference concludes.
- (e) Use of Statements.** Statements made by parties and participants during the conference are not protected and may be used in future proceedings.

## **Rule 50. Preliminary Protective Hearing**

**(a) Generally.** At the preliminary protective hearing, the court must determine whether continued temporary physical custody of the child is necessary, giving paramount consideration to the health and safety of the child.

### **(b) ICWA.**

**(1) *Inquiry.*** The court must inquire at the start of the hearing if any party or participant has reason to know under 25 C.F.R. § 23.107 that the child is an Indian child.

**(2) *Emergency Removal or Placement.*** If there is a reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian, the preliminary protective hearing must meet the requirements for an emergency hearing as provided in ICWA § 1922 and 25 C.F.R. § 23.113. The petition or accompanying documents must contain the information listed in 25 C.F.R. § 23.113, including the efforts to contact the parent, Indian custodian, and tribe about the emergency proceeding.

### **(3) *Proceedings.***

**(A)** The court must determine whether a judicial officer made a finding before the dependency petition was filed regarding the child's removal from the home, as provided by Rule 47.3(D)(1) and 25 C.F.R. § 23.113(d) and affirm the findings. Or, if a judicial officer did not previously make that finding, then it must find whether the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child pursuant 25 C.F.R. § 23.113(d). A parent may request a hearing to contest the finding.

**(B)** If a judicial officer finds that the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child, the court must affirm the child's placement.

**(C)** If the court has made a finding that emergency removal or placement was not necessary to prevent imminent physical damage or harm, the court must return the child to the parent or Indian custodian, unless the court finds that returning the child to the child's parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger, as provided by 25 C.F.R. § 23.114.

**(D)** A parent or Indian custodian has a right to request a temporary custody hearing under Rule 51.

- (4) **Notification.** If there is a reason to know that the child is an Indian child, the court must order:
- (A) that the petitioner notify the parent, Indian custodian, the Indian child's tribe, or the Secretary of the Interior by registered or certified mail, as required by ICWA § 1912 (a); or
  - (B) If the court does not have sufficient evidence to determine that the child is an Indian child, then pursuant to 25 C.F.R. § 23.107, order that the petitioner use due diligence to identify and work with all the tribes in which there is reason to know the child may be a member, or a biological parent is a member and the child is eligible for membership.
- (5) **Placement Preferences.** If there is reason to know the child is an Indian child, the court must find whether placement of the Indian child is in accordance with Rule 50.2, ICWA § 1915, and C.F.R. § 23.131, or the court may defer to comply with the requirements of ICWA and the Regulations.
- (6) **Additional Findings.** The court must make the additional ICWA findings required by subpart (d)(5).

(c) **Procedure.** At the preliminary protective hearing, the court must:

- (1) appoint counsel pursuant to Rule 38;
- (2) determine:
  - (A) whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 48.X;
  - (B) whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41;
  - (C) whether paternity has been established as to any father, and if not, the court must ask the mother, and may take her testimony, concerning the identity and location of any potential father;
  - (D) whether reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D);
  - (E) whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition as required by A.R.S. § 8-824(F);

- (F) whether a proposed case plan for services has been submitted and whether it is reasonable and necessary to carry out the case plan; and
- (G) whether the parent admits, does not contest, or denies the allegations in the dependency petition.

(3) if DCS is the petitioner, determine:

(A) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;

(B) whether DCS made arrangements, as provided by A.R.S. §§ 8-512, 8-512.01, and 8-514.05, for:

(i) the assembly of the child's medical records;

(ii) a medical assessment of the child;

(iii) the implementation of any referrals; and

(iv) the communication of recommendations and results;

(4) identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825;

(5) review any agreements reached at the preliminary protective conference;

(6) conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 51, if requested by a parent;

(7) consider as a mitigating factor the availability of reasonable services to the parent to prevent or eliminate the need for removal of the child and efforts of the parent to obtain and participate in these services;

(8) inform a foster parent, pre-adoptive parent, a member of the child's extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and

(9) provide a copy of Form 1, and request that the parent sign and return the form to the court and ensure that the parent understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6),(E)(8), and (I).

**(d) Findings.** At the conclusion of the hearing, the court must make findings that include the following:

- (1) that the court has jurisdiction over the subject matter and persons before the court;
  - (2) that the initial dependency hearing was held pursuant to Rule 52 for those parties who were present;
  - (3) if a parent requested a review of temporary custody, that the hearing has been held;
  - (4) whether there is probable cause to believe that the continued temporary or physical custody of the child is clearly and necessary to prevent abuse or neglect pending the dependency adjudication;
  - (5) confirm, under 25 C.F.R. § 23.107 and based on a report, declaration, or testimony included in the record or by court order, that the petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;
  - (6) that the parent was advised of, and understands the consequences of:
    - (A) failing to participate in reunification services, and
    - (B) failing to attend future proceedings;
  - (7) if applicable, the reasons why siblings have not been placed together; and
  - (8) other findings as appropriate or required by law.
- (e) **Orders.** At the conclusion of the hearing, the court must enter orders:
- (1) returning the child to the parent, or if the child is not returned to the parent, declaring the child a ward of the court and entering orders regarding the placement of the child pending the determination of the dependency petition, and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);
  - (2) approving or modifying any of the agreements the parties reached at the preliminary protective conference;
  - (3) if paternity has not been established, that it be established through testing or execution of a voluntary acknowledgment of paternity;
  - (4) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, if such placement is in the children's best

interests, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;

- (5) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:
    - (A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
    - (B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanent plan for the child.
  - (6) that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
  - (7) that the parent immediately inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;
  - (8) setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, in accordance with A.R.S. § 8-842 and Rule 52 ## [to comply with ICWA];
  - (9) setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered; and
  - (10) entering other orders as appropriated or required by law.
- (f) **Copies for the Parties.** At the conclusion of the hearing, the court must provide a copy of the court's written findings and order to each party who has appeared at the hearing.

**Rule 50.1. Placement Preferences**

- (a) **Generally.** A child should be placed in the least restrictive placement available, consistent with the best interests of the child. *See* A.R.S. § 8-514.
- (b) **Placement Preferences.** Subject to section (a), placement preferences, in descending order, are as follows:
- (1) with a parent;
  - (2) with a grandparent;
  - (3) in kinship care with another member of the child's extended family, including a person who has a significant relationship with the child. A foster parent or kinship caregiver with whom a child under three years of age has resided for at least nine months is presumed to be a person who has a significant relationship with the child;
  - (4) in licensed family foster care;
  - (5) in therapeutic foster care;
  - (6) in a group home; or
  - (7) in a residential treatment facility.
- (c) **Child with Developmental Disabilities.** In determining the child's placement, consideration should be given to the child's developmental disabilities. *See* A.R.S. § 8-514.01.
- (d) **Indian Child.** Rule 50.2 governs placement preferences for an Indian child.

## **Rule 50.2. ICWA Placement Preferences**

**(a) Placement Preferences.** This rule applies in determining placement of an Indian child, including in any dependency, foster care, guardianship, pre-adoption, or adoption proceeding. If a tribe has established preferences, those preferences apply. *See* ICWA § 1915 and 25 C.F.R. §§ 23.131 and 23.132. Otherwise, placement preferences for an Indian child, in descending order, are as follows:

- (1) with a member of the child's extended family;
- (2) in a licensed family foster home approved or specified by the child's tribe;
- (3) in an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (4) in an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 U.S.C. chapter 21.

**(b) Deviation from ICWA Placement Preferences.** Under 25 C.F.R. §§ 23.131 and 23.132, the determination to depart from the placement preferences in ICWA § 1915 must be made in the following manner:

- (1) ***Statement of Good Cause.*** In any foster care, guardianship, pre-adoptive, or adoptive placement, if any party asserts that there is good cause not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties and the court.
- (2) ***Burden of Proof.*** The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
- (3) ***Court's Determination.*** A court's determination of good cause to depart from the placement preferences must be in a signed minute entry or order and should be based on one or more of the following:
  - (A) the request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
  - (B) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
  - (C) the presence of a sibling attachment that can be maintained only through a particular placement;

- (D) the extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or
  - (E) the unavailability of a suitable placement, if the court determines that a diligent search was conducted to find suitable placements meeting the preference criteria, but none was located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child’s parent or extended family resides, or with which the Indian child’s parent or extended family members maintain social and cultural ties.
- (4) ***Socioeconomic Status.*** A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- (5) ***Time in a Non-Preferred Placement.*** A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement if that placement was made in violation of ICWA.

#### **COMMENT TO 2022 AMENDMENT**

The Regulations provide that good cause to deviate from placement preferences should be based on one of the five factors, but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be “narrow and limited in scope.” 81 Fed. Reg. §§ 38778, 38839 (June 14, 2016).

## **Rule 51. Contested Review of Temporary Custody**

**(a) Generally.** If requested by the parent at the preliminary protective hearing, or at the initial dependency hearing if the parent was not served and did not appear for the preliminary protective hearing, the court must:

- (1) conduct a review of temporary physical custody of the child in an out-of-home placement, and
- (2) determine
  - (A) whether removal of the child from the home was clearly necessary, and
  - (B) whether the child should remain in an out-of-home placement.

### **(b) Burden of Proof.**

- (1) **Probable Cause.** The petitioner must show there is probable cause to believe that continued temporary physical custody of the child in an out-of-home placement is clearly necessary to prevent abuse or neglect pending the dependency adjudication pursuant to A.R.S. §§ 8-824(F) and 8-825(C).

### **(c) Procedure.** At the temporary custody hearing:

- (1) The court may limit testimony and evidence pursuant to A.R.S. § 8-824(E)(3).
- (2) Evidence may be presented in support of, or to rebut a finding of, the need for the continued temporary physical custody of the child in an out of home placement. Evidence may include hearsay evidence, in whole or in part. *See* A.R.S. § 8-825.
- (3) The parent must be permitted to present evidence in support of the child's return at the conclusion of the petitioner's case.
- (4) A parent may present, and the court may consider as a mitigating factor, the participation of the parent in the healthy families program under A.R.S. § 8-481. *See* A.R.S. § 8-824(E)(4).
- (5) A parent may present, and the court must consider as a mitigating factor, whether the availability of reasonable services would prevent or eliminate the need for removal and the effort to obtain and participate in these services. *See* A.R.S. § 8-824(E)(5).

### **(d) Findings.**

- (1) The court must find whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect.

**(e) Orders.**

- (1) If the petitioner failed to meet the burden of proof, the court must order return of the child to the parent pending the determination of the dependency petition, pursuant to A.R.S. § 8-825(C)(1), or
- (2) if the petitioner met the burden of proof, the court may declare the child a temporary ward of the court pending the determination of the dependency petition and must continue the child in an out-of-home placement pursuant to A.R.S. § 8-825(C)(2).

## **Rule 52. Initial Dependency Hearing**

**(a) Generally.** At the initial dependency hearing, the court must determine whether service has been completed and whether the parent admits, denies, or does not contest the allegations in the dependency petition.

### **(b) Time for the Hearing.**

**(1) *No Appearance at the Preliminary Protective Hearing.*** If a parent does not appear at the preliminary protective hearing, the court must set an initial dependency hearing no later than 21 days after the filing of the petition.

**(2) *Service by Publication.*** If service by publication is required, the court may set an initial dependency hearing after allowing sufficient time for publication and no fewer than 10 days after publication is complete.

**(c) Procedure.** At the initial dependency hearing, the court must:

**(1)** appoint counsel under Rule 38;

**(2)** determine:

**(A)** whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 48X;

**(B)** whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41;

**(C)** whether paternity has been established as to any father, and if not, the court must ask the mother, and may take her testimony, concerning the identity and location of any potential father;

**(D)** whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D);

**(3)** conduct a temporary custody hearing pursuant to A.R.S. § 8-825 if requested by a parent pursuant to Rule 51;

**(4)** consider as a mitigating factor the availability of reasonable services to the parent, guardian, or Indian custodian to prevent or eliminate the need for removal of the child and efforts of the parent, guardian, or Indian custodian to obtain and participate in these services, as provided by A.R.S. § 8-824(E)(5);

- (5) inquire if any party has reason to believe that the child is an Indian child. *See* 25 C.F.R. § 23.107;
- (6) provide the parent a copy of Form 1 and request the parent sign and return the form to the court and ensure that the parent understands their rights and responsibilities. *See* A.R.S. § 8-824(D), (E)(6), (E)(8), and (I); and
- (7) inquire if the parent wishes to admit, not contest, or deny the allegations in the dependency petition.

(A) *Admission/No contest.* If the parent admits or does not contest the allegations in the petition, the court must proceed with the dependency adjudication hearing pursuant to Rule 55(d)(1) and set or conduct a disposition hearing under Rule 56.

(B) *Denial.* If the parent denies the allegations contained in the petition, the court must set a settlement conference, pretrial conference, or a mediation, and may set a dependency adjudication.

**(d) Failure to appear.** The court may proceed with the dependency adjudication and disposition if it finds on the record specific facts upon which to adjudicate the child dependent and finds that the parent:

- (1) had notice of the hearing;
- (2) was properly served pursuant to Rule 48X;
- (3) had been admonished of the consequences of failing to appear, including a warning that the hearing could go forward in their absence, and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition; and
- (4) failed to demonstrate good cause for the failure to appear.

**(e) Determinations.** If DCS is the petitioner, the Court should determine:

- (1) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;
- (2) whether DCS placed, or is attempting to place, the child with the child's siblings, if such placement is possible and is in the child's best interest, and if that is not possible, to maintain frequent visitation or other ongoing contact between all siblings; and

(3) identify on the record all the documents the court has received and will consider including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825.

**(f) Findings.** All findings must be contained in a signed minute entry or order. At the conclusion of the hearing the court must make findings that include:

- (1) that the court has jurisdiction over the subject matter and persons before the court;
- (2) if a parent requested a review of temporary custody, that the hearing has been held;
- (3) whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication;
- (4) confirmation under 25 C.F.R. § 23.107— and based on a report, declaration, or testimony included in the record or by court order— that petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to believe the child may be a member or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;
- (5) if there is reason to know the child is an Indian child, whether the standards and burdens of proof required by ICWA are met, including whether placement is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by Rule 52(h);
- (6) that the parent was advised of, and understands the consequences of:
  - (A) failing to participate in reunification services, and
  - (B) failing to attend future proceedings.
- (7) if applicable, the reasons why siblings have not been placed together; and
- (8) other findings as appropriate and required by law.

**(g) Orders.** At the conclusion of the hearing, the court must enter orders:

- (1) returning the child to the parent, or if the child is not returned to the parent, affirming or modifying the prior orders regarding the placement of the child pending the determination of the dependency petition and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);

- (2) if paternity has not been established, that it be established through paternity testing or execution of a voluntary acknowledgement of paternity;
- (3) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings if such placement is in the children's best interests or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings ;
- (4) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:
  - (A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
  - (B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another planned permanent plan for the child.
- (5) if the petitioner has not verified whether the child is an Indian child, that the petitioner must continue to use due diligence to make that determination;
- (6) where the court knows or has reason to know that an Indian child is involved, that the petitioner notify the parent, the Indian child's tribe, or the Secretary of the Interior, as required by ICWA § 1912(a);
- (7) that the parent provide the court with the names, relationship, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
- (8) that the parent immediately inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;
- (9) that the petitioner effectuate service on any party under Rule 48.X who has not been served and set a continued initial dependency, or a publication hearing in accordance with A.R.S. § 8-842;
- (10) setting dates for future proceedings, which may include a settlement conference, mediation, a pretrial conference, or an adjudication if a denial is entered;
- (11) may stay the proceedings and order an in-home intervention if appropriate, as provided by A.R.S. §§ 8-842(C) and 8-843(F) and Rule 48.1;

(12) if the party admits or does not contest the allegations in the petition or fails to appear, make orders as appropriate and required by law and Rules 55 and 56; and

(13) entering other orders as appropriate or required by law.

**(h) Continuance.** The court for good cause, including the following reasons, may continue the initial dependency hearing:

(1) service of process on the parties and notification under ICWA has not been completed;

(2) additional time is required to comply with the requirements of ICWA or additional time is requested by the child's tribe; or

(3) additional time is required to obtain and consult with an attorney and the child's best interest would not be adversely affected.

### **Rule 53. Settlement Conference**

- (a) **Generally.** The court with the parties' agreement may conduct a settlement conference to help identify and resolve issues.
- (b) **Settlement Conference Memorandum.** At least 5 days before the settlement conference, or as otherwise provided by the court, each party must provide the court, but not file or exchange with other parties, a confidential memorandum that addresses the following:
- (1) a general description of the contested issues and the position of the party with respect to each issue;
  - (2) a general description of the evidence the party will present;
  - (3) a summary of any attempts to settle the matter; and
  - (4) any other information a party believes would be helpful to the settlement process, including acceptable settlement proposals.
- (c) **Procedure.**
- (1) The assigned trial judge may only conduct the settlement conference with the consent of the parties. In all other cases, another judicial officer must conduct the settlement conference.
  - (2) Statements made in the course of the settlement conference must not be used in future hearings, except as permitted by Ariz. R. Evid. 408.
  - (3) The court may engage in ex parte communications with the consent of all those participating in the conference.
  - (4) The parties must inform the assigned judge of the result of the settlement conference.
- (d) **Findings and Orders; Further Proceedings.** All findings and orders must be in the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may do any of the following:
- (1) If the court finds the parent admits or does not contest that the child is dependent, it may adjudicate the child dependent and enter findings and orders pursuant to Rule 55, and it may set or conduct a disposition hearing pursuant to Rule 56.
  - (2) If the parties are unable to reach agreement, the court must set or affirm a dependency adjudication hearing and may set a pretrial conference.

**(e) Admonitions.**

- (1)** If the court sets a further hearing, it must address the parent in open court and advise that their failure to attend the pretrial conference or the dependency adjudication hearing without good cause 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 also must advise the parent, guardian, or Indian custodian that the hearings may go forward in their absence and may result in a finding of dependency based on the record and evidence presented.
- (2)** The court must also advise the parent 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.
- (3)** The court must find that the parent was advised of and understands the consequences of failing to participate in reunification services and failing to attend future proceedings. The court may provide the parent with a copy of Form 1, request that they sign and return a copy of the form and note on the record that the form was provided.

**(f) ICWA.** If ICWA applies, the court must make findings pursuant to the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

**(g) Other Findings and Orders.** The court may make other findings and enter any other orders as may be appropriate or required by law.

