Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, January 24, 2020

10:00 a.m. to 4:00 p.m.

State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the December 13, 2019 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and discussion of rules** **Workgroup 1: Rule 3.1 (revisited), Rule 6** **Workgroup 2: Rule 11 (revisited); Rules 12, 13, 14, 15, 17, 22, 24, 25, and 26** **Workgroup 3: Rule 38 (revisited); Rules 40, 40.1, and 40.2** **Workgroup 4: Rule 63.1 and 63.2**	 *Judge Kreamer, Judge Armstrong* *Ms. Phillis, Mr. Cardy, Ms. Smith, Ms. Beringhaus, Mr. Meaux* *Judge Quigley, Judge Young, Mr. Gilmore, Ms. Avila-Taylor* *Professor Atwood*
Item no. 4	**Roadmap** **Next meetings:** Friday, February 28, 2020 (Room 119) Friday, April 3, 2020 (Room 119) Friday, May 8, 2020 (Room 119)	*Justice Berch*
Item no. 5	**Call to the Public** **Adjourn**	*Justice Berch*

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

Juvenile Rules Task Force

State Courts Building, Phoenix

Meeting Minutes: December 13, 2019

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong, Professor Barbara Atwood (by telephone), Beth Beckmann, Dale Cardy, Kathleen Coughlin, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, Tina Mattison, Donna McQuality, Eric Meaux, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Smith, Denise Avila Taylor, Hon. Patricia Trebesch, Edward Truman, Kent Volkmer, Hon. Anna Young

Absent: Beth Beringhaus, Maria Christina Fuentes, Hon. Rick Williams

Guests: Nina Preston, Chanetta Curtis, Cheri Clark, Ana Namauleg, Jenny Black, Shari Andersen-Head, Rachel Roehe, Kristan Landry

AOC Staff: Joseph Kelroy, Mark Meltzer, Angela Pennington

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the third Task Force meeting to order at 10:00 a.m. She noted that the Court's recent Administrative Order No. 2019-142 allows the public to record open sessions of committee meetings, including meetings of this Task Force, subject to limitations described in that Order. The Chair advised that workgroups met 6 times after the November 8 Task Force meeting, and collectively, the workgroups have met for more than 30 hours since September 27. Today's meeting packet contains clean and redline versions of 18 rules, along with materials regarding ICWA provided by David Withey, the AOC's Legal Counsel. Two additional documents were posted on the Task Force webpage: the U.S. Department of the Interior's "final rule" regarding ICWA, and Division One's 2011 opinion in *Yvonne L. vs. A.D.E.S.*

The Chair then referred members to draft meeting minutes of the November 8, 2019 Task Force meeting, which were also in the meeting packet. Members had no corrections to the draft.

Motion: A member moved to approve the November 8, 2019 meeting minutes. The motion received a second and it passed unanimously. **JRTF 002**

2. Presentation on ICWA. The Chair invited Mr. Withey to speak about the relationship between ICWA regulations and Arizona's juvenile rules. Mr. Withey began by noting that federal ICWA regulations have the full force and effect of federal law, which is supreme under the United States Constitution. Federal law recognizes Indian children as a special responsibility of the federal government (i.e., "our kids"), and procedures in state courts must follow that law. The federal ICWA regulations became

effective in 2016; the Arizona Supreme Court by Order No. R-17-0025 adopted conforming amendments to numerous juvenile rules in 2017.

Accordingly, Juvenile Rule 8(C) now requires an Arizona trial court to follow the federal regulations if the court "has reason to know" that the child is an Indian child, and to treat the child as an Indian child until the court determines otherwise. A comment to current Rule 8 includes circumstances that, under the regulations, indicate a "reason to know." Current Rule 8(D) authorizes the trial court to transfer a proceeding involving an Indian child to tribal court, and the comment provides details of federal regulations that support transfer or establish good cause for denying transfer. Mr. Withey acknowledged that recently restyled rules frequently omit lengthy comments, but if the Task Force deletes the comment to Rule 8, he suggested that the Task Force preserve the comment's substance in the body of the rule. He also noted that time limits concerning a preliminary protective hearing under current Rule 50, and placement preferences in current Rule 50.1, also derive from federal regulations, and he urged the Task Force to retain pertinent references to the regulations in these rules.