## **Rule 54. Pretrial Conference**

- (a) Generally.** The court may hold a pretrial conference before the dependency adjudication hearing to determine whether the parties are prepared and intend to proceed to the dependency adjudication hearing, or whether it is still possible for the parties to agree on a resolution of the remaining issues without a hearing.
- (b) Procedure Before the Conference.** The parties must confer before the pretrial conference and determine:
- (1) whether the parent will admit or not contest the allegations of the petition;
  - (2) whether the parties have completed disclosure under Rule 44(b)(2);
  - (3) the amount of time needed for the hearing;
  - (4) the scheduling of witnesses;
  - (5) any other issues raised by the parties; and
  - (6) whether the hearing will be closed to the public.
- (c) Procedure at the Pretrial Conference.** At the pretrial conference:
- (1) The parties will advise the court of the status of the issues listed in section (b).
  - (2) If the parties wish to discuss possible settlement, the court may schedule a settlement conference pursuant to Rule 53 or a mediation.
  - (3) A parent may admit or not contest the allegations, which the court may accept, and the court may proceed with disposition pursuant to Rule 56.
  - (4) The court may proceed with the adjudication as provided in section (e) if the parent fails to appear without good cause.
  - (5) The court may affirm or modify trial dates.
  - (6) The court may limit the issues to be litigated at the dependency adjudication hearing.
- (d) Admission/No Contest.** If the court finds the parent admits or does not contest that the child is dependent, the court may adjudicate the child dependent and enter its findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56.
- Failure to Appear.** If a parent fails to appear and pursuant to A.R.S. § 8-844(F), the court may proceed with the dependency adjudication and disposition if it finds on the

record specific facts upon which to adjudicate the child dependent and finds that the parent:

- (1) had notice of the hearing;
  - (2) had been admonished regarding the consequences of failing to appear, including a warning that the hearing could go forward in the parent's absence, and that failure to appear may constitute a waiver of rights and an admission of the allegations contained in the dependency petition; and
  - (3) failed to demonstrate good cause for the failure to appear and is deemed to have waived the parent's rights and admitted the allegations in the dependency petition.
- (e) **ICWA.** To complete an adjudication when ICWA applies, the court must make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.
- (f) **Affirm the Dependency Adjudication Hearing.** If the parties are unable to reach agreement, the court must set or affirm a dependency adjudication hearing date, or set another proceeding to facilitate settlement. The court may order the parties to file prior to the adjudication hearing pretrial statements pursuant to Rule 44 or proposed findings of fact and conclusions of law.
- (g) **Admonition.** The court must:
- (1) After setting an adjudication hearing, provide a copy of Form 1 and request that the parent sign and return the form to the court to ensure that the parent understands the parent's rights, responsibilities, and the consequences of failing to appear.
  - (2) After accepting an admission or no contest, provide future court dates and ensure that the parent is advised of and understands the consequences of failing to participate in reunification services and failing to attend future proceedings.
- (h) **Findings and Orders.** All findings and orders must be in a signed minute entry or order.

## **Rule 55. Dependency Adjudication Hearing**

(a) **Generally.** At the dependency adjudication hearing, the court must determine whether the petitioner has met the burden of proving the child dependent.

### **(b) Time.**

(1) **Requirement.** The dependency adjudication hearing must be completed no later than 90 days after service of the dependency petition on the parent.

(2) **Continuance.** The court may continue a dependency adjudication hearing beyond the time prescribed by A.R.S. § 8-842(C) for 30 days on a showing of good cause, and for a longer period upon a finding of extraordinary circumstances. The court must state in writing the factual basis for extending time based on extraordinary circumstances.

### **(c) Burden of Proof.**

(1) **Cases Not Subject to ICWA.** The petitioner must prove the allegations in the petition by a preponderance of the evidence.

(2) **ICWA Cases.** If the child is an Indian child, the petitioner must prove by clear and convincing evidence, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. This proof is required even when a parent admits or does not contest the allegations in a dependency petition. The petitioner also must prove by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that those efforts have proven unsuccessful. *See* ICWA § 1912 and 25 C.F.R. § 23.121. These requirements are in addition to the proof required by subpart (c)(1).

(d) **Admission/No Contest.** A parent may waive the right to a contested hearing on the allegations contained in the dependency petition by admitting or not contesting the allegations orally or in writing. In accepting an admission or if the parent does not contest the allegations in the petition, the court must:

(1) determine whether the parent understands the rights being waived;

(2) determine whether the parent knowingly, intelligently, and voluntarily admits or does not contest the allegations;

(3) determine a factual basis to support a finding of dependency; and

- (4) enter the findings and orders as set forth in section (h).
- (e) **Failure to Appear.** If a parent fails to appear and pursuant to A.R.S. § 8-844(F), the court may proceed with the dependency adjudication and disposition if it finds on the record specific facts upon which to adjudicate the child dependent and finds that the parent:
  - (1) had notice of the hearing;
  - (2) had been admonished regarding the consequences of failing to appear, including a warning that the hearing could go forward in the parent's absence, and that failure to appear may constitute a waiver of rights and an admission of the allegations contained in the dependency petition; and
  - (3) failed to demonstrate good cause for the failure to appear and is deemed to have waived the parent's rights and admitted the allegations in the dependency petition.
- (f) **Procedure After Denial.** If a parent appears at the dependency adjudication hearing and continues to deny the allegations of the petition, the court must conduct a contested adjudication hearing.
- (g) **Amendments to Conform to the Evidence.** An amendment to conform to the evidence may be made during or after the presentation of evidence pursuant to Civil Rule 15(b).
- (h) **Findings and Orders.** Findings and orders must be in a signed minute entry or order. As to each parent and based on the record and evidence presented, the court must:
  - (1) enter findings that the court has jurisdiction over the subject matter and persons before the court;
  - (2) if the petitioner failed to meet the required burden of proof, dismiss the petition and return the child to the parent;
  - (3) if the parent failed to appear, make the findings required by section (e);
  - (4) if the petitioner met the burden of proof, state specific facts that support a finding of dependency and adjudicate the child dependent;
  - (5) enter orders concerning the placement and custody of the child pending disposition;
  - (6) if ICWA applies, make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of

the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;

- (7) conduct the disposition hearing pursuant to Rule 56, or set the disposition hearing no later than 30 days after the adjudication;
- (8) address the parent in open court and advise the parent that failure to attend further proceedings without good cause or 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 must advise the parent that hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failing to attend subsequent proceedings or participate in reunification services. The court may provide the parent with a copy of Form 1, request that the parent sign and return a copy of the form, and note on the record that the form was provided; and
- (9) make findings and enter any other orders as appropriate or required by law.

## **Rule 56. Disposition Hearing**

- (a) **Generally.** The court must conduct a disposition hearing for a dependent child pursuant to A.R.S. § 8-845.
- (b) **Time Limits.** The court must hold a disposition hearing no later than 30 days after the dependency adjudication hearing.
- (c) **Considerations.** To determine the appropriate disposition, including the placement of the child and the case plan, the court may consider the parties' positions, any reliable statements or documents, and any testimony or other evidence, including information the court may have considered at a previous hearing.
- (d) **Court Action.** At the conclusion of the hearing, in a signed minute entry or order, the court must:
- (1) if DCS is a party, order DCS to make reasonable efforts to provide services to the child and child's parent pursuant to A.R.S. § 8-846(A);
  - (2) if DCS is not a party, direct the parties, in the court's discretion, to participate in reasonable services that will facilitate reunification of the family or another permanent plan for the child pursuant to A.R.S. § 8-825(D)(2);
  - (3) enter orders concerning the placement and custody of the child;
  - (4) set a review hearing within 6 months and set the permanency hearing;
  - (5) advise the parties present at the hearing and those identified in Rule 58(b)(1) of their right to participate in periodic review hearings;
  - (6) if ICWA applies, make findings regarding the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the placement preferences; and
  - (7) make any other findings and enter any other orders as may be appropriate or required by law.
- (e) **Advisal Regarding Failure to Appear or to Participate in Reunification Services.** At the conclusion of the hearing, the court must address the parent in open court and advise the parent that failing to attend further proceedings without good cause or to participate in reunification services may result in termination of parental rights or the establishment of a permanent guardianship of the child. The court must advise the parent that the hearings may go forward in their absence. The court must make specific findings that it advised the parent of these consequences and that the parent

understands these consequences. *See* A.R.S. § 8-824(E)(6) and (8). The court may provide the parent with a copy of Form 1, request the parent to sign and return a copy of the form, and note on the record that the form was provided.

## **Rule 57. Motion to Determine the Provision of Reunification Services**

### **(a) Generally.**

- (1) A party may file a motion pursuant to A.R.S. § 8-846 asking the court to relieve DCS of the duty to provide reunification services.
- (2) If the child is an Indian child, the court's granting of the motion does not determine whether active efforts are necessary under ICWA § 1912 and 25 C.F.R. §§ 23.120 and 23.121.

### **(b) Procedure.** The court must consider whether one or more of the statutory circumstances in A.R.S § 8-846(D) through (F) exist.

- (1) The court may rule on the motion without a hearing unless a hearing is requested.
- (2) If a party requests a hearing, evidence may be presented concerning whether reunification services are required, which may include:
  - (A) the parties' oral or written reports;
  - (B) documents entered into evidence at prior proceedings;
  - (C) expert testimony or reports;
  - (D) documents agreed upon by the parties; and
  - (E) any other evidence admitted by the court.

### **(c) Findings.** If the court finds by clear and convincing evidence that reunification services are not required, the court must set forth the specific factual basis for its findings, in a signed minute entry or written order and, if the child is an Indian child, include findings pursuant to the standards and burdens of proof required by ICWA § 1912 and 25 C.F.R. § 23.121.

### **(d) Orders.**

- (1) If the court denies the motion, the court must order DCS to continue to make reasonable efforts to provide services to the child and the child's parent as provided by A.R. S. § 8-825(D)(1).
- (2) If the court grants the motion, the court must order that the petitioner is relieved of the duty to provide reunification services and must enter other orders as required by A.R.S. § 8-845(C). If the child has been adjudicated dependent, the court must set a permanency hearing as required by A.R.S. § 8-862(A)(1).

### **COMMENT TO 2022 AMENDMENT**

In cases involving Indian children, the discontinuation of services may adversely affect any future attempt to terminate the parental rights. ICWA requires that before terminating parental rights, the court must be satisfied that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.

## **Rule 58. Review Hearing**

**(a) Generally.** Pursuant to A.R.S. § 8-847, the court must conduct periodic review hearings at least once every 6 months after the disposition hearing to review the progress of the parties in achieving the case plan goals and determine whether the child continues to be dependent.

### **(b) Notice.**

- (1) *Court's Duty to Notify of the Right to Participate.*** At a proceeding to review the disposition orders of the court, the court must notify the following persons of the review hearing, and their right to participate in the review proceeding and any future proceedings:
- (A)** the authorized agency charged with the child's care and custody;
  - (B)** the child's tribe as required under ICWA;
  - (C)** any foster parents in whose home the child resides or has resided within the last 6 months, except for those foster parents who maintain a receiving foster home where the child has resided for 10 days or less. The petitioner must provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute;
  - (D)** a shelter care facility or receiving foster home where the child resides or has resided within the last 6 months for more than 10 days. The petitioner must 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;
  - (E)** the child's parent, unless:
    - (i)** the rights of a parent to the child have been terminated by court action; or
    - (ii)** 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;
  - (F)** the child, if 12 years of age or older;
  - (G)** the child's relative, as defined in A.R.S. § 8-501, if that relative files with the court a written notice to participate;
  - (H)** a person permitted by the court to intervene in the dependency proceeding;
  - (I)** a physical custodian in whose home the child resides or has resided within the last 6 months;

(J) any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement; and

(K) any other person the court deems appropriate.

(2) ***Sibling information exchange program.*** If the court finds that a child is no longer dependent, before it dismisses the proceeding the court must provide notice of the sibling information exchange program as required by A.R.S. § 8-543 to the following:

(A) the child in the proceeding for whom the periodic review hearing is held; and

(B) a parent or guardian with legal custody of the child for whom the periodic review hearing is held.

(c) **Reports.** The petitioner must provide a report to the court and the parties at least 15 days before the review hearing that addresses:

(1) the placement of the child;

(2) the services being provided to the child and family, including the educational needs of the child;

(3) the progress the parties have made in achieving the case plan goals; and

(4) whether the child continues to be dependent.

(d) **Contested Issues.** Any party seeking an evidentiary hearing on any issue must file a motion requesting that the matter be set for a contested hearing. The motion must identify the issues to be litigated, the names and addresses of all witnesses, and the estimated time the parties will need to present evidence. Upon receiving the motion, the court may reset the matter to provide sufficient time for an evidentiary hearing, or it may proceed with the review hearing as scheduled.

(e) **Procedure.**

(1) Absent any party's objection, the court may consider the oral or written reports of the parties, documents entered into evidence at prior proceedings, documents agreed upon by the parties, and any other reports pursuant to Rule 4.

(2) Any documents that the parties wish the court to consider as evidence must be marked and admitted before the hearing concludes.

(3) The court must address the recommendations of the Foster Care Review Board on the record, as provided by A.R.S. § 8-515.03(1).

- (4) The court must consider any safety plan as well as any other safety issues that might prevent the child's return to a parent or that might affect the child's placement.
- (5) At the first periodic review hearing, the court must consider whether a parent of a child under 3 years of age at the time of removal has substantially neglected or willfully refused to participate in reunification services offered by the department.

**(f) Findings and Orders.** All findings and orders must be in a signed minute entry or order.

- (1) At the conclusion of the hearing the court must:
  - (A) dismiss the petition and return the child to the parent if the court finds the child is not dependent; or
  - (B) make a finding that the child continues to be dependent.
- (2) If the court finds that the child continues to be dependent, the court must:
  - (A) enter orders concerning:
    - (i) the placement, custody, and educational needs of the child; and
    - (ii) services to be provided to the family and child.
  - (B) if the child is not placed with a parent, determine whether DCS has identified and assessed whether placement of the child with a relative or person who has a significant relationship with the child is possible;
  - (C) determine whether the parent has complied with orders the court has issued pursuant to A.R.S. § 8-824(E)(7);
  - (D) set the next review hearing within the time provided by A.R.S. § 8-847;
  - (E) set a permanency hearing not later than 12 months after the date the child was removed from the home;
  - (F) address and advise the parent in open court that the parent's failure to attend further proceedings without good cause or the parent's failure to participate in reunification services, if appropriate, may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The

court may provide the parent with a copy of **Form X**, request that the parent sign and return a copy of the form and note on the record that the form was provided;

- (G) if there is reason to know child is an Indian child, make findings pursuant to the standards and burdens of proof as required under ICWA, including whether placement of the Indian child is in accordance with ICWA § 1915, 25 C.F.R. § 23.131, and Rule 50.2; and
- (H) make other findings as appropriate or required by law.

#### **COMMENT TO 2022 AMENDMENT**

In considering safety issues under subpart (e)(4), judges and parties should consider the American Bar Association's publication titled *Child Safety, A Guide for Judges and Attorneys* (2009).

## **Rule 59. Motion for Return of the Child**

- (a) **Generally.** At any time after the temporary custody hearing, a parent may file a motion with a supporting factual basis that asks the court to return the child to the parent's custody pursuant to A.R.S. § 8-861.
- (b) **Time Limits.** The court must set a hearing no later than 30 days after the filing date of the motion unless the parties agree otherwise.
- (c) **Burden of Proof.** The moving party has the burden of establishing by a preponderance of the evidence that the return of the child would not create a substantial risk of harm to that child's physical, mental, or emotional health or safety.
- (d) **Report and Response.**
- (1) ***DCS is the Petitioner.*** When DCS is the petitioner, it must file a report with the court at least 15 days before the hearing and provide copies to all parties. The report must address the following:
    - (A) the current case plan and goals of the case plan;
    - (B) the parent's compliance with the case plan; and
    - (C) the petitioner's opinion on whether returning the child to the parent would create a substantial risk of harm to the child's physical, mental, or emotional health or safety.
  - (2) ***DCS is not the Petitioner.*** When DCS is not the petitioner, the petitioner must file a response to the motion at least 15 days before the hearing.
- (e) **Procedure.** The court may consider evidence admissible under Rule 3.1(b), which may include hearsay, to determine whether the child can be returned to the parent. The court must consider any failure of the parent to comply with the terms of the case plan as evidence that return of the child would create a substantial risk of harm to the child.
- (f) **Findings and Orders.** The court must make factual findings even when no party objects to the motion. All findings and orders must be in a signed minute entry or order. The court must:
- (1) return the child to the parent if the court finds that the parent met the burden of proof under section (c); or if the parent did not meet the burden of proof under section (c), the court must deny the motion;
  - (2) set or affirm future hearing dates;

- (3) address and advise the parent in open court that the failure to attend further proceedings without good cause and failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent with a copy of Form X, request that the parent sign and return a copy of the form, and note on the record that the form was provided;
- (4) make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, if ICWA applies and the court has not yet done so, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131, or whether there is good cause to deviate from the preferences; and
- (5) make findings and enter any other orders.

## **Rule 60. Permanency Hearing**

- (a) Generally.** At the permanency hearing, the court must determine the child's permanency plan and enter orders that are necessary to accomplish the plan within a specific time.
- (b) Time Limits.** Pursuant to A.R.S. § 8-862, the permanency hearing must be held:
- (1)** no later than 30 days after the disposition hearing, if the court under A.R.S. § 8-846 relieved DCS of the duty to provide reunification services;
  - (2)** no later than 6 months after the removal of a child who was under 3 years at the time of removal from the child's home; or
  - (3)** no later than 12 months after the child's removal from the home in all other cases, unless otherwise permitted by law.
- (c) Procedure.** At the permanency hearing, the court:
- (1)** must consider testimony or documents admitted into evidence under Rule 4(b), which may include hearsay;
  - (2)** must consider the permanency plan proposed by DCS pursuant to a prior court order; and
  - (3)** may allow the child to speak with the court during the hearing to assist the court in determining a permanency plan for the child.
- (d) Findings and Orders.** All findings and orders must be in a signed minute entry or order. The court must make findings and:
- (1)** determine the appropriate permanency plan for the child, make the determination required by Rule 47.1, and order the petitioner to accomplish the plan within a specific time;
  - (2)** set a review hearing within the time required by A.R.S. § 8-847(A), but every review hearing after the permanency hearing for that child may be designated a permanency hearing;
  - (3)** if the court determines that termination of parental rights or the establishment of a permanent guardianship is clearly in the best interests of the child, order DCS, the child's attorney, or the child's guardian ad litem to file a motion or petition pursuant to A.R.S. § 8-862 to terminate parental rights—or to establish a permanent guardianship—no later than 10 days after the permanency hearing, and appoint counsel for the parent as provided in Rule 38(b);

- (4) address and advise the parent in open court that failure to attend further proceedings without good cause and failure to participate in reunification services, if appropriate, may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent with a copy of Form 2 (if the permanency plan is guardianship) or Form 3 (if the permanency plan is termination of parental rights), request that the parent sign and return a copy of the form, and note on the record that the form was provided;
- (5) if there is reason to know the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof as required under ICWA, including whether placement of the Indian child is in accordance with ICWA § 1915, 25 C.F.R. § 23.131, and Rule 50.2, or whether there is good cause to deviate from the preferences;
- (6) if the child is in an out-of-home placement, the court must make a finding as to whether the placement continues to be appropriate and is in the child's best interests; and
- (7) make other findings as appropriate or required by law.

## **SUBPART 4. PERMANENT GUARDIANSHIP**

### **Rule 61. Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship**

#### **(a) Motion.**

- (1) **Generally.** Any party to a dependency proceeding may file a motion for permanent guardianship for a child who has been adjudicated dependent. The motion must contain all the information required by A.R.S. §§ 8-871 and 8-872.
- (2) **Pre-adjudication Motion.** A motion may be filed before the dependency adjudication only when the dependency petition was filed by DCS. If the child has not been adjudicated dependent, all parties must consent to the permanent guardianship. If any party objects to the pre-adjudication motion, the court may schedule a settlement conference or mediation, or it may strike the motion and proceed with the dependency petition.

#### **(b) Notice of Hearing.**

- (1) **Generally.** A notice of hearing must inform the parent, guardian, or Indian custodian of the location, date, and time of the initial guardianship hearing.
- (2) **Failure to Appear.** The notice of hearing also must advise the parent, guardian, or Indian custodian that their failure to appear without good cause may result in a finding that they waived legal rights and are deemed to have admitted the allegations in the motion for guardianship. The notice also must advise the parent, guardian, or Indian custodian that the hearing may go forward in their absence and may result in the establishment of a permanent guardianship based upon the record and evidence presented.

#### **(c) Service.**

- (1) **Generally.** The moving party must serve the motion for guardianship and notice of hearing on the parties pursuant to Civil Rule 5(c).
- (2) **Indian Child.** If the motion alleges or the court has reason to know the child at issue is an Indian child, then in addition to service of process as required by this rule, the moving party must also notify the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

**(d) Hearing Involving an Indian Child.** The court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the initial guardianship hearing.

**(e) Providing Notice of Hearing to Other Persons.** In addition to serving the notice of hearing on the parties, the moving party must also provide a copy of the notice of hearing to the following persons:

- (1) the child's current physical custodian;
- (2) any foster parent with whom the child has resided within 6 months prior to the date of the hearing;
- (3) the prospective guardian if the guardian is not the current physical custodian; and
- (4) any other person the court orders to be provided with the notice of hearing.

**(f) Investigation and Report.**

- (1) Upon the filing of a motion for guardianship, the court may order DCS, if it is legal custodian of the child, to conduct an investigation and prepare a report for the initial guardianship hearing 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.
- (2) If DCS is not the legal custodian, the court may order the child's attorney, GAL, or a party to prepare this report.
- (3) If the child is an Indian child, the report must address whether the prospective guardian falls within the placement preferences required under ICWA or whether good cause exists to deviate from the placement preferences.
- (4) A copy of the report must be provided to the parties and the court at least 10 days before the initial guardianship hearing.

**(g) Other Orders.** Pending the hearing, the court may enter other orders that are in the child's best interests.

## **Rule 62. Initial Guardianship Hearing**

- (a) **Generally.** At the initial guardianship hearing, the court determines whether service has been completed under Rule 61(c), whether notice of the hearing has been provided to those persons identified in Rule 61(e), and whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion for guardianship.
- (b) **Time Limits.** Unless the court orders or permits otherwise under A.R.S. § 8-864, the initial guardianship hearing must be held within 30 days after the Rule 60 permanency hearing, or if there has not been a permanency hearing, within 30 days after the filing of a motion for permanent guardianship.
- (c) **Procedure.** At the initial guardianship hearing the court must:
- (1) inquire if any party has reason to know that the child at issue is an Indian child;
  - (2) appoint an attorney pursuant to Rule 38(b), unless an attorney had previously been appointed;
  - (3) appoint an attorney or GAL, or both, for the child if none has been previously appointed;
  - (4) determine whether service of process has been completed as to each party pursuant to Rule 61 or whether any party has waived service, and whether notice of the hearing has been provided to those persons identified in Rule 61;
  - (5) determine whether the report ordered by the court has been completed and provided to the parties;
  - (6) advise the parent, guardian, or Indian custodian of their rights as follows:
    - (A) the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;
    - (B) the rights to call witnesses and to cross examine witnesses who are called to testify by another party;
    - (C) the right to trial by the court on the guardianship motion; and
    - (D) the right to use the process of the court to compel the attendance of witnesses; and
  - (7) determine whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion for guardianship.

(A) *Admitted or Not Contested.* If the parent, guardian, or Indian custodian admits or does not contest the allegations, the court may proceed with the guardianship adjudication hearing and enter findings and orders pursuant to Rule 63.

(B) *Denied.* If the parent, guardian, or Indian custodian denies the allegations, the court must set the matter for a trial, which must begin within 90 days after the initial guardianship hearing. The court also may, if appropriate, schedule a settlement conference, mediation, or pretrial conference. If the child has not been adjudicated dependent and any party objects to a permanent guardianship, the court may schedule a settlement conference or mediation or may strike the motion for guardianship and proceed with the dependency petition.

**(d) Findings and Orders.** At the conclusion of the hearing, the court must:

- (1) set a continued initial guardianship hearing as to any party who was not served and did not appear;
- (2) address the parent, guardian, or Indian custodian in open court and advise that:
  - (A) failure to appear at the guardianship pretrial conference, settlement conference, or guardianship adjudication hearing without good cause may result in a finding that the party waived legal rights and are deemed to have admitted the allegations in the guardianship motion; and
  - (B) the guardianship adjudication hearing may go forward in their absence and may result in the establishment of a permanent guardianship based upon the record and evidence presented.
- (3) make specific findings that it advised the parent, guardian, or Indian custodian of the failure to attend subsequent proceedings;
- (4) if the child is an Indian child, make findings pursuant to the standards and burden of proof as required under ICWA; and
- (5) make findings and enter other orders that may be appropriate or required by law.

**(e) Form.** The court may provide the parent, guardian, or Indian custodian with a copy of Form 2, “Notice to Parent in a Guardianship Action.” The court also may request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.

**(f) Failure to Appear.**

- (1) The court may proceed with the guardianship adjudication hearing if the parent, guardian, or Indian custodian fails to appear at the initial guardianship hearing without good cause, and the court finds that the parent, guardian, or Indian custodian:
  - (A) had notice of the initial guardianship hearing;
  - (B) was properly served pursuant to Rule 61; and
  - (C) had been admonished regarding the consequences of failing to appear at the initial guardianship hearing including a warning that the adjudication hearing could go forward in their absence, and that failing to appear may constitute a waiver of rights and an admission of the allegations in the guardianship motion.
- (2) At the hearing, the court may grant the motion and establish a guardianship based on the record and evidence presented if the requirements of subpart (f)(1) are satisfied and the moving party can meet the burden of proof required for guardianship. The court must enter its findings and orders pursuant to Rule 63(e). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof as required under ICWA and as set forth in Rule 63(c)(2).

### **Rule 63. Guardianship Adjudication Hearing**

**(a) Generally.** At a guardianship adjudication hearing, the court determines whether the prospective guardian is a fit and proper person to become the permanent guardian of the child, and whether guardianship is in the best interests of the child.

#### **(b) Time Limits.**

- (1)** Unless the court orders or permits otherwise under A.R.S. § 8-864, the guardianship adjudication hearing must begin within 90 days after the filing of a motion for permanent guardianship.
- (2)** The court may continue the hearing for not more than 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected.
- (3)** The court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion that specifies the extraordinary circumstances. The party must file the motion within 5 days after discovering those circumstances. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

#### **(c) Burden of Proof.**

- (1)** The moving party has the burden of proving the allegations by clear and convincing evidence, except as provided in subpart (c)(2).
- (2)** If the child is an Indian child, the moving party has the burden of proving the allegations beyond a reasonable doubt, in accordance with ICWA section 1912. The moving party also must prove beyond a reasonable doubt, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The moving party must prove that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have proven unsuccessful.

**(d) Admitted or Not Contested.** The parent, guardian, or Indian custodian may waive the right to trial on the allegations contained in the guardianship motion by admitting or not contesting the allegations orally or in writing. In either circumstance, the court must:

- (1) determine whether the party understands the rights being waived;
- (2) determine whether the party knowingly, intelligently, and voluntarily admits or does not contest the allegations;
- (3) determine whether a factual basis exists to support the establishment of a guardianship; and
- (4) proceed with entering the findings and orders as set forth in section (f).

**(e) Failure to Appear.**

- (1) The court may proceed with the guardianship adjudication hearing if the parent, guardian, or Indian custodian fails to appear at the hearing without good cause, and the court finds the parent, guardian, or Indian custodian.

(A) had notice of the guardianship adjudication hearing;

(B) was properly served pursuant to Rule 61; and

(C) had been admonished regarding the consequences of failing to appear at the guardianship adjudication hearing, including a warning that the hearing could go forward in their absence and that failing to appear may constitute a waiver of rights and an admission to the allegations contained in the guardianship motion.

- (2) At the hearing, the court may establish a guardianship based on the record and evidence presented if the requirements of subpart (e)(1) are satisfied and the moving party can meet the burden of proof required for guardianship. The court must enter its findings and orders pursuant to section (h). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof as required under ICWA and as set forth in Rule 63(c)(2).

**(f) Child's Position.** The court must consider a child's objection to the appointment of the person nominated as permanent guardian. The court may appoint as guardian the person nominated by a child 12 years of age or older, unless the court finds it would not be in the child's best interests to do so.

**(g) Findings and Orders.** At the conclusion of the hearing the court must:

- (1) Enter findings as to the court's jurisdiction over the subject matter and persons before the court.

- (2) If the moving party has met its burden of proof:

(A) make specific findings of fact in support of the establishment of a guardianship and appoint a permanent guardian;

- (B) enter appropriate orders governing the powers and duties of the guardian as set forth in A.R.S. § 14-5209;
  - (C) enter visitation orders, if appropriate;
  - (D) order the parent to contribute to the support of the child, if appropriate;
  - (E) set an annual review and order the preparation of a report, as required by A.R.S. § 8-872; and
  - (F) dismiss the dependency action.
- (3) If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof as required under ICWA.
  - (4) If the moving party fails to meet the burden of proof, the court must deny the guardianship motion, establish a revised permanency plan, and set a review hearing.
  - (5) Make findings and enter any other orders as may be appropriate or required by law.
- (h) Successor Permanent Guardians.** At the guardianship hearing, or by notice filed after the appointment of a permanent guardian or a successor permanent guardian under A.R.S. § 8-874, the guardian may inform the court of the identity and contact information of potential successor permanent guardians.

### **Rule 63.1. Successor Permanent Guardianships**

- (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, DCS, or any interested party may file a motion for appointment of a successor permanent guardian. The motion must be verified by the person filing the motion and contain all information required by A.R.S. § 8-874(A).
- (b) Affidavit.** If the motion identifies a proposed successor permanent guardian, the motion must be accompanied by an affidavit by the proposed successor permanent guardian that includes the information required by A.R.S. § 8-874(B).
- (c) Procedures and Orders.** Upon receiving a motion for successor permanent guardianship, the court must follow the procedures and enter orders as required by A.R.S. § 8-874(C).
- (d) Notice.** The court must order the person filing the motion to provide notice as required by A.R.S. § 8-874(D). If the child is an Indian child, the person must provide notice as required by ICWA.

## **Rule 63.2. Initial Successor Permanent Guardianship Hearing**

**(a) Generally.** At the initial successor permanent guardianship hearing, the court must determine whether service has been completed and the notice of the hearing has been provided to those persons identified pursuant to A.R.S. § 8-874(D), 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.**

- (1)** The moving party has the burden of proving the allegations in the motion by clear and convincing evidence.
- (2)** If the child is an Indian child, the moving party has the burden of proving the allegations as provided in Rule 63(c)(2).

**(c) Procedure.** At the initial successor permanent guardianship hearing, the court must:

- (1)** inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA;
- (2)** determine whether notice of the hearing has been provided to those persons identified in A.R.S. § 8-874(D); and
- (3)** follow the procedures specified in Rule 63(d) and A.R.S. § 8-874(C).

**(d) Child's Position.** The court must consider a child's objection to the appointment of the person nominated as successor permanent guardian. The court may appoint as guardian the person nominated by a child 12 years of age or older, unless the court finds it would not be in the child's best interests to do so.

**(e) Findings.** The court must grant the motion, terminate the appointment of the current permanent guardian, and appoint the proposed successor permanent guardian as the child's permanent guardian if the court finds that the movant has met its burden of proof that:

- (1)** the previously appointed permanent guardian is unable or unwilling to serve;
- (2)** the proposed successor permanent guardian is suitable to assume the responsibilities of permanent guardian; and
- (3)** the appointment would be in the child's best interests.

**(f) Review Hearing.** If the court enters an order appointing a successor permanent guardian, the court must set a review hearing no later than one year after the

appointment. It also may order DCS or an agency to conduct an investigation and submit a written report before the hearing.

- (g) Provisional Permanent Guardian.** The court may appoint the proposed successor permanent guardian as a provisional permanent guardian of the child for a period not exceeding 9 months. The court must set a hearing to determine whether the appointment should be made permanent, and direct DCS 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.
- (h) Other Orders.** The court also may enter orders necessary for the child's safety and well-being, including providing for contact between the child and parents, siblings, relatives, or others, 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 is able to contribute.
- (i) Denial of the Motion.** If the court denies the motion to appoint a successor permanent guardian or does not appoint a provisional or successor permanent guardian, the court may enter orders necessary for the child's safety and well-being, and may order DCS or the child's attorney or GAL to file a dependency petition regarding the child, and proceed as provided in A.R.S. § 8-874(J) and (K).

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

**(a) Petition for Termination of Parental Rights.** Any person or agency who has a legitimate interest in the welfare of a child may file a petition for termination of parental rights pursuant to A.R.S. § 8-533. The petition must allege the grounds for termination and meet the requirements of A.R.S. § 8-534. The petition also must state whether there is reason to know the child is an Indian child.

**(b) Motion for Termination of Parental Rights.** If the court has determined in a pending action that a child is dependent and has also determined that termination of parental rights may be in that child's best interests, the court may order DCS, the child's attorney or guardian ad litem, or another party, to file a motion for termination of parental rights no later than 10 days after the permanency hearing. The motion must allege the grounds for termination as provided by A.R.S. § 8-533. The motion also must state whether there is reason to know the child is an Indian child.

### **(c) Notice of Hearing.**

**(1) Generally.** A notice of hearing must advise the parent, guardian, or Indian custodian of the location, date, and time of the initial termination hearing.

**(2) Failure to Appear.** The notice of hearing must advise the parent, guardian, or Indian custodian of the following:

**(A)** that failure to appear at the initial hearing, pretrial conference, status conference, or termination adjudication hearing without good cause may result in a finding that the party has waived legal rights and will be deemed to have admitted the allegations in the petition or motion for termination of parental rights; and

**(B)** that the hearing may go forward in the absence of the parent, guardian, or Indian custodian and may result in the termination of parental rights based upon the record and evidence presented.

### **(d) Service.**

**(1) Generally.**

**(A) Who Must be Served.** The petitioner under section (a) must serve the parents of the child, the child's guardian, the person with legal custody of the child, any individual who is in loco parentis to the child, and the guardian ad litem of any party.

**(B) Manner of Service.** The moving party under section (b) must serve the motion as provided by Rule 46.

- (C) *Time for Service.* The petition or motion for termination and notice of hearing must be served by the moving party upon the parties and any other person as provided by law at least 10 days before the initial termination hearing.
- (2) *Service Involving an Indian Child.* If the petition or motion alleges or the court has reason to know the child is an Indian child, in addition to service as required by this rule, the petitioner or moving party must also give notification to the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the petitioner or moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of the right to intervene.
- (3) *Hearing Involving an Indian Child.* The court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the initial guardianship hearing.
- (e) **Orders.** The court may enter orders pending the hearing that are in the child's best interests.

## **Rule 65. Initial Termination Hearing**

**(a) Generally.** At an initial termination hearing, the court must determine whether service has been completed and whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the petition or motion for termination of parental rights.

### **(b) Time Limits.**

**(1) *On Petition.*** If a termination of parental rights is requested by petition, the initial termination hearing must be held no fewer than 10 days after the completion of service, as provided by A.R.S. § 8-535(B).

**(2) *On Motion.*** If a termination of parental rights is requested by motion, the initial termination hearing must be held no later than 30 days after the permanency hearing, as provided by A.R.S. § 8-862(D)(2).

**(c) Procedure.** At the initial termination hearing the court must:

- (1)** inquire if any party has reason to know that the child is an Indian child;
- (2)** appoint counsel pursuant to Rule 38(b), unless counsel has previously been appointed;
- (3)** appoint an attorney or guardian ad litem, or both, for the child if none has been previously appointed;
- (4)** determine whether service of process has been completed pursuant to Rule 64 or waived as to each party;
- (5)** advise the parent, guardian, or Indian custodian of following rights:
  - (A)** the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;
  - (B)** the right to trial by the court on the termination petition or motion;
  - (C)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party; and
  - (D)** the right to use the process of the court to compel the attendance of witnesses; and
- (6)** determine whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion or petition to terminate parental rights.

(A) *Admits or Does Not Contest.* If the parent, guardian, or Indian custodian admits or does not contest the allegations, the court may proceed with the termination adjudication hearing and enter findings and orders under Rule 66.