Mr. Withey was aware that a workgroup had discussed the standard of proof for "active efforts" under Rule 63, and he provided a handout containing an excerpt from the Code of Federal Regulations ("CFR") on this point. The CFR reported that the Department of the Interior "declines to establish a uniform standard of proof on this issue ['active efforts'] in the final rule but will continue to evaluate this issue for consideration in any future rulemaking." Members then discussed whether Arizona's standard for "active efforts" should be clear and convincing evidence, or proof beyond a reasonable doubt. During that discussion, a member cited *Valerie M. vs. A.D.E.S.*, a 2009 opinion of the Arizona Supreme Court, which held that in a termination proceeding governed by ICWA, the trial court correctly applied the correct standard of proof: clear and convincing evidence. The Chair observed that the standard can be at or above a standard required by federal law, but it cannot fall below that standard. See further the discussion of ICWA in Rule 63 below. Mr. Withey invited members to contact him if additional ICWA questions arise. The Chair then proceeded to the workgroup reports.

3. **Report from Workgroup 3.** Judge Quigley revisited two rules that the workgroup presented at the November 8 meeting.

Rule 36 ("scope of rules"). At the November 8 meeting, Task Force members raised concerns that the draft of Rule 36(b) ("interpretation") omitted any mention of parental rights. Accordingly, the workgroup today proposed modifying the phrase "protect the child's best interests" in the previous draft to "protects the rights of the parties and the child's best interests…." The new draft still includes the phrase, "gives paramount consideration to the child's health and safety." Some members believed that the latter phrase subordinated parents' statutory rights. However, most members concluded that parental rights yield to the court's responsibility to protect children's health and safety, and further observed that during the past several years, similar language in the current

rule has not been problematic. Members then approved the workgroup draft without further changes.

Members discussed two related matters. First, although statutes refer to both "best interest" and "best interests," they agreed that the rules should refer to "best interests" as a plural noun. Second, they discussed adding a new Rule 36(c) that would incorporate in Part III of the Juvenile Rules all the Civil Rules, unless specific civil rules were excluded. Workgroup 1's draft Rule 3 only applies civil rules that are specifically incorporated by reference. Proposed Rule 36(c) would have the benefit of making a broader spectrum of Civil Rules applicable in Part III juvenile proceedings, for example, rules for withdrawal or substitution of counsel (Civil Rule 5.3), judgment as a matter of law, and relief from a judgment or order (Civil Rule 60). Workgroup 3 will discuss further the options of adding a new Rule 36(c) versus amending draft Rule 3.

Rule 37 ("definitions"). Judge Quigley reported that the workgroup revised section (b), a definition of "participant," and noted that a statutory reference in the draft should be removed. She reaffirmed the workgroup's decision to relocate a provision on placement preferences in Rule 37(c) because it is an ICWA standard rather than a defined term. One member proposed a new standalone rule that would include all the ICWA provisions, but another member requested that the Task Force study the proposal further before making this determination. Mr. Withey preferred that ICWA references be in the rules where the standards would apply, because stakeholders will more likely notice standards when they are embodied in the related rule. The Chair advised that the Task Force would consider a standalone rule concept only after it has reviewed more rules. But the Task Force otherwise approved the definitions in Rule 37.

Workgroup 3 is studying several other rules, and it will report on those rules at a future meeting.

4. **Report from Workgroup 4.** Professor Atwood presented Workgroup 4's rules, two of which (Rules 61 and 62) had been previously presented.