(B) *Denies.* If a petition for termination was filed, the court may schedule mediation, or it may set a pretrial conference or status conference. If a motion for termination of parental rights was filed and the parent, guardian, or Indian custodian denies the allegations, the court must set the matter for an adjudication hearing no later than 90 days after the permanency hearing. The court may schedule a settlement conference, a pretrial conference or mediation, if appropriate.

(7) Determine how a verbatim record of the termination adjudication hearing will be made.

**(d) Findings and Orders.** At the conclusion of the hearing, the court must:

(1) enter findings concerning notification and service and the court's jurisdiction over the subject matter and persons before the court;

(2) set a continued initial termination hearing as to any party who was not served and did not appear;

(3) address the parent, guardian, or Indian custodian in open court and advise that:

(A) failure to appear at the termination pre-trial conference, settlement conference, or termination adjudication hearing without good cause may result in a finding that the party has waived legal rights and will be deemed to have admitted the allegations in the termination petition or motion; and

(B) that the hearing may go forward in the absence of the parent, guardian, or Indian custodian and may result in the termination of parental rights based upon the record and evidence presented;

(4) make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings;

(5) if the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA; and

(6) make findings and enter other orders that are appropriate or required by law.

**(e) Form.** The court may provide the parent, guardian, or Indian custodian with a copy of Form 3, "Notice to Parent in a Termination Action." The court also may request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.

**(f) Failure to Appear.**

- (1) The court may proceed with the termination adjudication hearing if the parent, guardian, or Indian custodian fails to appear at the initial termination hearing without good cause, and the court finds that the parent, guardian, or Indian custodian:

  - (A) had notice of the initial termination hearing;
  - (B) was properly served pursuant to Rule 64; and
  - (C) had been admonished regarding the consequences of failing to appear at the initial termination hearing, including a warning that the adjudication hearing could go forward in the party's absence, and that failing to appear may constitute a waiver of rights and an admission of the allegations in the termination petition or motion.
- (2) At the hearing, the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (f)(1) are satisfied and the petitioner or moving party has met the burden of proof required for termination. The court must enter its findings and orders pursuant to Rule 66(i). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA and as set forth in Rule 66(h)(2)(D).

## **Rule 66. Termination Adjudication Hearing**

**(a) Generally.** At a termination adjudication hearing, the court must determine whether the petitioner or moving party has met the burden of proving at least one ground for terminating parental rights, and whether termination is in the child's best interests.

**(b) Time for Hearing a Termination Motion.** If a motion for termination of parental rights was filed:

- (1) the termination adjudication hearing must be held no later than 90 days after the permanency hearing;
- (2) the court may continue the hearing for no more than 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected; and
- (3) the court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion that specifies the extraordinary circumstances no later than 5 days after discovering those circumstances. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

**(c) Burden of Proof.** The petitioner or moving party has the burden of proving:

- (1) by clear and convincing evidence, the alleged grounds for termination, and
- (2) by a preponderance of the evidence, that the termination would serve the child's best interests.

**(d) Burden of Proof for an Indian Child.** If the child is an Indian child, in addition to the burdens under subparts (c)(1) and (c)(2), the petitioner or moving party must also prove:

- (1) beyond a reasonable doubt, with evidence that must include testimony from a qualified expert witness, that continued custody of an Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, in accordance with ICWA section 1912 and 25 C.F.R. 23.121 and 23.122, and
- (2) by clear and convincing evidence, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of

an Indian family and that those efforts have proven unsuccessful, in accordance with ICWA § 1912 and 25 C.F.R §§ 23.121 and 23.2.

**(e) Admission/No Contest.** The parent, guardian, or Indian custodian may waive the right to trial on the allegations contained in the petition or motion for termination of parental rights by admitting or not contesting the allegations orally or in writing. In either circumstance, the court must:

- (A) determine whether the party understands the rights being waived;
- (B) determine whether the party knowingly, intelligently, and voluntarily admits or does not contest the allegations;
- (C) determine whether a factual basis exists to support the termination of parental rights; and
- (D) proceed with entering the findings and orders as set forth in section (h).

**(f) Failure to Appear.**

(1) The court may proceed with the termination adjudication hearing if the parent, guardian, or Indian custodian fails to appear at the hearing without good cause, and the court finds that the parent, guardian, or Indian custodian:

- (A) had notice of the termination adjudication hearing;
- (B) was properly served pursuant to Rule 64; and
- (C) had been admonished regarding the consequences of failing to appear at the termination adjudication hearing, including a warning that the hearing could go forward in the party's absence and that failing to appear may constitute a waiver of rights and an admission to the allegations contained in the termination petition or motion.

(2) At the hearing, the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (f)(1) are satisfied and the petitioner or moving party has met the burden of proof required for termination. The court must enter its findings and orders pursuant to section (h).

**(g) Social Study.** A social study prepared pursuant to A.R.S. § 8-536 or by court order is admissible as provided in Rule 3.1(d)(4).

**(h) Findings and Orders by the Court.** After the hearing, the court must do the following:

- (1) enter findings as to the court's jurisdiction over the subject matter and persons before the court; and

- (2)** enter findings on whether the petitioner or moving party has met its burden of proof and, if so,
  - (A)** make specific findings of fact in support of the termination of parental rights and grant the motion or petition for termination;
  - (B)** appoint a guardian for the child, but it may vest legal custody in another person or authorized agency;
  - (C)** enter orders for the financial support of the child;
  - (D)** if the child is an Indian child, make findings pursuant to the standards required under ICWA, including whether placement of the child is in accordance with ICWA §1915 and 25 C.F.R §§ 23.130 and 23.131, or whether there is good cause under 25 C.F.R. § 23.132 to deviate from the placement preferences; and
  - (E)** set or reaffirm the dependency review hearing.
- (3)** If the petitioner or moving party has not met its burden of proof,
  - (A)** deny the termination petition or motion, and
  - (B)** if appropriate, order the parties to submit a revised case plan before the dependency review hearing.

**Rule 67. Scope of Rules**

- (a) Application.** The rules in Part IV govern procedures in adoption proceedings.
- (b) Interpretation.** The court should interpret the rules in Part IV in a manner that protects the rights of the parties and the child's best interests, and gives paramount consideration to the child's health and safety.

## **Rule 68. Meaning of Terms**

**(a) Generally.** For purposes of this part:

- (1) “Parent” means the child’s biological, adoptive, or legal mother or father whose rights have not been terminated.
- (2) “Parties” include the prospective adoptive parent, the person to be adopted, the parents of the person to be adopted, any person or entity whose consent is required to effectuate an adoption, and any other person or entity who has been permitted by the court to intervene in the proceedings pursuant to Civil Rule 24 or ICWA.
- (3) “Investigative Report” has the meaning provided in A.R.S. § 8-105.
- (4) “Social Study” has the meaning provided in A.R.S. § 8-112.

**(b) ICWA Definitions and Placement Preferences.**

- (1) **Definitions.** In cases subject to ICWA, the terms “parent,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe,” and “extended family member” have the meanings shown in Rule 37.
- (2) **Preadoptive Placement Preferences.** A preadoptive placement of an Indian child must comply with ICWA § 1915 and 25 C.F.R. §§ 23.131 and 23.132 and must be the least restrictive setting that most approximates a family and in which the child’s special needs, if any, may be met. The child must be placed within reasonable proximity to the child’s home, taking into account any special needs of the child. In the absence of good cause to the contrary, preference must be given to a placement with:
  - (A) a member of the Indian child’s extended family;
  - (B) a foster home licensed, approved or specified by the Indian child’s tribe;
  - (C) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
  - (D) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child’s needs.
- (3) **Adoptive Placement Preferences.** An adoptive placement of an Indian child must comply with ICWA § 1915 and 25 C.F.R. §§ 23.130 and 23.132. If the child’s tribe has not established a different order of preference, preference must be given, in the absence of good cause to the contrary, to a placement with:
  - (A) a member of the Indian child’s extended family;

- (B) other members of the Indian child's tribe; or
- (C) other Indian families.

**Rule 69. Appointment, Appearance, and Withdrawal of Counsel**

**(a) Appointment.** The court may appoint counsel for a person who is entitled to counsel and determined to be indigent as provided by law, these rules, or ICWA. To determine whether a person is indigent, the court may require the person to provide proof of financial resources by filing a financial questionnaire provided by the court. The court may question the person under oath. If the court determines the person is not indigent, it may order the person to pay a reasonable portion of the cost of counsel or deny the request to appoint counsel. If the court enters an order appointing or denying counsel, it must provide a copy of the order or minute entry to the parties.

**(b) Appearance.** Counsel may enter an appearance by:

- (1) personally appearing in open court and advising the court that counsel is representing a party, or
- (2) filing a written notice of appearance and providing copies to the assigned judge and all parties.

**(c) Withdrawal of Counsel.** Unless otherwise authorized by the court, a request to withdraw as counsel must be in writing, and a copy of the request must be provided to the parties.

**Rule 70. Appointment of a Guardian Ad Litem**

The court may appoint a guardian ad litem in an adoption proceeding in the circumstances provided by Rule 40. The duties of the guardian ad litem are generally described in Rules 40.1 and 40.2.

**Rule 71. Telephonic Testimony, Video Conferencing**

On a party's motion or on its own, the court may permit telephonic testimony or argument, or video conferencing, in any proceeding. The motion must be in writing unless the court allows otherwise.

**Rule 72. Computing and Extending Time**

Unless these rules provide otherwise, time is computed, and may be extended, in accordance with Civil Rule 6.

## **Rule 73. Disclosure and Discovery in Contested Adoptions**

### **(a) Generally.**

- (1) ***Duty to Disclose.*** If the court at any stage of the proceeding, on its own initiative or upon request of a party, determines that an adoption is contested, a party must disclose to other parties all relevant information that is not privileged. A party must allow other parties to inspect materials, with or without copying and regardless of whether those materials are in physical, paper, or electronic form.
- (2) ***Manner of Disclosure.*** A party should disclose information in the least burdensome and most cost-effective manner.
- (3) ***Limits on Secondary Dissemination.*** A person who receives disclosure must maintain the confidentiality of the information received and must not further disclose the information unless disclosure is authorized by statute or court order.
- (4) ***Ongoing Disclosure Requirement.*** Unless the court orders otherwise, any relevant document received or prepared by a party must be disclosed no later than 10 days after its receipt or preparation. If a party receives or prepares a document fewer than 10 days before a hearing, the party must disclose it as soon as practicable before the hearing.

**(b) Pretrial Disclosure Statement in Contested Adoption.** Unless otherwise ordered by the court, the parties must disclose to each other and the court, in the form of a pretrial disclosure statement, the following information no later than 30 days prior to a contested hearing:

- (1) the uncontested facts deemed material;
- (2) the contested issues of fact and law which may be material or applicable;
- (3) a statement of other issues of fact or law that each party believes to be material;
- (4) the witnesses each party intends to call at trial, including their names, addresses and telephone numbers, and in addition, a description of the substance of each witness's expected testimony. No witness may be called at trial other than those disclosed in accordance with this rule, except for good cause shown. The pretrial disclosure statement must note witnesses whose testimony will be offered in the form of a deposition; and
- (5) a list of and copies of all exhibits which each party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court no later than 10 days after receipt of the list of

exhibits. Specific objections or grounds not listed in the disclosure statement are deemed waived, unless otherwise ordered by the court. No exhibits may be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

**(c) Methods of Discovery.** The parties may agree to utilize the discovery procedures in Civil Rules 26 through 37. Absent such agreement, a party may utilize those discovery methods only after the court grants a party's motion stating why these methods are necessary.

**(d) Sanctions.** Upon a party's motion or the court's own motion, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include granting a continuance, precluding the evidence, or entering any order against a party the court deems appropriate. Any sanction should be consistent with the intent of these rules as set forth in Rule 67 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

## **Rule 74. Motions**

- (a) **Form.** Motions must be in writing, unless otherwise authorized by the court, and state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.
- (b) **Filing.** A motion must be filed with the clerk. A copy of the motion must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding juvenile judge or that judge's designee. The filing party must serve all other parties as provided by Rule 8.
- (c) **Response.** If the moving party serves the motion by hand delivery, fax, or electronic means, a response to a motion must be filed no later than 5 days after service. If the motion is served by mail, a response is due no later than 10 days after service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.
- (d) **Court Ruling.** Except as these rules or statutes provide otherwise, after the time for a response has expired or if no party objects, the court may rule on the motion with or without a hearing.
- (e) **Motion to Continue.** A motion to continue must be made in good faith and must state the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court may grant a motion to continue for good cause.
- (f) **Motion to Set Aside Judgment.** A motion to set aside a judgment rendered by the court must conform to the requirements of Civil Rule 60(b)-(d), except that the motion must be filed no later than one year after the final judgment, order, or proceeding unless the moving party alleges grounds pursuant to Civil Rule 60(b) (1), (2) or (3), in which case the motion must be filed within 6 months. The court may not extend these time limits. A motion to set aside a judgment under Civil Rule 60(b)(4) may be filed at any time. If the child is an Indian child, the provisions of ICWA §§ 1913 and 1914 apply.

## **Rule 75. Confidentiality; Release of Information**

- (a) Confidentiality of Adoption Records.** All adoption records are confidential and must be withheld from public inspection unless authorized by law, court order, or as provided in these rules.
- (b) Release of Information.** The court may release identifying and non-identifying information about the adoptee or birth parent as provided by A.R.S. § 8-121.
- (c) Records of Indian Adoption.** Under 25 U.S.C. § 1917, upon a request filed with the court by an Indian individual who has reached the age of 18 and who was the subject of an adoptive placement, the court that entered the final adoption decree must inform the individual of the tribal affiliation, if any, of the individual's biological parents, and provide other information as may be necessary to protect any rights flowing from the individual's tribal relationship. If the biological parent executed a notarized statement requesting anonymity, information pertaining to the biological parent must be redacted prior to release. The court must also comply with the requirements of 25 U.S.C. § 1951.

**Rule 76. [Reserved.]**

## **Rule 77. Certification to Adopt**

- (a) **Application for Certification.** Any prospective adoptive parent must submit a written application for certification and be certified by the court as acceptable to adopt children, as provided by A.R.S. § 8-105, before filing a petition to adopt. This requirement does not apply to individuals identified in A.R.S. § 8-105(N).
- (b) **Dismissal of the Application Due to Insufficient Information.** If the court is unable to certify the applicant as acceptable to adopt a child because the application lacks the information required by A.R.S. § 8-105, the court may dismiss the application or permit the applicant to submit supplemental information. If the court dismisses the application, the applicant may submit a subsequent application, in which event the court may consider information contained in the original application.
- (c) **Court Action.** No later than 60 days after receiving the investigative report and recommendation required by A.R.S. § 8-105, the court may:
- (1) certify that the applicant is acceptable to adopt children;
  - (2) require further investigation if it finds that additional information is necessary for making an appropriate decision regarding certification; or
  - (3) determine that the applicant is unacceptable to adopt children, in which event it must notify the applicant and the person, department, agency, or entity responsible for preparing the certification report of the court's determination, the reason for the denial, and the applicant's right to a hearing on the denial of certification.
- (d) **Motion for Hearing on Denial of Certification.** The applicant may file a motion requesting a hearing on the denial of certification. The motion must be filed no later than 30 days after entry of the minute entry or order denying certification. The court must set an evidentiary hearing that begins no later than 60 days after the filing of the motion. The court must notify the applicant and the person, division, agency, or entity responsible for preparing the certification report of the location, date, and time of the hearing.
- (e) **Pretrial Conference.** Upon request of a party or on its own, the court may set a pretrial conference.
- (f) **Access to Information.** The applicant may obtain a copy of the information contained in the court's file as prescribed by law. Before providing a copy, the clerk must redact the results of the criminal background check, information obtained from DCS records, and information provided by references, other than their names.

- (g) **Burden of Proof.** The burden is on the applicant, or any other party ordered by the court, to show acceptability to adopt by a preponderance of the evidence.
- (h) **Procedure.** The hearing must be informal, and the court must consider all reliable evidence, including hearsay. Documents that the parties want the court to consider must be marked and entered into evidence. The court for good cause may continue the hearing.
- (i) **Findings and Orders.** The court must make specific findings of fact concerning the applicant's acceptability to adopt based upon the evidence presented at the hearing. All findings and orders must be in a signed minute entry or written order. The court must advise the applicant of the right to appeal an adverse ruling.

## **Rule 78. Petition for Child's Custody by a Non-Certified Person**

### **(a) Petition.**

- (1) ***By a Prospective Adoptive Parent.*** Except as provided in A.R.S. § 8-108(C), a prospective adoptive parent who is not yet certified to adopt, but who has custody of a child the person intends to adopt, must petition the court for an order permitting the person to keep custody of the child pending certification. The person must do so no later than 5 days after obtaining custody. The petition must set forth how and when the child came into the petitioner's care, why continued custody is in the child's best interests, and whether there is reason to know the child is an Indian child.
- (2) ***By Others.*** An agency, DCS, or person other than a prospective adoptive parent may petition the court for custody of a child pending placement of the child for adoption. Upon the filing of the petition, the court must set the matter for hearing and order the person currently having custody to show cause why the court should not grant the petition.

**(b) Notice of Hearing.** Unless otherwise provided by a local rule or administrative order, a notice of hearing must accompany the petition and include the location, date, and time of the hearing. The notice must require the attendance of persons or entities identified in subpart (d)(1).

**(c) Service.** The petitioner must serve the petition and notice of hearing in any manner reasonably designed to ensure the attendance at the hearing of the persons and entities identified in subpart (d)(2). If there is reason to know that the child who is the subject of the petition under this rule is an Indian child and the proceeding is involuntary under ICWA, the child's parent, Indian custodian, and tribe must be notified of the hearing as provided by Rule 79.1.

### **(d) Procedure.**

- (1) ***Time.*** The court must set a hearing no later than 10 days after the petition was filed, but the court may waive this time limit for good cause.
- (2) ***Attendance.*** The following persons or entities must attend the hearing, unless the court for good cause waives their attendance: the prospective adoptive parent, the child, and any person or representative of DCS or the agency responsible for preparing reports for the court pursuant to A.R.S. § 8-105.

**(e) Findings and Orders.** All findings and orders must be contained in a signed minute entry or order. The court must:

- (1) determine whether the custody requested by the petitioner is in the child's best interests;
- (2) grant the petition, or deny the petition and order that custody of the child be given to another person or agency if it is in the child's best interests;
- (3) if the court grants custody to a prospective adoptive parent who has not been certified to adopt, order that the prospective adoptive parent file an application for certification to adopt within 30 days. If the prospective adoptive parent or agency has not identified at the hearing who will prepare a report and recommendations pursuant to A.R.S. § 8-105, the court must set a status hearing within 30 days to determine the status of the certification; and
- (4) if there is reason to know that the child is an Indian child, make findings required under ICWA, including whether there is compliance with the placement preferences or whether there is good cause to deviate from the placement preferences under ICWA § 1915 and 25 C.F.R. §§ 23.130 through 23.132.