Rule 61 ("motion, notice of hearing, service of process, and order for permanent guardianship"): Professor Atwood advised that the workgroup reorganized and reformatted this rule to more clearly delineate pre- and post-adjudication guardianships. Although the federal regulations apparently permit service under Rule 61(c) by either registered or certified mail, the workgroup limited service to registered mail to be consistent with an Arizona statute. However, the Task Force's list of proposed legislative changes should include adding the option of certified mail, which is less expensive than registered mail. The revised rule was then opened for member comments.

A judge member had a concern with draft Rule 61(a)(1), which would allow any party to a dependency proceeding to file a post-adjudication guardianship motion. The concern centered on giving any party an opportunity to file the motion even when a

permanent guardianship was not the court's plan. Compare current Rule 61(a), which permits the filing of a guardianship motion only "if the court determines that the establishment of a permanent guardianship is in the best interests of a [child]…." Although the judge member thought the draft rule diluted the judge's ability to control the filing of the motion, the judge would ultimately decide the motion on its merits and in that sense would still retain control of the outcome. Another judge member advised that the original version of a bill concerning Title 8 guardianships would have allowed anyone to file a preadjudication guardianship petition, which is beneficial to everyone because it avoids the need for dependency proceedings, and the member suggested that this be added to the Task Force's list of proposed legislative amendments. Ms. Jorquez will ask her colleagues if they agree with this proposal. Another member expressed concern about how pre-adjudication consent could be obtained from a parent who cannot be located, and this issue might need to be re-examined in the context of other Part III rules. In draft Rule 61(f)(2), if the DCS is not the legal custodian, the court may order "a party" to prepare the investigative report. Members discussed changing this to "a person," but left the provision unchanged because a person who prepares a report would probably be doing so at the request of a party.

Members had no further changes to Rule 61 and they approved the revised draft.

Rule 62 ("initial guardianship hearing"). Professor Atwood noted that the workgroup revised the time limit in section (b) for setting the initial guardianship hearing to account for cases in which there had not been a permanency hearing. The revised provision says, "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."

A member suggested deleting the reference to the permanency hearing as a starting point for measuring time because, while there will not always be a preceding permanency hearing, there will always be a preceding motion. The member also suggested adding the words "good cause" after "permits otherwise." Other members acknowledged that the decision to proceed with a permanent guardianship might not be made at a permanency hearing. Another member noted that all hearings after the permanency hearing, including report and review hearings, are in effect "permanency hearings," although they are not titled as such. One member disagreed with removing a reference to a permanency hearing in section (b) because A.R.S. § 8-862(f)(2) specifically includes that reference. Some members suggested that legislative changes to A.R.S. §§ 8-864 and 8-872 would be useful in clarifying what is otherwise an inconsistent and confusing statutory process. But even without those changes, a member proposed a new provision in Rule 60 ("permanency hearing") that would expressly say that any hearing after a disposition hearing is a permanency hearing. This would add flexibility in setting the hearing date under the present draft of Rule 62(b). Further discussion concerning Rule 62(b) will abide Workgroup 3's consideration of Rule 60.

Professor Atwood also discussed the workgroup's proposed changes to Rule 62(c)(7), which concerns the procedure at the initial guardianship hearing. The workgroup reorganized subpart (C) on "failure to appear," and the draft begins with a statement that "the court may proceed with the guardianship adjudication hearing under Rule 63" if the parent or custodian fails to appear at the initial guardianship hearing without good cause, and the court finds that the parent or custodian had notice of the initial guardianship hearing, was properly served, and had been admonished regarding the consequences of failing to appear at the initial guardianship hearing. Members agreed that good cause for a failure to appear could be established after the initial guardianship hearing.