**(f) Expiration of Custody Order.**

- (1) ***Expiration and Extension.*** The order granting custody of a child to the prospective adoptive parent under this rule expires 6 months after it is entered. The court may extend the custody order for good cause.
- (2) ***Status Hearing.*** Before the order expires, the court must set a status hearing to determine whether the prospective adoptive parent has been certified and has filed a petition to adopt. The court may waive the attendance of the parties at the status hearing if the court has sufficient information showing that the prospective adoptive parent is proceeding with the adoption in a timely manner. The court may vacate the hearing upon the filing of a petition to adopt.

**(g) Termination of Custody.** The court for good cause may terminate a custody order it has entered under this rule before the expiration date, but before doing so it must provide notice and an opportunity to be heard to the prospective adoptive parent and DCS or any agency that placed the child.

## **Rule 79. Petition to Adopt**

**(a) Contents of the Petition.** A petition to adopt must be captioned, “In the Matter of\_\_\_, a person under the age of 18 years,” and the allegations of the petition may be based upon information and belief. In addition to information required by A.R.S. § 8-109, the petition must contain the following information:

- (1) whether all necessary consents have been obtained, noting any exceptions as provided by law;
- (2) whether a petition for termination of parental rights has been granted or is pending, including any pending special action or appeal;
- (3) whether approval has been granted through the Interstate Compact on the Placement of Children, if applicable; and
- (4) if the child is an Indian child:
  - (A) the name of the Indian child’s tribe, if known;
  - (B) whether there is compliance with the placement preferences required under ICWA § 1915 and 25 C.F.R. § 23.130;
  - (C) whether the petitioner reasonably believes that the Indian child is a resident or domiciliary of an Indian reservation; and
  - (D) whether the Indian child is a ward of a tribal court.

**(b) Setting a Hearing on Petition.** The court must hold the hearing on the petition:

- (1) within 60 days if the child has resided in the home of the prospective adoptive parent or parents for at least one year immediately preceding the filing of the petition for adoption. If the prospective adoptive parent is the stepparent of the child, this requirement applies only if the stepparent has been married to the birth or legal parent of the child for at least one year;
- (2) within 90 days if the child is under three years of age or has resided in the home of the prospective adoptive parent or parents for at least six months preceding the filing of the petition for adoption. If the prospective adoptive parent is the stepparent of the child, this requirement applies only if the stepparent has been married to the birth or legal parent of the child for at least one year; or
- (3) in all other cases, within 6 months after the filing of the petition of adoption.

**(c) Expedited Hearing.** The court must hold an expedited hearing if a party files a motion supported by an affidavit that an expedited hearing is in the child's best interests and that any of the following is true:

- (1)** the child is suffering from a chronically debilitating progressive or fatal disease, as diagnosed by a licensed physician;
- (2)** a prospective adoptive parent, birth parent, or legal parent is terminally ill, as diagnosed by a licensed physician;
- (3)** the child is free for adoption, is at least 16 years of age, consents to adoption, and has lived with the prospective parent or parents for at least 6 months; or
- (4)** the court finds other compelling reason relating to the special needs and welfare of the child to expedite the hearing.

**(d) Indian Child.** If there is reason to know the child is an Indian child and the parent or Indian custodian did not voluntarily place the child for adoption, the under 25 C.F.R. § 23.112, the court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the adoption hearing.

### **Rule 79.1. Service of the Petition to Adopt and Notice of Hearing**

(a) **Generally.** Except as provided in section (d), service of the petition and a notice of hearing must be accomplished under Civil Rules 4.1 and 4.2, but Civil Rules 4.1 and 4.2 are deemed modified as follows:

(1) **No summons.** References to service of summons are inapplicable because no summons is issued.

(2) **Petitioner and Respondent.** References to “plaintiff” mean the petitioner. References to “defendant” mean the respondent.

(b) **Persons to Serve.** The petitioner must serve the petition and a notice of hearing on the following persons:

(1) the person, department, or agency conducting the social study required by A.R.S. § 8-112;

(2) any person, department, or agency required by A.R.S. § 8-106 to give consent unless consent and a waiver of notice were filed previously; and

(3) any person who has initiated a paternity action.

(c) **Indian Child.** If there is reason to know that the child is an Indian child and the parent or Indian custodian did not voluntarily place the child for adoption, then in addition to service of process as required by this rule, under 25 C.F.R. § 23.111, the petitioner must also give notice to the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe of their right to intervene.

(d) **Objections.** Any person objecting to the petition must promptly file an objection before the hearing.

## **Rule 80. Birth Parent Living Expenses**

- (a) Motion for Approval.** Any person or agency wishing to pay living expenses for a birth parent in excess of one thousand dollars, as provided by A.R.S. § 8-114, must file a motion supported by an affidavit signed by the birth parent justifying the expenses. The affidavit must specify the amounts allocated to the individual monthly expenses for which approval is sought and explain why the expenses are needed for the time period requested.
- (b) Procedure.** Unless waived by the court on a showing of good cause, the court must hold a hearing within 10 days and notify the parties of the location, date, and time of the hearing. If the court holds a hearing, it may require the attendance of the birth parent or the person or agency wishing to pay living expenses. The court must verify the identity of the birth parent before entering any orders.
- (c) Findings and Order.** The court must promptly determine whether the expenses are permissible under A.R.S. § 8-114. All findings and orders must be in a signed minute entry or order.

## **Rule 81. Consent to Adopt**

(a) **Generally.** Individuals must give consent as required by A.R.S. § 8-106. Consent must meet the requirements of A.R.S. § 8-107.

(b) **Consent in Open Court for an Out-of-State Adoption.** This section governs procedures relating to the signing of consents by a birth parent as part of an out-of-state adoption where the consents are required to be given in open court.

- (1) Any person required to sign a consent to adopt before the court must move the court to set a hearing for the purpose of taking the consent. The court must promptly set a hearing and notify the person seeking to give consent of the location, date, and time of the hearing.
- (2) The person required to give consent or the prospective adoptive parent must make arrangements for the presence of a certified court reporter at the hearing if one is required to effectuate an out-of-state adoption. The person required to give consent also must provide the court with copies of the consents for signature, if required, and must include an additional copy for the court. All copies of the signature establishing consent must be accompanied by self-addressed, stamped envelopes if the person consenting will request that the court mail the consents to the state where the adoption will occur.
- (3) At the hearing, the person seeking to give consent must provide the court with proof of identification. The identification must include a photograph of the person so that the court can verify the identity of the person before taking a consent to adopt.

(c) **Consent to Adopt an Indian Child.** If there is reason to know that the child is an Indian child, in addition to requirements as provided by law, the consent to adopt must contain the following information:

- (1) the name and birth date of the Indian child;
- (2) the name of the Indian child's tribe;
- (3) the identifying number or other indication of the Indian child's membership in the tribe;
- (4) the name and address of the consenting parent or Indian custodian; and
- (5) the name and address of the person, division or agency through whom any preadoptive or adoptive placement has been or is to be made.

**(d) Findings and Orders.** At the conclusion of the hearing the court must state, in a signed minute entry or order, that consents were signed by the person appearing before the court. If there is reason to know that the child is an Indian child, the consents must be accompanied by the presiding judge's certificate that the terms and consequences were fully explained in detail, in English or interpreted in a language the parent could understand, and were understood by the parent. *See* ICWA § 1913 and 25 C.F.R. §§ 23.124 through 23.126. The signed consents must be returned to the person consenting to the adoption.

**(e) Invalid Consent.** A consent given fewer than 72 hours after the birth of the child is invalid. In the case of an Indian child, any consent given prior to or within 10 days after the birth of an Indian child is invalid.

## **Rule 82. Petition to Revoke Consent**

**(a) Petition to Revoke Consent.** A person seeking to revoke their own consent to the adoption of a child must file a petition stating the basis for the relief sought. A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 85.

### **(b) Service.**

The court must prepare a notice of hearing that specifies the date, time, and location of an initial hearing.

**(1)** The court must provide a copy of the petition and notice of hearing to the adoptive parent or the parent's attorney, DCS, or the agency to whom the consent was originally given. The court must provide the copies in a manner that is reasonably calculated to provide prompt notice.

**(2)** If the original consent was given to DCS or an agency, the entity must provide copies of the petition to revoke consent and notice of hearing to the prospective adoptive parent.

**(c) Appointment of Counsel.** The court must appoint counsel for an indigent petitioner as provided in Rule 69.

**(d) Appointment of a Guardian ad Litem.** On a party's or the court's own motion, the court may appoint a guardian ad litem for the child. If the court grants the petition to revoke consent, the guardian ad litem, if warranted, may file a dependency petition.

**(e) Initial Hearing and Evidentiary Hearing.** The court must set an initial hearing no later than 15 days after the petition is filed. At the initial hearing, the court must determine whether notice has been provided, and if so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. The court may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 73 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.

**(f) Burden of Proof.** The person seeking to revoke consent must prove by clear and convincing evidence that the consent to adopt was the result of fraud, duress, or undue influence.

**(g) Procedure.** The court must consider evidence in the form of testimony and documents that have been admitted into evidence under Rule 3.1(b),

**(h) Findings and Orders.** The court's findings must be in a signed minute entry or order. If a consent is revoked, the court must enter orders concerning the custody of the child. The court must advise the parties of their right to appeal.

**(i) Revocation of Consent to Adopt an Indian Child.** The parent of an Indian child who seeks to revoke a consent to adopt may do so at any time before the court enters a final order of termination of parental rights or adoption. The revocation may be accomplished by filing a sworn statement of intent to revoke consent with the clerk of the court where the consent was originally filed, or as otherwise required by 25 C.F.R. § 23.128. The court must then order the return of the Indian child as soon as practicable to the custody of the parent.

#### **COMMENT TO 2022 AMENDMENT**

Proceedings to revoke a consent to adopt should be more formal and more expeditious than other types of juvenile proceedings due to the potential impact on all parties, particularly the child. The court should consider the appointment of a guardian ad litem for the child if it appears that valid grounds exist upon which to revoke the consent.

### **Rule 83. Documentation Required to Adopt**

**(a) Before the Hearing.** No later than 10 days before the finalization of an adoption, the petitioner must provide to the court the following documents, if applicable:

- (1) a copy of the birth certificate of the child to be adopted;
- (2) a notarized affidavit signed by the birth mother identifying all potential fathers of the child as provided by law;
- (3) an affidavit that a search of paternity filings was conducted;
- (4) a certificate from the Department of Health Services signed by the State Registrar of Vital Statistics stating that a diligent search has been made of the putative fathers registry for notices of claims of paternity from potential fathers, and the results of the search;
- (5) the affidavit of service of process upon all potential fathers as provided by A.R.S. § 8-106;
- (6) an affidavit of compliance from an attorney or agency as provided by A.R.S. § 8-130;
- (7) a verified accounting required by A.R.S. § 8-114, unless the prospective adoptive parent is the child's stepparent;
- (8) notarized statements from any birth parent granting or denying permission for the child being adopted to obtain identifying information about the child and from the consenting parent upon the child reaching 18 years of age, and granting or denying permission to be informed of the death of the child, as provided by A.R.S. §§ 8-107, 8-129, and 8-130;
- (9) the original agreement between the birth parent and prospective adoptive parent regarding future communications among the parties, as provided by A.R.S. § 8-116.01; and
- (10) the social study required by A.R.S. § 8-112 or as ordered by the court.

**(b) At the Hearing.** The following documents must be provided to the court either at the hearing:

- (1) a certified copy of the birth certificate of the child to be adopted;
- (2) the certificate of adoption;
- (3) the order of adoption; and

(4) all original consents as provided by law.

#### **COMMENT TO THE 2022 AMENDMENT**

This rule requires the petitioner to file a birth certificate. However, in some counties, the filed birth certificate is scanned and shredded and cannot thereafter be returned to the petitioner. The certified birth certificate might be the petitioner's only "original" birth certificate, and most families want to retain it for the child's historical records. This rule accordingly requires the petitioner to file a photocopy of the birth certificate and to present a certified original document to the judicial officer at the Rule 84 hearing. The judicial officer can compare the certified copy with the copy on file to assure that the filed document is authentic, and then the judicial officer can return the certified document to the petitioner.

## **Rule 84. Hearing to Finalize Adoption**

- (a) **Attendance.** The prospective adoptive parent, the spouse of the prospective adoptive parent, unless otherwise ordered by the court, and the child to be adopted must attend the hearing. The court may permit virtual attendance as provided by Rule 12. For good cause, the court may permit testimony by an oral deposition of an adoptive parent who is unable to attend the final adoption hearing, if the deposition was conducted in open court before the hearing.
- (b) **Burden of Proof.** The burden is on the petitioner to prove by a preponderance of the evidence that the petitioner is a fit and proper person to adopt and that it is in the best interests of the child to be adopted.
- (c) **Procedure.** At the hearing the court must:
- (1) receive testimony from the parties verifying the information in the petition to adopt;
  - (2) if the child is 12 years of age or older, determine whether the child consents to the adoption;
  - (3) review any post-placement agreements between the parties under A.R.S. § 8-116.01 and approve such agreements, as appropriate;
  - (4) terminate the parental rights of the birth parent under Arizona law, if not terminated previously;
  - (5) if the child is an Indian child, determine whether:
    - (A) the tribe was notified of the proceedings and the right to intervene, if applicable;
    - (B) the parent or Indian custodian's consent to the adoption was taken in accordance with ICWA § 1913;
    - (C) the placement complies with the placement preferences set forth in ICWA, or whether good cause exists for deviating from the placement preferences provided in ICWA §1915 and 25 C.F.R. §§ 23.130 through 23.132; and
    - (D) the parental rights of the parent or Indian custodian have been terminated in accordance with ICWA § 1912, 25 C.F.R. §§ 23.121 and 23.122, and Rule 66; and
  - (6) set an additional hearing if the court cannot proceed with the adoption hearing for any reason.

**(d) Findings and Orders.** The court must make its findings in a signed minute entry or order and grant or deny the petition to adopt at the conclusion of the hearing. The court may take the matter under advisement if information required by law was not received by the court before or at the hearing, as required by these rules.

**(e) ICWA.** If the child is an Indian child:

(1) the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA; and

(2) pursuant to ICWA § 1951, the court must direct the clerk to provide the Secretary of the Interior with a copy of the final adoption decree and the following information:

(A) the name and tribal affiliation of the child;

(B) the names and addresses of the biological parents;

(C) the names and addresses of the adoptive parents; and

(D) the identity of any agency having files or information relating to such adoptive placement.

**(f) Dismissal of a Dependency Action.** If the adopted child is a ward of the court in the county where the adoption is granted, the court must dismiss the dependency action. If the child is a ward of the court in another county or state, the court must direct that the department or agency having had legal custody of the child to file a motion to dismiss in the county where the child is a ward, or to notify the other state of the adoption order.

## **Rule 85. Setting Aside an Adoption**

- (a) **Motion to Set Aside.** A person seeking to set aside a final order of adoption must file a motion to set aside the judgment within the time limits set by Rule 74(f). The motion may only allege grounds permitted under Civil Rule 60(b)-(d). The court must set an initial hearing no later than 10 days after the filing date and advise the parties of the date, time, and location of the initial hearing. If there is reason to know the child is an Indian child, the court must proceed under ICWA.
- (b) **Appointment of Guardian ad Litem.** On a party's or the court's own motion, the court may appoint a guardian ad litem for the child. If the court grants the motion to set aside, the guardian ad litem, if warranted, may file a dependency petition.
- (c) **Initial Hearing.** The court must set an initial hearing no later than 15 days after the filing date of the motion. At the initial hearing, the court must determine whether notice has been provided, and if so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. The court may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 73 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.
- (d) **Burden of Proof.** The burden is upon the person seeking to set aside the adoption to prove the allegations contained in the motion by clear and convincing evidence.
- (e) **Procedure.** The court must consider evidence in the form of testimony and documents that have been admitted into evidence under Rule 3.1(b).
- (f) **Indian Child.** After an adoption is final, the parent of an Indian child may withdraw consent to the adoption and petition the court to vacate the adoption decree on the ground that the consent was obtained through fraud or duress under ICWA § 1913. If the court finds that consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to the parent as soon as practicable. An adoption of an Indian child that has been effective for at least two years may not be invalidated unless otherwise permitted under state law. An Indian parent or custodian also may move to set aside an adoption for reasons other than fraud or duress, pursuant to Rule 74(f).
- (g) **Findings and Orders.** The court must make its findings in a signed minute entry or order. The court must advise the parties of their right to appeal and, if court sets the adoption aside, it must enter orders concerning custody of the child. If ICWA applies, the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA.

### **COMMENT TO 2022 AMENDMENT**

Proceedings to set aside an adoption should be more formal than other types of juvenile proceedings due to the potential impact on all parties, particularly the child.

The Indian Child Welfare Act contemplates the return of the child to the parent or Indian custodian if the adoption is set aside. The court should return the child in the absence of clear and convincing evidence, including testimony of a qualified expert, that return of the child to the parent or Indian custodian would likely result in serious emotional or physical damage to the child.

**Rule 86. [Reserved.]**

## **Rule 87. Enforcement or Modification of Post-Placement Agreements**

**(a) Motion to Enforce or Modify.** After a good faith attempt to mediate any disagreements, any party to a court-approved post-placement agreement under A.R.S. § 8-116.01 may move the court to enforce or modify the agreement. The motion must state the parties' efforts to mediate their disagreements before the motion was filed. The court must set a hearing and notify the parties of the location, date, and time of hearing.

### **(b) Findings and Orders.**

- (1)** At the conclusion of the hearing, the court will determine whether there has been a breach of the post-placement agreement, and whether the original agreement should be enforced or modified.
- (2)** The court may modify an approved agreement if it finds that modification is necessary to serve the best interests of the child and one of the following is true:
  - (A)** the modification is agreed to by the adoptive parents, or
  - (B)** exceptional circumstances have arisen since the agreement was approved that justify modification of the agreement.
- (3)** The court must make its findings in a signed minute entry or order.