Rule 63 ("guardianship adjudication hearing"). The discussion of time limits under Rule 62(b) was revisited during the discussion of the time limits in Rule 63(b), which again makes the permanency hearing the beginning point for measuring time. After further consideration, members revised the time limit for the guardianship adjudication hearing to "90 days after the filing of a motion for permanent guardianship," unless the court orders or permits otherwise under A.R.S. § 8-864. However, removing the reference to the permanency hearing deviates from the statute, and the Chair suggested that each workgroup maintain a list of this and other proposed statutory changes. A member asked whether the 90-day requirement applied to the commencement or the conclusion of the hearing; members agreed that requiring that the hearing "be held" refers to the commencement of the hearing. However, the Chair cautioned that courts should not construe a provision that the hearing must start within 90 days as a suggestion to set the hearing on the ninetieth day; the hearing should be set sooner if feasible.

A provision in draft Rule 63(c) ("burden of proof"), subpart 2, says that if the child is an Indian child, "the moving party must prove [by clear and convincing evidence] that active efforts have been made to provide remedial services…." Professor Atwood suggested removing the bracketed language because the first sentence of subpart (2) already establishes the burden of proof as beyond a reasonable doubt, and it would be illogical to have different burdens of proof regarding active efforts in guardianships and terminations.

A provision in current Rule 63(D), which was preserved in draft Rule 63(d) and that concerns conducting the hearing informally, was removed because it duplicates a provision that is already in draft Rule 3(b) ("informality"). In draft Rule 63(d)(1) ("admitted or not contested"), the workgroup substituted the words "not contested" for the former phrase "plea of no contest" to remove a connotation that this proceeding is criminal in nature. The workgroup revised draft Rule 63(d)(2) ("failure to appear") similarly to its revisions to draft Rule 62(c)(7). Draft Rule 63(d)(3) ("child's interests") was also revised. One member suggested adding a provision that would require the court to consider parental rights, but members declined to do this because that consideration was addressed by Rule 36. For the same reason, members deleted a draft

provision about giving primary consideration to the child's needs. After additional discussion, members retitled this subpart as "child's position," and shortened it to simply say, "The court may appoint as guardian the person nominated by a child 12 years of age or older, unless that court finds it would not be in the child's best interests to do so."

Judge Armstrong observed that Rule 63(e) ("reports") repeats a provision on admissibility already covered by Rule 3.1, and he suggested deleting Rule 63(e), but his suggestion was reserved for later discussion. The workgroup revised Rule 63(f)(3) to say, "if the case involves an Indian child" instead of "if ICWA applies…." The workgroup modified Rule 63(f)(4), which governs the denial of a guardianship motion, to clarify that the court rather than a party thereafter establishes a revised permanency plan. Finally, section (g) ("successor permanent guardians,"), which in the current rules is a subpart of Rule 63(F) ("findings and orders"), was made a freestanding section because it deals with a notice to the court that is submitted by a party, which is neither a required finding nor a requirement for a court order.

Members approved the draft of Rule 63 subject to the conditions mentioned above.

5. **Report from Workgroup 1.** Judge Armstrong presented rules on behalf of Workgroup 1.

Rule 2 ("definitions"). Judge Armstrong noted that Rule 37, discussed above, now has the same title, "definitions," as Rule 2, but members did not think this would be problematic. Judge Armstrong further noted four new definitions that Workgroup 1 added to Rule 2 after the November 8 meeting: "ADJC," "child safety worker," "guardian ad litem ('GAL')," and "out-of-home placement." A second sentence was added to the definition of "juvenile." The draft comment to the 2022 amendment now includes a citation to Division Two's 2019 opinion in *Holly C. v. Tohono O'Odham Nation.*

In common parlance, a "child safety worker" is a case worker but Rule 2 defines a child safety worker because that term is used in Title 8. Members agreed to remove a reference in this definition to Article 8. The definition of guardian ad litem raised two issues: must a GAL be an attorney, and is a CASA (court-appointed special advocate) a GAL? The Committee on Juvenile Court will discuss these issues at its next meeting. Meanwhile, Judge Armstrong noted that in other rules and statutes, the term "GAL" includes a CASA. (Draft Rule 5 discussed below concerns CASAs.) A corresponding legislative change would be necessary if the Task Force proposes a rule that a GAL must be an attorney. Members also discussed that the court appoints GALs for individuals other than children, such as incompetent adults, and the duties of the GAL might vary based on the status of the protected individual. Ms. Jorquez volunteered to research statutory references to "guardian ad litem." For the time being, the definition of GAL in Rule 2 will say that it "means a person (etc.)" rather than "means an attorney (etc.)"

Members modified the definition of "juvenile" so it no longer refers to the child's age. (The draft definition refers to a person "within the juvenile court's jurisdiction under A.R.S. § 8-202.") The definition of "out-of-home placement" mirrors the definition in A.R.S. § 8-501. During their discussion of the definition of "parent," members proposed various adjectives, including "natural," "biological," "adoptive," or "legal" mother or father. They agreed to "the child's biological, adoptive, or legal mother or father whose rights have not been terminated."

Members will revisit Rule 2 at future meetings as definitions are added or as draft definitions require modification.

Rule 3 ("priority of proceedings; conducting proceedings; applicability of other rules"). Rule 3 was on the meeting agenda only to note that what in the November 8 draft was Rule 3(e) ("applicability of the Arizona Rules of Evidence") has now been deleted. The substance of Rule 3(e) has been relocated to a new Rule 3.1, also titled "applicability of the Arizona Rules of Evidence."

A member also asked about the wording of the priority provision in draft Rule 3(a). The draft now says that juvenile court proceedings have priority "over other proceedings in state court." Members discussed changing this to "superior court," but thought this might inadvertently suggest that a juvenile proceeding has priority over, for example, an order of protection, or that a juvenile traffic case has priority over an appellate court hearing. Members then agreed that juvenile proceedings have priority over other proceedings "except as otherwise provided by law," and modified Rule 3(a) accordingly. On a collateral matter, Judge Armstrong noted that A.R.S. § 8-291.01(B) includes an incorrect cross-reference to Juvenile Rule 3(f). The correct reference is currently Rule 23(D).

Draft Rule 3 was approved as modified.

Rule 3.1 ("applicability of the Arizona Rules of Evidence"). Judge Armstrong explained that newly drafted Rule 3.1 incorporates all the evidentiary standards in the current rules except one regarding settlement conferences. He noted that the words "contested adjudication proceedings" in Rule 3.1(a) ("contested adjudication proceedings") are synonymous with trial. A member asked whether this term includes pretrial evidentiary hearings. Judge Armstrong believes that the rules of evidence are more relaxed in those hearings, but members might reconsider whether the evidence rules should apply in these ancillary proceedings. In Rule 3.1(b) ("other proceedings"), and to allow for the admissibility of such items as a psychological evaluation, members agreed to change "any non-privileged evidence…is admissible" to "any evidence…is admissible unless the evidence…is subject to a privilege." "Waste time" was changed to "waste of time." Rule 3.1(c) ("admissibility of a child's statement or conduct") is an exception to sections (a) and (b). Members changed the word "any" to "all" ("in all

dependency, termination, and Title 8 guardianship proceedings, etc."), and deleted the extraneous words "for all purposes" in the phrase "admissible for all purposes." One member suggested that the workgroup review each of the 17 references to the admissibility of evidence in the current rules, as noted by Judge Armstrong at a previous meeting, to assure that each reference was adequately addressed by draft Rule 3.1.