### **Staff Note Regarding the Emancipation Rules.**

There currently are 15 emancipation rules, numbered 88 through 102. Mr. Volkmer initially proposed consolidating these provisions into 5 new rules. These 5 new rules are as follows:

- 88. Emancipation Generally
- 89. Petition and Documentation Requirements
- 90. Time for Hearing and Notice of Hearing
- 91. Proceedings After Service of the Petition
- 92. Determination and Order of Emancipation

Staff then further reorganized the provisions of these rules. Here is a table showing the source of each new rule provision in the current rules.

<b>New Rule</b>	<b>Current Rule</b>
88(a)	88
88(b)	89
88(c)	96
88(d)	91
88(e)	92
88(f)	93
89(a) through (d)	90, 94
90(a)	95(A) + 100
90(b)	95(B)
90(c)	95(c)
91(a)	97
91(b)	99
91(c)	99
91(d)	98(A)
91(e)	98(B)
92(a)	101
92(b) through (d)	102

Two provisions in the current rules were omitted: Rule 90 (because it's also in Rule 94(A), now Rule 89(a)); and Rule 91(A), because it's obvious and unnecessary.

## **Rule 88. Emancipation Generally**

- (a) **Scope.** These rules and A.R.S. §§ 12-2451 through 12-2456 govern procedures for the emancipation of minors.
- (b) **Definitions.** In emancipation proceedings the following definitions apply:
- (1) **“Petitioner”** means the minor seeking emancipation.
  - (2) **“Respondent”** means any parent or guardian of the petitioner.
  - (3) **“Parent”** means the minor’s natural or adoptive mother or father, unless parental rights have been terminated by court order.
  - (4) **“Guardian”** means a legally appointed guardian.
- (c) **Allegation of Abuse or Neglect.** If at any time during emancipation proceedings there is an allegation of child abuse or neglect, the court may stay the proceedings under A.R.S. § 12-2452(A) and require DCS to investigate the allegation and submit a written report to the court.
- (d) **Appointment of a Guardian ad Litem.** The court may appoint a guardian ad litem for the petitioner at any time during an emancipation proceeding. The court may assess the parent or guardian for the cost of the guardian ad litem.
- (e) **Public Access to Records and Hearings.**
- (1) **Emancipation Record.** The court must maintain the record of an emancipation case as a public record, but for good cause, the court may order the record closed pursuant to Supreme Court Rule 123.
  - (2) **Hearings.** Emancipation hearings must be open to the public, unless the court makes a written finding that closing the hearing is necessary to protect a party or there is a clear public interest in confidentiality.
- (f) **Fee Reduction or Waiver.** At any time before or at the hearing the court, based on financial hardship, may reduce or waive the fee prescribed in A.R.S. § 12-284 for filing an emancipation petition.

## **Rule 89. Petition and Documentation Requirements**

**(a) Requirements.** A minor may file a petition for emancipation with the clerk of the court in the county in which the minor resides if all the following apply:

- (1)** the petitioner is at least 16 years of age;
- (2)** the petitioner is an Arizona resident;
- (3)** the petitioner is financially self-sufficient;
- (4)** the petitioner is not a ward of the court and is not in the care, custody, and control of a state agency; and
- (5)** the petitioner files with the court an acknowledgment that the petitioner has read and understands the information provided by the court that explains the rights and obligations of an emancipated minor and the potential risks and consequences of emancipation.

**(b) Content of Petition.** A petition for emancipation must be under oath and captioned: “In the Matter of Emancipation of \_\_\_\_, a minor.” It must state:

- (1)** the petitioner’s name, mailing address, date of birth, and the last four digits (only) of the petitioner’s social security number;
- (2)** the name and mailing address of the petitioner’s parent or legal guardian if known, and if the address is unknown, a description of the efforts taken to obtain the address; and
- (3)** specific facts and supporting documentation that warrant emancipation and that address the following:
  - (A)** the petitioner’s demonstrated ability to manage the petitioner’s financial affairs, including proof of employment or other means of support;
  - (B)** the petitioner’s demonstrated ability to manage the petitioner’s personal and social affairs, including proof of housing;
  - (C)** the petitioner’s demonstrated ability to live wholly independent of the petitioner’s parent or guardian;
  - (D)** the petitioner’s demonstrated ability and commitment to obtain or maintain education, vocational training, or employment;
  - (E)** how the petitioner will obtain or maintain health care; and
  - (F)** any other information considered necessary to support the petition.

**(c) Supporting Documentation.** The petitioner must provide at least one of the following to support the petition:

- (1) documentation that the petitioner has been living on petitioner's own for at least three consecutive months;
- (2) a statement explaining why the petitioner believes the home of the petitioner's parent or guardian is not a healthy or safe environment; or
- (3) a notarized statement from the petitioner's parent or guardian that contains their written consent to the emancipation, with an explanation of the reason for giving consent.

**(d) Lack of Information.** If a petition fails to include the information required by sections (b) and (c), the court may:

- (1) dismiss the petition without prejudice, or
- (2) require the petitioner to file supplemental information. If the court requires supplemental information, it must give written notice to the petitioner and specify a date for filing the required supplement. The court may dismiss the petition without prejudice if the petitioner fails to file the supplement by that date.

## **Rule 90. Time for Hearing, Notice of Hearing**

- (a) Time for Hearing.** The court must conduct a hearing within 90 days after the filing of the petition. The court for good cause may extend the time for conducting the hearing. The following periods are excluded from the 90-day computation:
- (1) for the petitioner to file supplemental information under Rule 89(c);
  - (2) for the court to gather correct address information under Rule 90(c);
  - (3) for the DCS investigation and report under Rule 88(c); and
  - (4) the time from the court's referral of the matter to mediation or alternative dispute resolution until the time of filing a notice of agreement or non-agreement under Rule 91(f).
- (b) Notice of Hearing.**
- (1) The court must notify the petitioner and the petitioner's parents or guardian of the date, time, and place of the hearing by certified mail-at least 60 days before the hearing date. Notice is effective upon mailing.
  - (2) The court must provide the petitioner, parents, or guardian a copy of the petition with the notice.
  - (3) The notice must advise the parents or guardian that if they fail to appear at the emancipation hearing, the court may proceed in their absence.
- (c) Incorrect or Unknown Address.** If the notice of hearing and petition are returned to the court as undelivered due to an incorrect address, or if the petition fails to provide an address for a necessary party, the court may make further inquiry of the petitioner, or it may require the petitioner to provide a full explanation concerning efforts to locate the necessary party or the circumstances why the necessary party cannot be located and served with notice.

## **Rule 91. Proceedings after Service of the Petition**

**(a) Responses and Objections.** The petitioner's parent or guardian may file a written response or objection to the petition for emancipation. An objection to the petition for emancipation must state specifically why the petition for emancipation is inaccurate or should be denied. The parent or guardian must mail or deliver a copy of the response or objection to the petitioner.

### **(b) Disclosure.**

**(1) Duty to Disclose Witnesses and Exhibits.** Unless otherwise ordered by the court, each party must disclose in writing to other parties and the court at least 20 days before the emancipation hearing the following information:

**(A)** a list of witnesses the party intends to call at the emancipation hearing, including the names, addresses, and telephone numbers of each witness, and a description of the substance of the witness's expected testimony. The disclosure must identify witnesses whose testimony will be in the form of a deposition; and

**(B)** a list and copies of all exhibits the party intends to use at the emancipation hearing.

**(2) Exclusion.** The court may exclude witness testimony or an exhibit if the witness or exhibit was not timely disclosed, except in rebuttal or for good cause.

**(c) Objection.** A party who objects to the admission of an exhibit must file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court within 10 days after receipt of the disclosure statement. The court may rule on objections at any time before the emancipation hearing.

**(d) Discovery.** The court may permit discovery only for good cause.

### **(e) Attendance.**

**(1) Petitioner.** The petitioner must personally appear in court for all proceedings or as the court directs otherwise. If the petitioner had notice of the date, time, and place of a hearing, the petitioner's absence may be deemed voluntary and the court may proceed and make findings or enter further orders, including dismissal of the petition.

**(2) Parent or Guardian.** The petitioner's parents or guardian may attend any hearing, but if they have filed an objection to the emancipation they must appear personally or through counsel for all court proceedings, or as the court directs otherwise. If a parent or guardian had notice of the date, time, and place of a

hearing, a parent or guardian's absence may be deemed voluntary and the court may proceed to make findings or enter further orders.

**(f) Alternative Dispute Resolution.**

- (1) At any time before the emancipation hearing, the court may stay the proceedings and refer the parties to mediation or other alternative dispute resolution.
- (2) If the petitioner's parent or guardian objects to the petition for emancipation, the court must stay further proceedings and refer the matter to mediation or alternative dispute resolution, unless the court reasonably believes that mediation would not be in the petitioner's best interests. The court may consider:
  - (A) whether the petitioner's parent or guardian has been convicted of abuse, neglect, or abandonment;
  - (B) whether the petitioner's parent or guardian is named as a perpetrator of abuse, neglect, or abandonment in the DCS central registry; or
  - (C) any other relevant information.
- (3) If an agreement is reached through mediation or alternative dispute resolution, the agreement must be signed by all parties and submitted to the court for approval.
- (4) If an agreement is not reached through mediation or alternative dispute resolution, the court must reset and conduct the emancipation hearing.

## **Rule 92. Determination and Order of Emancipation**

**(a) Burden of Proof.** The petitioner must prove by clear and convincing evidence that emancipation is in the petitioner's best interests.

**(b) Determination of Emancipation.** The court must determine emancipation based on the petitioner's best interests. The court must consider the following:

- (1) the potential risks and consequences of emancipation and whether the petitioner understands these risks and consequences;
- (2) the wishes of the petitioner;
- (3) the opinions and recommendations of the petitioner's parents or guardian;
- (4) the financial resources of the petitioner, including any employment history;
- (5) the petitioner's ability to be financially self-sufficient;
- (6) the petitioner's educational level and success in school;
- (7) whether the petitioner has any criminal record; and
- (8) any other factor the court deems relevant.

**(c) Order of Emancipation.** If the court finds emancipation is in the petitioner's best interests, the court must:

- (1) make the following findings on the record:
  - (A) the petitioner is at least sixteen years of age;
  - (B) the petitioner is a resident of this state;
  - (C) the petitioner is financially self-sufficient;
  - (D) the petitioner has acknowledged in writing that the petitioner has read and understands the information provided by the court that explains the rights and obligations of an emancipated minor and the potential risks and consequences of emancipation; and
  - (E) the petitioner is not a ward of the court and is not in the care, custody, and control of a state agency.
- (2) file an order of emancipation with the clerk;
- (3) provide a copy of the order to the petitioner and any party entitled to notice of the proceeding; and

(4) provide a copy of the order to the Department of Economic Security, DCS, or the department's agent if the petitioner is a child in a Title IV-D case.

**(d) Appeal.** A party may appeal from an order granting or denying the emancipation petition as provided in Rule 103.

### **Rule 103.0. Right to Appeal**

**(a) Who May Appeal.** Any aggrieved party may appeal to the Court of Appeals from a final order of the juvenile court. A party is aggrieved under this rule if the order from which the appeal or cross-appeal is taken denies the party a personal or property right or imposes a substantial burden on the party.

**(b) Final Orders.** A final order must be in writing, signed by a judge, and filed with the clerk.

**(1)** In delinquency and incorrigibility proceedings:

- (A)** A disposition order for a juvenile who is adjudicated incorrigible or delinquent is a final order.
- (B)** A restitution order entered after the date of the disposition order is a separately appealable final order, but if a separate appeal is filed and if practicable, it should be consolidated with an appeal of the disposition order.
- (C)** When the court finds that the juvenile violated probation, its disposition order is a final order.
- (D)** An order transferring a juvenile for prosecution as an adult is a final order.

**(2)** In all other juvenile proceedings, final orders include:

- (A)** an order granting a dependency petition and declaring a child dependent or denying or dismissing a dependency petition;
- (B)** a disposition order entered after a juvenile has been adjudicated dependent;
- (C)** an order granting or denying a motion to intervene;
- (D)** an order relieving DCS of its obligation to provide reunification services;
- (E)** an order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody;
- (F)** an order terminating visitation;
- (G)** an order granting or denying a petition or motion for termination of parental rights;
- (H)** an order denying an application for adoption certification under A.R.S. § 8-105 and Rule 77, after a hearing under Rule 77(h);
- (I)** an order granting or denying an adoption petition;

- (J) an order granting or denying a Title 8 guardianship petition or motion;
- (K) an order granting or denying a petition for emancipation;
- (L) an order altering or amending a final order under Rule 46.1 and an order denying a motion to alter or amend a final order under Rule 46.1;
- (M) an order granting or denying a motion to set aside a final order under Rule 46.2(b) or Rule 74(f); and
- (N) any other order that is final pursuant to Arizona case law.

### **Rule 103.1. General Provisions**

**(a) Caption on the Notice of Appeal.** The notice of appeal must be captioned using the type of proceeding and the initials of the juvenile's name. For example, "In re Delinquency of A.B.," "In re Dependency as to C.D.," or "In re Termination of Parental Rights as to E.F."

**(b) Suspension of Order.**

**(1) Generally.** The filing of a notice of appeal does not suspend an order of the juvenile court, and execution of the order is not stayed while the appeal is pending, unless the appellate court suspends the order or stays the execution.

**(2) Request for Stay.** A party may file a motion in the appellate court requesting a stay of the order after a notice of appeal has been filed. The filing party must state in that motion whether other parties stipulate or object to staying the order while the appeal is pending.

**(3) Factors.** In deciding whether to stay a juvenile court order, the appellate court may consider the best interests of the child, the likelihood that the order will be reversed, and any other pertinent legal or equitable matters. If the juvenile court order requires restitution, its clerk will hold monies paid for restitution until the appellate court issues its mandate.

**(c) Priority of Juvenile Appeals.** The appellate court must give a juvenile appeal precedence over all the other actions except extraordinary writs or special actions.

**(d) Suspension of Rules.** On its own or on a party's motion, the appellate court for good cause may suspend, supplement, or vary the requirements of any provision of Rules 103 through 107.1, and may substitute another appropriate order of proceeding. However, the time specified in Rule 104(a) for the filing of a notice of appeal or notice of cross-appeal may not be shortened or extended, except as provided in that rule.

**(e) Appointment of Counsel.**

**(1) Requirement.** When required by law, the juvenile court or the appellate court must appoint an attorney for a party to an appeal from a final juvenile court order.

**(2) Party with Appointed Counsel in the Juvenile Court.** The juvenile court or the appellate court may order the attorney who had been appointed in the juvenile court proceedings to continue representing that party on appeal, unless the juvenile court or appellate court finds that the party is currently able to employ

counsel. Either court may also appoint a different attorney for a party to an appeal.

- (3) ***Party without Appointed Counsel in the Juvenile Court.*** A party who did not have appointed counsel in the juvenile court may request appointed counsel on appeal by filing a request in the juvenile court no later than 5 days after the notice of appeal is filed. If the juvenile court denies the party's request for appointed counsel, the party may request the appellate court to appoint counsel.

(f) **Bond.** A bond is not required on an appeal from a juvenile court order.

(g) **Continuing Juvenile Court Jurisdiction.** While an appeal is pending, the juvenile court may proceed within its legal authority on a remaining or new issue to the extent:

- (1) the appellate court has specifically authorized or directed the juvenile court to rule on the issue;
- (2) the juvenile court's ruling on the issue would be in furtherance of the appeal;
- (3) a statute or court rule confers continuing jurisdiction on the juvenile court; or
- (4) the juvenile court's ruling on the issue would not legally or practically prevent the appellate court from granting the relief requested on appeal.

This rule does not authorize the juvenile court to extend the time for filing briefs, motions, transcripts, or other documents or items with the appellate court.

(h) **Service of Filings Under These Rules.** A party who files documents with the superior court clerk or an appellate clerk pursuant to Rules 103 through 107.1 must serve copies of the documents on the other parties as provided by Civil Rule 5(c).

(i) **Arizona Rules Civil Appellate Procedure (ARCAP).** In addition to any ARCAP rule specifically incorporated by these rules, the following apply:

- (1) Rule 2 (Definitions);
- (2) Rule 3(b) (Suspension of an Appeal);
- (3) Rule 4 (Filing Documents with an Appellate Court; Format; Service), except that the caption for all filings in the appellate court must be as provided in Rule 103.1(a), not as provided in ARCAP 4(a) and the related ARCAP forms;
- (4) Rule 4.1 (Paper Filing);
- (5) Rule 4.2 (Electronic Filing);

- (6) Rule 5 (Computing and Modifying Deadlines), except as provided in Rule 104(e), which permits the juvenile court to excuse the untimely filing of a notice of appeal or cross-appeal;
- (7) Rule 6 (Motions);
- (8) Rule 8(g) (Joint or Consolidated Appeals or Cross-Appeals);
- (9) Rule 9(c) (Filing of Notice of Appeal Before Entry of Judgment);
- (10) Rule 11, (d), (e), and (h) (Narrative Statement, Agreed-Upon Statement, Multiple Appeals from the Same Judgment);
- (11) Rule 17 (Supplemental Citation of Legal Authority);
- (12) Rule 18 (Oral Argument in the Court of Appeals);
- (13) Rule 20 (Notice of Decisions and Orders);
- (14) Rule 24 (Appellate Court Mandates), except that the appellate court may issue its mandate immediately if the appeal is dismissed upon the filing of a notice by counsel under Rule 106(e), and the party has not filed a brief on the party's own behalf;
- (15) Rule 25 (Sanctions) except that incorporation of ARCAP 25 must not be construed to permit the imposition of sanctions against an appellant, a cross-appellant, or their counsel who files a frivolous appeal from a final order in a delinquency or transfer matter;
- (16) Rule 27 (Substitution of Parties); and
- (17) Rule 28(a) through (f) (Decisions; Publication of Opinions).

## **Rule 104.0. Notice of Appeal**

### **(a) Time for Filing a Notice of Appeal and Notice of Cross-Appeal.**

#### **(1) *Notice of Appeal.***

**(A)** Except as otherwise provided by this rule, a party must file a notice of appeal in the juvenile court no later than 15 days after entry of the final order from which the appeal is taken.

**(B)** An order is entered on the date the clerk files it, as shown by the clerk's date stamp on the filed order.

**(2) *Notice of Cross-Appeal.*** Except as otherwise provided by this rule, a party must file a notice of cross-appeal in the juvenile court no later than 10 days after the appellant filed a notice of appeal, or 15 days after entry of the final order from which the appeal is taken, whichever is later.

**(3) *Effect of Certain Post-Judgment Motions on the Time for Filing a Notice of Appeal.*** If a party within 12 days after entry of a final order files a motion under Rule 46.1 to alter or amend the final order, or a motion to set aside the final order under Rule 46.2(c) or Rule 74(f), the time to file a notice of appeal or cross-appeal under section (a) is extended as follows.

**(A) *No Previous Notice of Appeal.*** If a party has not previously filed a notice of appeal, the time for filing a notice of appeal begins to run on the date of entry of:

**(i)** the altered or amended order, regardless of whether that order was entered on a party's motion or the court's initiative;

**(ii)** an order denying a party's motion to alter or amend; or

**(iii)** an order granting or denying a party's motion to set aside.

**(B) *Previous Notice of Appeal.*** If a party has filed a notice of appeal before timely filing one of these motions, or files a notice of appeal while the motion is pending, then after the appellate court assigns a case number under Rule 105(a), the appellant must promptly notify the appellate court of the pending motion. Upon receipt of that notice, the appellate court will suspend the appeal. The appellant must promptly notify the appellate court when the juvenile court has decided the motion. The appellate court will then reinstate the appeal as of the entry of the order disposing of the last motion. A party intending to appeal the juvenile court's ruling on such a motion must file a new or amended notice of appeal or cross-appeal within the time prescribed in

subpart (a)(1) or (a)(2) as measured from the entry of the order disposing of the motion.

(C) *Altering or Amending a Judgment on the Court's Initiative.* If a party has filed a notice of appeal before the court enters an altered or amended final order on its own under Rule 46.1, the party is not required to file an amended notice of appeal after the court enters the altered or amended order.

(4) *Other Post-Judgment Motions.* Other than as provided in subpart (a)(3), the filing of any post-judgment motion that concerns the order from which the appeal is taken does not extend the time for filing a notice of appeal or cross-appeal. Once a proper notice of appeal is filed, the juvenile court is divested of jurisdiction to address such motions, unless the appellate court suspends the appeal and re-vests in the juvenile court the jurisdiction to rule on the motion. If jurisdiction to address the motion is re-vested, an aggrieved party who challenges the juvenile court's ruling on the motion must file a new or amended notice of appeal as provided in subpart (a)(1) or (a)(2).

(5) *Delayed Appeal or Cross-Appeal.* If a party fails to file a timely notice of appeal or cross-appeal and the juvenile court finds good cause for the failure, the juvenile court must allow the appeal or cross-appeal to proceed.

(A) To obtain relief under this rule, a party must file a motion in the juvenile court that shows good cause for the failure.

(B) If the juvenile court enters an order granting the motion, the party must file the delayed notice of appeal or cross-appeal no later than 7 days after entry of the order permitting it.

(C) If a party files an untimely notice of appeal or cross-appeal before the juvenile court enters an order permitting a delayed appeal or cross-appeal, and the appeal remains pending when the court enters its order granting relief under this rule, the appellate court must treat the untimely notice as if it had been timely filed.

(b) **Content of the Notice of Appeal.** The notice of appeal or notice of cross-appeal must be in substantially the same form as Form 5 and must include the following:

(1) the party filing the notice;

(2) the final order or portion of the order the party is appealing;

(3) whether the party was represented by appointed or private counsel when the final order was entered, unless the party filing the notice is a government agency; and

(4) if the notice of appeal or cross-appeal is filed by an attorney, it must be in substantially the same form as Form 5, and must include the following statement: “By signing and filing this notice of appeal, undersigned counsel avows that counsel communicated with the client after entry of the order being appealed, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.” If the attorney for a party files a notice of appeal or cross-appeal that does not contain the required statement, the clerk must refer the notice of appeal or cross-appeal to the juvenile court judge assigned to the case. After reviewing the notice of appeal or cross-appeal, the assigned judge must issue an order informing the attorney and the appellant or cross-appellant that the notice does not comply with this rule and permit counsel to file an amended notice of appeal or cross-appeal no later than 5 days after the order is entered. If a proper notice of appeal or cross-appeal is not filed within that period, the court must strike the notice of appeal or cross-appeal and direct the clerk not to process it under Rules 104, 104.1, and 105. If the appellate court receives a notice of appeal or cross-appeal that does not comply with this rule and the juvenile court has taken no action on it, the appellate court must give counsel for the appellant or cross-appellant a reasonable opportunity to file an amended notice and if a compliant notice of appeal is not filed, the court must dismiss the appeal or cross-appeal.

(c) **Distribution of the Notice.** Unless otherwise provided, no later than two business days after the filing of a notice of appeal or cross-appeal, the juvenile court clerk must distribute copies of the notice to:

- (1) all parties;
- (2) each certified court reporter who reported any juvenile court proceeding that is part of the presumptive record as described in Rule 104.1(a) or the court’s designated transcript coordinator, if the record was made by electronic or other means; and
- (3) the appellate court clerk. The juvenile court clerk must include with the copy of the notice served on the appellate court clerk a copy of the order from which the appeal is taken and the names of the persons to whom the clerk distributed a copy of the notice of appeal or cross-appeal.

## **Rule 104.1. The Record on Appeal**

**(a) Presumptive Record on Appeal.** The presumptive record on appeal consists of documents filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:

- (1) *Documents and Exhibits.*** The presumptive record on appeal:
  - (A)** Includes all documents filed with the clerk before the record is transmitted, and in a delinquency case, the disposition file under Rule 30(a)(6). No other filings may be transmitted without an order from the appellate court.
  - (B)** Includes all exhibits admitted into evidence, as well as any report offered into evidence but not admitted under Rule 3.1(d)(8).
  - (C)** Must not include any document or exhibit deleted pursuant to Rule 104.1(b) or any item of a size, bulk, or condition that makes transmission impractical, in which case the provision of ARCAP 11.1(c)(2) apply.
- (2) *Transcripts.*** The presumptive record in each of the following types of appeals includes the transcripts respectively specified below:
  - (A) *From a delinquency or incorrigibility adjudication:*** transcripts of the adjudication and disposition hearings and any separate restitution hearing.
  - (B) *From a probation violation proceeding:*** transcripts of the contested violation hearing or the admission hearing and the disposition hearing.
  - (C) *From an order transferring a juvenile for prosecution as an adult:*** transcripts of the probable cause and public safety phases of the transfer hearing.
  - (D) *From an order adjudicating a child dependent or dismissing a dependency petition:*** transcripts of the hearing or hearings that generated the order. If the notice of appeal or cross-appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing.
  - (E) *From an order granting or denying a motion to intervene:*** transcripts of the hearing on the motion.
  - (F) *From an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation:*** transcripts of the hearing or hearings that resulted in that order.
  - (G) *From an order establishing or denying a guardianship or an order granting or denying a motion or petition to terminate parental rights:*** transcripts of the

contested guardianship, termination, or other hearing that generated the order being appealed.

**(H)** *From an order denying an adoption certification under A.R.S. § 8-105 and Rule 77:* the transcript of the hearing under Rule 77(d).

**(I)** *From an order granting or denying an adoption petition:* transcripts of any hearing on the validity of a parent's consent to adoption and the adoption hearing.

**(J)** *From an order granting or denying a petition for emancipation:* transcripts of any hearings on the petition.

**(K)** *From any other final order:* transcripts of any hearing that resulted in that order.

Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

**(b) Appellant's Supplemental Designation.**

**(1)** No later than 5 days after filing a notice of appeal, the appellant may file "appellant's supplemental designation of record" that requests the juvenile court clerk to include in the record transmitted to the court of appeals the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:

**(A)** any exhibit that has been marked and offered but not admitted into evidence; and

**(B)** all or part of the transcript of any designated proceeding that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

**(2)** The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

**(3)** The appellant must serve the supplemental designation of record on all parties, on each court reporter who reported a designated proceeding, and as applicable, on the court's transcript coordinator. The certified transcript on appeal must not include any proceeding or portion of any proceeding excluded from the presumptive record under this subpart.

**(c) Appellee's Supplemental Designation.** No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk "appellee's supplemental designation of record" for any items not included in section (a) or

deleted by appellant under section (b)(2) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. The appellee must serve the supplemental designation as provided in section (b).

**(d) Supplementing the Record by Motion.** After the time for filing a supplemental designation under section (b) or (c) has passed, a party may request to supplement the record only by motion filed in the appellate court.

**(1) *Within 7 days.*** No later than 7 days after the appellate clerk sends a notice under Rule 105(e) that the record on appeal is complete, a party may file a motion that requests adding to the record on appeal items the party reasonably believes are necessary for proper consideration of issues the party intends to raise on appeal. The motion must:

**(A)** show good cause for supplementing the record; and

**(B)** state whether other parties consent or object to the proposed supplementation of the record or explain why the moving party was unable to contact the other parties before filing the motion.

**(2) *After 7 days.*** If a party files a motion under this section more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must show that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's motion to supplement the record under this subpart unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1), and the party has established the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

**(e) Disputes, Omissions, and Misstatements.** The parties must submit any dispute about whether the record accurately includes what occurred in the juvenile court to that court, which will resolve the dispute. If anything material is omitted from or misstated in the record, the parties may add to or correct the record by a court-approved stipulation. Alternatively, the juvenile court, before the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

**(f) Sanctions.** If a party requests adding to the presumptive record any item or transcript that is not necessary for proper consideration of the issues on appeal, the appellate

court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103.1(i).

## **Rule 104.2. Notice of Non-Participation**

- (a) Generally.** Any part to the case or a party's fiduciary, which includes a personal representative, Title 14 guardian, conservator, or trustee, who has appeared in the proceedings on behalf of a party, may file a notice of non-participation stating that the party or fiduciary does not intend to actively participate in the appeal and adopts and agrees to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are identified in the notice.
- (b) Time for Filing.** A notice of non-participation may be filed in the juvenile court no later than 10 calendar days after the juvenile court clerk has distributed copies of the notice of appeal or cross-appeal under Rule 104(c). Otherwise, a notice of non-participation must be filed in the appellate court. A party or fiduciary filing a notice of non-participation must serve a copy of the notice on all persons on whom service was made under that provision.
- (c) Effect of Filing.** By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal. A notice of non-participation must not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or cross-petition for review.

**Rule 105. Assigning an Appellate Case Number; Filing, Serving, and Transmitting the Record on Appeal**

**(a) Assigning an Appellate Case Number and Caption.**

- (1) The appellate clerk must assign an appellate case number upon receipt of the notice of appeal from the superior court clerk. The appellate court clerk must establish the official caption of the appeal pursuant to the criteria in Rule 103.1(a).
- (2) If a party files a timely notice of appeal but the court of appeals has not received the notice before the party files a motion seeking to stay the superior court's order pending resolution of the appeal, the appellate court clerk may assign the appeal an appellate case number when the party files that motion. The moving party must attach to the motion a copy of the timely filed notice of appeal.

**(b) Notification of Assignment of the Appellate Case Number.** The appellate court clerk must provide notice of the assigned appellate case number and the official caption to:

- (1) all parties;
- (2) the superior court clerk; and
- (3) the court reporter or authorized transcriber for all presumptive transcripts as provided in Rule 104.1(a)(2) and for any proceeding or part thereof designated pursuant to Rule 104.1(b)(1)(B) or (c).

**(c) Filing and Transmitting Documents.** No later than 20 days after the notice of appeal is filed, the superior court clerk must:

- (1) prepare a certified copy of the following by individually numbering each document in filing-date order, beginning with the first-filed document:
  - (A) the documents that are part of the presumptive record, identified in Rule 104.1(a)(1), except documents excluded from the presumptive record under Rule 104.1(b)(2), and
  - (B) any documents added to the presumptive record under Rule 104.1(b) or (c);
- (2) identify and assemble all exhibits identified in Rule 104.1(a)(1)(B) and admitted into evidence, as well as any report offered into evidence but not admitted under Rule 3.1(d), except:
  - (A) any exhibit appellant has excluded under Rule 104.1(b), unless appellee has re-designated the exhibit under Rule 104.1(c), and

- (B) any item of a size, bulk, or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply;
- (3) prepare an index of the record on appeal separately listing:
  - (A) the documents prepared pursuant to subpart (c)(1), in numerical order, indicating for each the title or a brief description of the document and its filing date, and
  - (B) the exhibits identified and assembled pursuant to subpart (c)(2), by number, with a brief description of each and the date it was admitted into evidence;
- (4) transmit the documents, exhibits, and index to the appellate court clerk; and
- (5) serve copies of the index on all parties to the appeal.

**(d) Filing and Serving Certified Transcripts; Sanctions.**

- (1) **General Requirements.** Unless otherwise ordered by the appellate court, the court reporter or authorized transcriber must file the completed certified transcript with the appellate court clerk and must serve one copy on each appellant and each appellee who has not filed a Notice of Non-Participation under Rule 104.2. The court reporter or authorized transcriber must file a notice of service with the transcript, stating when, upon whom, and by what means service was made. The transcript must show the assigned appellate court case number.
- (2) **Time for Filing.** The court reporter or authorized transcriber must file the transcript no later than 30 days after whichever of the following occurs first:
  - (A) the filing of a notice of appeal by a governmental agency or of a notice of appeal stating that appellant was represented by appointed counsel in the juvenile court when the final order was entered;
  - (B) service of notice on the court reporter or authorized transcriber that the juvenile court or the appellate court has appointed counsel to represent the appellant on appeal; or
  - (C) the appellant makes satisfactory arrangements to pay for the certified transcript.

- (e) **Supplementing the Record by Appellate Court.** On a party's motion filed under Rule 104.1(d) or on its own initiative, the appellate court may direct the transmission of any document, exhibit, or other item necessary for determining the appeal and [that was?] not transmitted under sections (c) and (d) of this rule.

**(f) Notice of Completion of the Record.** Upon receipt of all documents, exhibits, and transcripts that are included in the presumptive record, or added by supplemental designation, or by the appellate court's order under section (e), the appellate court clerk must send a notice to all parties of the date on which the record on appeal is complete.

## **Rule 106.0. Briefing in the Court of Appeals; Transfer to the Supreme Court**

**(a) Generally.** ARCAP 15 (“Due Dates; Filing and Service of Briefs”) applies in appeals from the juvenile court, except that:

- (1) the opening brief must be filed with the Court of Appeals no later than 20 days after the appellate clerk sends the notice of completion of the record required by Rule 105(f), unless the appellate court orders otherwise;
- (2) any answering brief must be filed with the Court of Appeals no later than 20 days after service of the opening brief; and
- (3) a reply brief must be filed no later than 10 days after service of appellee’s answering brief or a notice stating that no reply brief will be filed. The Court of Appeals encourages the appellant to file the notice as soon as possible after the answering brief is filed.

**(b) Length and Content of Briefs.** ARCAP 13 (“Content of Briefs”), 13.1 (“Appendix”), and 14 (“Length and Form of Briefs”) apply in appeals from the juvenile court, except:

- (1) ***Word Limit for an Electronically Filed Brief.*** An electronically filed opening, answering, or amicus curiae brief must not exceed 7,000 words, and a party’s reply brief must not exceed 3,500 words.
- (2) ***Page Limit for a Paper Filed Brief.*** If a brief is submitted for filing at the appellate clerk’s filing counter, an opening, answering, or amicus curiae brief must not exceed 22 pages, and a reply brief must not exceed 12 pages.
- (3) ***Exclusions from Word or Page Limits.*** The word and page limits specified in this rule do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any appendix.
- (4) ***Victim Identification.*** Appellate briefs must use a victim identifier in place of the victim’s name in any case in which a delinquent act is alleged. “Victim identifier” means a victim’s initials, a pseudonym, or other substitute for the victim’s true full name.
- (5) ***Binding a Paper Brief.*** A party permitted to file a brief in paper under ARCAP 4.1(c) must securely bind the brief (for example, the pages of the brief may be clipped or banded), but the binding must not use adhesives, staples, or two-pronged fasteners that perforate the pages of the brief.

**(c) Extensions of Time.**

- (1) A party seeking an extension of time for filing a brief must file a motion stating the reasons the extension is needed, and whether any party objects, or that the moving party's attempts to communicate with the other parties have been unsuccessful.
- (2) The Court of Appeals for good cause may grant a party an initial extension of 20 days for the filing an opening or answering brief and 10 days for the filing of a reply brief.
- (3) The Court of Appeals may grant further extensions only for extraordinary circumstances.

**(d) Amicus Curiae Brief.** ARCAP 16 ("amicus curiae") applies to appeals from final orders of the juvenile court. Amicus curiae may not file a reply brief.

**(e) Notice and Avowal in Lieu of Opening Brief; Pro se Brief.**

- (1) When or before the opening brief is due in an adoption, dependency, Title 8 guardianship, or severance appeal, a court-appointed attorney may file a Notice and Avowal in Lieu of Opening Brief, avowing either or both of the matters in subparts (e)(1)(A) and (e)(1)(B).
  - (A) The appellant has failed to maintain contact with counsel, and despite diligent efforts, counsel has been unable to locate appellant. Counsel must state the last date on which the appellant and counsel had contact, and the efforts counsel has made to locate the appellant. Counsel must avow that for this or any other reason, which counsel must specify, counsel believes the appellant has abandoned the appeal.
  - (B) Counsel has reviewed the entire record on appeal and finds no non-frivolous issue to raise. Counsel must include avowals that counsel has informed the appellant of the intent to file a notice under this rule, and the appellant's opportunity to file a pro se brief.
- (2) If appellant's attorney files a notice under subpart (e)(1)(B), the attorney must provide the appellate court with appellant's contact information and inform the court in its notice whether appellant requests to file a pro se brief.
- (3) If the Court of Appeals grants appellant's request to file a pro se brief, it must order appellant to file the brief no later than 15 days after the date of the order. No extensions may be granted absent extraordinary circumstances. When appellant files the pro se brief, the court may deem the case at issue, or it may permit or direct an appellee to file an answering brief. The court may not grant

relief without permitting the appellee to file an answering brief. No pro se reply brief may be filed.

- (4) If the appellant's attorney files a Notice and Avowal in Lieu of Opening Brief and avows that the appellant does not request to file a pro se brief, or if the appellant notwithstanding the request fails to timely file a pro se brief, the Court of Appeals may dismiss the appeal. If the court dismisses the appeal, it may accelerate and immediately issue its mandate.
- (f) **“At Issue.”** Except as otherwise provided in subpart (e)(3), an appeal will be deemed “at issue” upon the filing of the reply brief, the filing of a notice that no reply brief will be filed, or the expiration of the time for filing the reply brief, whichever occurs first.
- (g) **Petition for Transfer.** ARCAP 19 applies in appeals from final orders of the juvenile court, except that a party's petition for transfer of the appeal to the Supreme Court must be filed before the case is at issue under section (f).