Rule 3.1(d) ("admissibility of reports") was the subject of extended discussion. One of the issues concerned an interpretation of current Rule 45 ("admissibility of evidence"), section (c) ("admissibility of reports"), which says that "the court may review reports prepared by the child safety worker and shall admit those reports into evidence…." Because "shall" is a disfavored word in restyled rules, members discussed whether its use in the current rule meant "must" or "may." One member suggested that the admission of an unreliable child safety worker's report will at least assure that it becomes part of the record. Another member responded that it's illogical to say that the court may review a report but must admit it regardless of whether it was reviewed. Members then agreed to "must review" and "may admit" the child safety worker's report. An ensuing discussion addressed how the report would become part of the record on appeal if it was reviewed (i.e., considered) but not admitted. Although practices differ, the consensus was that the report should be admitted and made part of the record if the judge considered the report in the slightest degree. In this circumstance, the judge could make a record about what portions of the report were relied upon. Members further codified this decision by adding to Rule 3.1(d) a new subpart (6) that provides, "If the court considers and affords any weight to a report under this section, the court must admit the report into evidence." Although members generally agreed that requiring automatic admission of an unreliable report might give the report undue credence, one member suggested that the report should always be admitted and that the court could then find on the record that it gave the report no weight. How to make an unadmitted report part of the record on appeal will be deferred to a discussion of the appellate rules.

Another issue in draft Rule 3.1(d) concerned the phrase "if the workers who prepared the report are available for cross-examination." The use of the plural, "workers," was intended to include supervisors who reviewed the report, or anyone at DCS who participated in preparing the report or who had knowledge of its contents. To be more explicit, members changed this phrase to "if the worker or workers who prepared or approved the report are available for cross-examination." Draft Rule 3.1(d)(1)(B) further requires that the report be disclosed to the parties not later than ten days before a hearing. Members thought this period was too short and changed it to fifteen days. Rule 3.1(d)(3) ("report under Rule 61(e)") had another "may/must" couplet concerning the guardianship report. After discussion and consideration of pertinent statutes and rules, members agreed to "must review the investigative report prepared under Rule 61(f) and may admit it into evidence." One member proposed filing these reports to assure they become part of the record, but members declined that proposal because doing so could make confidential information publicly available. (One county

currently files these reports and places them in a "social file," but references to materials in a social file are vague and not specific enough for appellate review.)

Members also discussed what was renumbered as draft Rule 3.1(d)(7) ("available for cross examination"). The language of this provision was suggested by Judge Warner. However, members disagreed on which party has the burden of demonstrating that the witness is "subject to the court's subpoena power." Must the proponent of the witness' report show that the witness is available, or does the adverse party have the burden of showing that the witness is not subject to subpoena, which might necessitate subpoenaing the witness and unintentionally making an unfavorable witness available? Resolving this issue also might require consideration of which party bears the cost of compelling the witness' attendance. A rule that require the witness to be available in the courtroom could be a logistical burden. A telephonic appearance might be insufficient for cross-examination. Members did not reach agreement on the meaning of "available for cross-examination," but instead suggested that members poll judges and request additional input for further Task Force discussion.

Rule 5 ("Court-Appointed Special Advocate ('CASA').") Judge Armstrong's draft of Rule 5 eliminates references to "volunteer special advocate," a term used in current Rule 3; and differentiates CASAs and GALs. The proposed revisions might require legislative changes, and Judge Armstrong's draft noted the pertinent statutes that would require modification. Another member also observed that the changes proposed in this draft rule might require revisions to certain sections of the Arizona Code of Judicial Administration, particularly § 7-101 ("Court Appointed Special Advocate Program"). The members approved the draft of Rule 5 subject to further consideration of the GAL's role.

6. **Report from Workgroup 2.** Ms. Phillis revisited a rule that members had discussed on November 8.

Rule 10 ("appointment of an attorney"). In section (a) ("right to an attorney"), after the phrase "right to be represented by an attorney in all delinquency proceedings initiated by a petition," members had previously added the words "or a citation." (They had made a corresponding change in section (b) ("appointment of an attorney").) Members reconsidered those revisions at today's meeting. Adding these words could require the appointment of counsel on citations to juveniles to appear in a municipal traffic court, or for other low-level offenses where the appointment of counsel might not be warranted. Members expressed concern with creating a right to counsel by rule—especially one that creates a financial burden on municipalities—that does not exist under the constitution or by statute. However, Ms. Phillis believed that a juvenile was entitled to court-appointed counsel even on a misdemeanor, because the juvenile could be detained on that charge. After reviewing A.R.S. § 8-221(B), members consolidated draft Rule 10(b) and (c) ("finding of indigent") into a revised Rule 10(b), which now simply

provides, "**Appointment of an Attorney.** After the filing of a petition or citation in juvenile court, the court must appoint an attorney for the juvenile as provided in A.R.S. § 8-221."