**Rule 106.1. Dismissal and Other Action by the Court Appeals; No Motion for Reconsideration; Motion for Publication**

**(a) Dismissal.** Before or after briefing is completed, the appellate court may dismiss an appeal:

- (1) if it is withdrawn by the appellant; or
- (2) on its own or an appellee's motion, for any legal cause, including lack of jurisdiction or lack of prosecution, unless the appellant shows good cause why the appeal should not be dismissed.

**(b) Action by the Appellate Court.** The appellate court may:

- (1) affirm the order of the juvenile court;
- (2) vacate or reverse the order and remand for appropriate action by the juvenile court;
- (3) take the matter under advisement and order the filing of additional matters in the appellate court; or
- (4) take other actions the court deems just and proper under the circumstances, including suspending the appeal and re-vesting jurisdiction in the juvenile court for further proceedings in that court.

**(c) No Motion for Reconsideration.** A party may not file a motion for reconsideration of a final order, decision, or opinion of the Court of Appeals.

**(d) Motion for Publication.** A party may file a motion for publication no later than 10 days after the filing of the decision and before a petition for review to the Supreme Court is filed.

## **Rule 107.0. Petition for Review**

(a) **Purpose.** A petition for review or cross-petition for review asks the Supreme Court to review a decision of the Court of Appeals.

### **(b) Place and Time for Filing.**

(1) **Place for Filing.** A party must file a petition or cross-petition for review, a response to a petition or cross-petition for review, or a motion to extend the time for filing any of these documents, with the Supreme Court clerk.

### **(2) Timing.**

(A) **Petition for Review.** A party must file a petition for review no later than 20 days after Court of Appeals files its decision or any final order disposing of the appeal.

(B) **Cross-Petition for review.** A party must file a cross-petition for review no later than 15 days after service of a petition for review or no later than 20 days after the Court of Appeals files its decision or final order, whichever is later.

### **(c) Form and Length of the Petition or Cross-Petition; Service.**

(1) **Application of ARCAP 4.** The petition and cross-petition must comply with the provisions of ARCAP 4(a) through (c), (f), and (g), unless the Supreme Court suspends a requirement of that rule.

(2) **Caption.** The parties must use the caption required by Rule 103.1(a).

(3) **Word Limit for Electronic Filing.** An electronically filed petition for review, response, or cross-petition must not exceed 3,500 words. However, a cross-petition combined with a response to a petition must not exceed 6,500 words.

(4) **Page Limit for Paper Filing; Number of Copies.** A petition, response, or cross-petition filed in paper must not exceed 12 pages. A party who files in paper must file an original and one copy of the document, including any appendix.

(5) **Exclusion from Word or Page Limit.** The word and page limits specified in this rule do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any appendix.

(6) **References to Case Law.** References to case law must comply with ARCAP 13(f).

(7) **Certificate of Compliance.** The petition or cross-petition for review must be accompanied by a certificate of compliance, as provided by ARCAP 23(g)(3).

**(d) Contents of the Petition or Cross-Petition for Review.** The party who files a petition for review must include with the filing a copy of the Court of Appeals decision or final order, and the following information:

- (1) *Statement of the Issues.*** A petition or cross-petition must include, without argument, a list of the issues decided by the Court of Appeals that the petitioner or cross-petitioner wishes to present to the Supreme Court for review. The petition or cross-petition for review must also list separately and without argument any additional issues that were presented to but not decided by the Court of Appeals, which the Supreme Court may need to decide if review is granted.
- (2) *Materials Facts.*** A petition or cross-petition must include the facts material to the issues presented to the Supreme Court for review. No evidentiary matter may be included if it is not material to proper consideration of these issues. The party must include a reference to the record or page of the certified transcript where the material evidence appears.
- (3) *Reasons the Supreme Court Should Grant Review.*** A petition or cross-petition must state the reasons the Supreme Court should grant review, which may include the following: no Arizona decision controls the point of law in question; a decision of the Supreme Court should be overruled or qualified; conflicting decisions have been rendered by the Court of Appeals; or important issues of law have been incorrectly decided.
- (4) *Appendix.***
  - (A) *Necessity.*** If there are documents in the record on appeal that are necessary for determination of the issues raised by the petition or cross-petition, and hyperlinking to the record is unavailable, the petitioner and cross-petitioner must file with the petition or cross-petition an appendix that contains only those documents.
  - (B) *Form.*** An appendix must comply with the requirements of ARCAP 13.1.
- (5) *Rejection of Petition or Cross-Petition.*** The Supreme Court clerk may return any petition or cross-petition for review presented for filing that does not substantially comply with this rule. The Supreme Court clerk must include with the returned petition written instructions to the petitioner or cross-petitioner to file a proper petition or cross-petition no later than the date specified in the clerk's instructions.

- (e) **Availability of Briefs.** When the Court of Appeals clerk is notified that a petition for review has been filed, the clerk must make available to the Supreme Court clerk the briefs filed in the Court of Appeals.
- (f) **Response to the Petition or Cross-Petition.**
- (1) **Timing.** Any party opposing the petition or cross-petition for review may file a response with the Supreme Court no later than 20 days after the date the petition or cross-petition for review was served. However, the Supreme Court will not consider a failure to file a response as an admission that the petition or cross-petition for review should be granted.
  - (2) **Contents.** If a response is filed, it must list, separately and without argument, any additional issues not listed by the petitioner or cross-petitioner that were presented to but not decided by the Court of Appeals and may need to be decided if review is granted. If the record on appeal contains documents that are necessary for a determination of the issues raised by the petition or cross-petition for review, and hyperlinking to the record is unavailable, a party must file with the response an appendix that complies with the requirements set forth in subpart (d)(4). An appendix to a response may contain only those documents not included in the appendix to the petition or cross-petition for review.
  - (3) **Reply.** If a response is filed, neither the petitioner nor cross-petitioner may file a reply unless the Supreme Court has ordered otherwise.
- (g) **Service of the Petition, Cross-Petition, and Response.** The petitioner or cross-petitioner must serve a copy of the petition, cross-petition, response, and any appendices, on all parties who appeared in the Court of Appeals and on any person who filed a notice of non-participation under Rule 104.2.
- (h) **Order Granting Review.** If the Supreme Court grants review, it must promptly notify the parties and the Court of Appeals clerk and specify the issue or issues to be reviewed. The Supreme Court may require the parties to file additional briefs, it may order oral argument, or it may do both. If the order granting review does not provide for supplementation of briefs or for oral argument, either party, no later than 15 days after the Supreme Court clerk sends notice of the court's order, may request the court to do so by filing a motion that specifies the reasons.
- (i) **Availability of the Record.** Upon notification by the Supreme Court clerk that a petition or cross-petition for review has been granted, the Court of Appeals clerk must make the remaining record available to the Supreme Court clerk and the Supreme Court's staff attorneys.

**(j) Order Denying Review.** If the Supreme Court denies review, its order must specify those justices, if any, who voted to grant review. The Supreme Court must notify the Court of Appeals and the parties when all petitions and cross-petitions for review have been decided and must return any original paper copies of the briefs to the Court of Appeals clerk. Unless the Supreme Court permits otherwise, a party may not file a motion for reconsideration of an order denying a petition or cross-petition for review.

**(k) Dispositions.** If the Supreme Court grants review, it may decide the appeal in any manner specified in ARCAP 28(a). The Supreme Court may also do the following:

- (1)** After a petition for review has been filed, if the parties to the appeal resolve the issues by agreement, the Supreme Court may vacate the decision of the Court of Appeals or designate a Court of Appeals opinion as a memorandum decision.
- (2)** When the Supreme Court grants review, it may remand the appeal to the Court of Appeals for reconsideration in light of authority identified in the Supreme Court's order.
- (3)** If issues were raised in, but not decided by, the Court of Appeals and the Supreme Court grants review, the Supreme Court may consider and decide those issues, may remand the appeal to the Court of Appeals to decide those issues, or may otherwise dispose of those issues as it deems appropriate.

### **Rule 107.1. Appellate Court Mandate**

- (a) Generally.** The Court of Appeals will issue a mandate in the manner and at the times provided in this section, except as provided in Rule 106(e)(4).
- (b) No Petition for Review.** If no petition for review is filed, the Court of Appeals clerk must issue the mandate at the expiration of the time for the filing of a petition for review.
- (c) Petition for Review Denied.** If a petition for review is filed, the Court of Appeals clerk must issue a mandate upon receiving an order of the Supreme Court denying the petition for review.
- (d) Petition for Review Granted.** If the Supreme Court grants a petition for review, the Supreme Court clerk issues the mandate.
- (e) Return of Exhibits and Other Objects.** The appellate court clerk must return to the juvenile court with the mandate any exhibits or other objects the juvenile court transmitted as originals. The appellate court may either return to the juvenile court with the mandate or destroy pursuant to rule or the appellate court's administrative orders any papers, exhibits, or other objects that the juvenile court transmitted as certified copies.

**Rule 108. ABROGATED**

**Form 5(a)**

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN \_\_\_\_\_ COUNTY**

\_\_\_\_\_ ) Case No.: \_\_\_\_\_  
 )  
 Caption per Rule Ariz. R. Juv. P 103.1(a) ) **NOTICE OF APPEAL**  
 (Example: In re Delinquency of A.B.) ) (Delinquency/Incorrigibility Proceeding)  
 )  
 ) Division \_\_\_\_\_  
 )  
 )  
 )  
 )  
 )  
 \_\_\_\_\_ )

NOTICE IS HEREBY GIVEN that \_\_\_\_\_, [name of party] appeals to the Arizona Court of Appeals from the following (check the applicable boxes and insert the date of the order or orders that are the subject of the appeal):

- 1. The disposition order entered on \_\_\_\_\_, following the order adjudicating the juvenile delinquent or incorrigible.
- 2. The order of restitution entered on \_\_\_\_\_, after the juvenile was adjudicated delinquent or incorrigible and after the entry of the disposition order referred to in subparagraph (1).
- 3. The disposition order in a probation violation proceeding entered on \_\_\_\_\_, following a finding that the juvenile violated probation.
- 4. The order entered on \_\_\_\_\_, transferring the juvenile for prosecution as an adult.

**ATTORNEY REPRESENTATION**

If the juvenile is the appellant:

The name of the attorney representing the juvenile in the superior court is \_\_\_\_\_. This attorney was  court-appointed or  privately retained. If counsel was court-appointed, specify the custodian of the client's file: \_\_\_\_\_.

The juvenile requests that the court appoint a new attorney to represent the juvenile on appeal.  Yes  No

If the State of Arizona is the appellant: The name of the office representing the State in the superior court: \_\_\_\_\_.

**AVOWAL BY THE APPEALING PARTY'S ATTORNEY (Applicable when a notice of appeal is filed by the attorney for the juvenile.)**

The undersigned attorney avows that the attorney has communicated with the client after entry of the order being appealed, as required by Rule 104(b)(4) of the Rules of Procedure for the Juvenile Court, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Signature, attorney for appellant

\_\_\_\_\_

\_\_\_\_\_

Name, address, telephone number

Attorney for \_\_\_\_\_.

**Form 5(b)**

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF PIMA**

\_\_\_\_\_ ) Case No.: \_\_\_\_\_  
 )  
Caption per Rule Ariz. R. Juv. P 103.1(a) ) **NOTICE OF APPEAL**  
(Example: In re Dependency of A.B.; ) (Dependency, Termination, Title 8  
In re Termination of Parental Rights to A.B.) ) Guardianship, Adoption, or Emancipation  
 ) Proceeding)  
 )  
 ) Division \_\_\_\_\_  
 )  
 )  
 )

NOTICE IS HEREBY GIVEN that \_\_\_\_\_, [name of party] appeals to the Arizona Court of Appeals from the following: (Check the applicable box or boxes and insert the date of the final orders that are the subject of the appeal):

- 1. The order entered on \_\_\_\_\_, granting the dependency petition and adjudicating the child or children dependent, or denying or dismissing the dependency petition.
- 2. The disposition order entered on \_\_\_\_\_, after the child has or children have been adjudicated dependent.
- 3. The order entered on \_\_\_\_\_, granting or denying a motion to intervene.
- 4. The order entered on \_\_\_\_\_, relieving the Department of Child Safety of its obligation to provide reunification services.
- 5. The order entered on \_\_\_\_\_, removing a child who has been adjudicated dependent from a parent's or guardian's physical custody.
- 6. The order entered on \_\_\_\_\_, terminating visitation.
- 7. The order entered on \_\_\_\_\_, granting or denying the petition or motion for termination of parental rights.
- 8. The order entered on \_\_\_\_\_, denying the application for adoption certification under A.R.S. § 8-105 and Rule 77 of the Rules of Procedure for the Juvenile Court, after a hearing under Rule 77(h).
- 9. The order entered on \_\_\_\_\_, granting or denying the adoption petition.
- 10. The order entered on \_\_\_\_\_, granting or denying a Title 8 guardianship petition or motion.

- 11. The order entered on \_\_\_\_\_, granting or denying the juvenile's petition for emancipation.
- 12. The order entered on \_\_\_\_\_, altering or amending a final order under Rule 46.1 of the Rules of Procedure for the Juvenile Court, either by motion of a party or on the superior court's own motion, or a denial of a motion under that rule.
- 13. The order entered on \_\_\_\_\_, granting or denying the motion to set aside a final order under Rule 46.2(b) of the Rules of Procedure for the Juvenile Court, or Rule 74(f) of the Rules of Procedure for the Juvenile Court.
- 14. The order entered on \_\_\_\_\_ which is a final, appealable order under Arizona law.

**ATTORNEY REPRESENTATION (Not applicable to a government agency)**

The name of the attorney representing the appealing party in the superior court is \_\_\_\_\_.

This attorney was  court-appointed or  privately retained.

The appealing party requests that a new attorney be appointed to represent the party on appeal.

Yes.  No.

**ATTORNEY REPRESENTATION (Government agency)**

The name of the individual attorney representing the appellant in the superior court is: \_\_\_\_\_,

**AVOWAL BY THE APPEALING PARTY'S ATTORNEY**

The undersigned attorney avows that the attorney has communicated with the client after entry of the order being appealed, as required by Rule 104(b)(4) of the Rules of Procedure for the Juvenile Court, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature, attorney for appellant

\_\_\_\_\_  
\_\_\_\_\_

Name, address, telephone.

Counsel for \_\_\_\_\_.

IF THIS NOTICE OF APPEAL IS FILED BY A PARTY AND NOT BY AN ATTORNEY:

\_\_\_\_\_  
Signature of appellant/cross-appellant

\_\_\_\_\_  
\_\_\_\_\_

Name, address, telephone

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of appealing party

Copies of the foregoing to:

DELIVERED

DELIVERED hearing that resulted in that order.

Form 6

Caption

In re: Dependency as to YZ

Supplemental Designation of the Record

**NOTE:** The presumptive record on appeal is specified in Rule 104.1, of the Rules of Procedure of the Juvenile Court. It includes all documents filed and exhibits admitted in the juvenile court and the transcripts for the hearing that resulted in the order from which the appeal is taken, which are specified in Rule 104.1. This form may be used by a party to add items to or delete from the presumptive record. The appellant or appellee must serve the supplemental designation of record on all parties, on each court reporter who reported a designated proceeding, and as applicable, on the court’s transcript coordinator.

The appellant [ ] the appellee [ ] (check one of these boxes) files this Supplemental Designation of the Record under Rule 104.1 of the Rules of Procedure for the Juvenile Court.

**APPELLANT’S SUPPLEMENTAL DESIGNATION OF RECORD**

**Excluding items or transcripts.** Pursuant to Rule 104.1(a), the appellant requests the juvenile court clerk to exclude the following documents, exhibits, or transcripts from the presumptive record on appeal because the documents, exhibits, or transcripts are not necessary for the appellate court’s proper consideration of the issues raised by this appeal (if none is excluded, write “none”; if a transcript is deleted, specify the nature of the hearing and date).

---

**Including additional items or transcripts.** In addition to the presumptive record described in Rule 104.1(a), the undersigned requests the juvenile court clerk to include in the record transmitted to the court of appeals the following items, which the undersigned reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal.

- A. The following exhibit(s) that have been marked and offered but not admitted into evidence (specify each exhibit’s identification number and describe the exhibit):

- 
- B. The following documents, which were not part of the presumptive record or marked as exhibits:
-

---

C. All or parts of the transcripts of the following proceedings that are not part of the presumptive record under Rule 104.1(a) but directly or indirectly resulted in the order from which this appeal is taken (specify the nature of the proceeding, the date of the proceeding, and the name of the court reporter or official court transcriber, and if designating only part of a transcript, also describe the requested portion):

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D. Other (specifically describe any other exhibit, transcript, or item not identified above):

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**APPELLEE’S SUPPLEMENTAL DESIGNATION OF RECORD**

**Additions to the presumptive record.** In addition to the presumptive record described in Rule 104.1(a) of the Rules of Procedure for the Juvenile Court, the undersigned requests the juvenile court clerk to include in the record transmitted to the court of appeals the following items, which the undersigned reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal, and which appellant has not already requested in a supplemental designation of record.

A. The following exhibit(s) that have been marked and offered but not admitted into evidence (specify each exhibit’s identification number and describe the exhibit):

---

B. The following documents, which were not part of the presumptive record or marked as exhibits

---

C. All or parts of the transcripts of the following proceedings that are not part of the presumptive record under Rule 104.1(a) but directly or indirectly resulted in the order from which this appeal is taken (specify the nature of the proceeding, the date of the proceeding, and the name of the court reporter or official court transcriber, and if designating only part of a transcript, also describe the requested portion)::

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---

D. Other (specifically describe any other exhibit, transcript, or item not identified above):

---

**Addition of deleted portions of the presumptive record.** Appellee requests the following documents, transcripts or portions of transcripts, or other items that are included in the presumptive record on appeal under Rule 104.1(a), but appellant deleted in a supplemental designation of record. The undersigned reasonably believes these deleted portions of the record may be necessary for proper consideration of issues likely to be raised on appeal.

---

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The undersigned's signature is an acknowledgement that undersigned has read the sanctions provision in Rule 104.1(f).

Dated + Signed:

Certificate of Service