Earlier versions of Rule 10 had alternatively said that a juvenile was "deemed indigent" or was "presumed indigent," which would allow the court to appoint counsel promptly upon receipt of a delinquency petition. Doing so would eliminate the need for a subsequent court hearing to make a finding of indigency, which could create delay. These alternative phrases were removed at today's meeting because members determined that A.R.S. § 8-221(C) requires the court to appoint counsel "before any court appearance which [sic] may result in institutionalization or mental health hospitalization of a juvenile."

Members also revisited draft section (d) ("assessment of the cost of court-appointed attorney"). Members previously agreed that an assessment for the cost of counsel should not be made against the DCS or ADJC when the juvenile was in the custody of either of those entities, and this draft section expresses that intent. Today, some members construed this provision as not relieving the juvenile's parents from the assessment notwithstanding that the juvenile was in custody. Other members disagreed with that construction and contended that if the juvenile was in DCS or ADJC custody, parents should not bear that assessment. Due to the lateness of the hour, the discussion of this issue ended without a resolution. However, in the last sentence of section (e) ("waiver of counsel"), members agreed to change "the court should obtain a waiver [of counsel from the juvenile's parent]" to "the court must also obtain a waiver…."

Members approved the draft of Rule 10 subject to the items mentioned above.

7. Call to the public; roadmap; adjourn. There was no response to a call to the public. The next Task Force meeting is set for **Friday, January 24, 2020**, beginning at **10:00 a.m.** in **Room 119**.

The meeting adjourned at 4:17 p.m.

MARICOPA COUNTY JOB DESCRIPTION

Child Welfare Specialist

MARKET RANGE TITLE: Social Worker

DEPARTMENT: Legal Advocate

DIVISION: Dependency

FLSA STATUS: Non-Exempt **CLASSIFIED/UNCLASSIFIED:** Unclassified

POSITION NUMBER: **JOB CODE:** PSW005

POSITION OVERVIEW

The Child Welfare Specialist provides ongoing assistance to attorneys appointed by the juvenile court to represent abused and neglected children in dependency proceedings. It is among the specialist's responsibilities to ensure not only that the needs of each child are met but also that reasonable efforts are made to prevent removal and finalize the permanency plan while ensuring that parents and children have an opportunity to fully engage in and comply with case plans.

ESSENTIAL JOB TASKS

(This is not an all-inclusive list of all job duties that may be required; employees will be required to perform other related duties as assigned.)

- Reviews police reports, pictures of evidence collected by detectives, forensic interviews, medical records, psychological and psychiatric evaluations, developmental assessments, counseling records, parent aide reports, educational assessments, substance abuse treatment records, and any other potential exhibit pertaining to a child abuse and neglect case.
- Confers with the authors of the above reports as well as with other persons with knowledge about the family's circumstances.
- Participates in meetings with other professionals/stakeholders to obtain additional and current information as the case progresses.
- Interviews the child and observed his/her interactions with the family of origin and current caregivers.
- Interprets all the written, verbal and nonverbal information obtained in order to advise other professionals and stakeholders regarding the direction a case should take or services that need to be provided to the child and/or family.
- Mediates differences between and with professionals/stakeholders during multi-disciplinary meetings in order to advance the child's best interest.
- Testifies in court as an expert witness.
- Presents information to appropriate persons about developmental expectations, signs and symptoms of childhood trauma, alternate treatment modalities, child welfare law, child protective services policies and procedures, available community resources and current best practices in the field in order to ensure appropriate care and treatment are provided to the child and family.
- Provides training to foster care agencies as requested in order to educate new and current foster parents as to the legal process.

POSITION QUALIFICATIONS

Minimum education and/or experience:
Bachelor's degree in Social Work, Psychology, Child Development, or other closely related field (i.e. Behavioral or Social Sciences) and one (1) year of direct experience within the child protection system such as a case worker, family advocate or social worker.

Specialized training, certifications, and/or other special requirements:
Department of Public Safety Finger Print Clearance Card eligibility.
Must possess, or have the ability to obtain by the time of hire, a valid Arizona driver's license.

Knowledge, skills, and abilities:
Knowledge of:

- Computer programs, which includes Windows applications and Microsoft Office.
- Arizona Child Welfare Practices.
- Policies pertaining to abuse and neglect of children.
- Phoenix metropolitan area street system.

Skill in:

- Communicating verbally and in writing to convey information effectively.
- Completing assignments accurately and with attention to detail.
- Strong interpersonal, oral and written communication and organizational skills.
- Interviewing children and family members.
- Critical thinking, problem solving and conflict resolution.

Ability to:

- Establish and maintain effective working relationships.
- Utilize independent judgment and initiative and to maintain the confidentiality of information and data.
- Manage multiple priorities, multi-task, and to work within a team environment.

Preferred education and/or experience:
Master's degree in Psychology, Social Work, or other closely related field and at least two (2) years of direct experience working within a child protection system such as a case worker, family advocate or social worker. Experience utilizing policies and procedures and state/federal laws related to child welfare within the state of Arizona.

Preferred training, certifications and/or other special requirements:

Working conditions:
Position requires visiting children in a variety of settings, including remote areas of the State and potentially dangerous parts of town. It also requires that some visits be made outside of the "normal" work hours of 8:00am to 5:00pm Monday-Friday. Work requires travel to and from job related locations during the course of a scheduled workday, subject to County policies regarding the use of County vehicles and/or private vehicles used on County business.
May be required to lift 15-25 pounds from floor to waist; 15 pounds waist to shoulder or shoulder to overhead; carry 15-25 pounds a distance of 100 feet or push / pull 100 pounds a distance of 1000 feet.

REPORTING STRUCTURE

Supervision received:
This position will be supervised by the Child Welfare Specialist Supervisor.

Supervision exercised: None

NCJFCJ
est. 1937
NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

STATEMENT IN SUPPORT OF

NATIONAL COURT APPOINTED SPECIAL ADVOCATES ASSOCIATION EFFORT TO RETAIN CASA AS GUARDIAN AD LITEM LANGUAGE IN THE CHILD ABUSE PREVENTION AND TREATMENT ACT

The National Council of Juvenile and Family Court Judges (NCJFCJ) supports the efforts of the National Court Appointed Special Advocate Association (National CASA) to retain language in the Child Abuse Prevention and Treatment Act (CAPTA) which allows for a court appointed special advocate (CASA) to be appointed to serve in the guardian ad litem (GAL) role required by the CAPTA.

The National CASA's position (*see attached*) is consistent with resolutions adopted by the NCJFCJ Membership in 1982, 1989, and 2005 endorsing the concept of court appointed special advocates and the appointment of trained volunteer GALs/CASAs in child abuse and neglect proceedings; and consistent with a resolution adopted in 2010 supporting the reauthorization of the CAPTA.

The NCJFCJ supports the current provisions of CAPTA "…requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings…"

The NCJFCJ shares the National CASA's concern that if CAPTA language is changed to exclusively require attorney representation, it will likely amount to an unfunded mandate and children could be effectively left unserved and without a best interest advocate, and reaffirms its endorsement of the concept and use of court appointed special advocates in child abuse and neglect proceedings.

Retain Court Appointed Special Advocate (CASA) as Guardian ad Litem (GAL) Language in the Child Abuse Prevention and Treatment Act (CAPTA)

Children who have been abused or neglected are among the most vulnerable populations in the United States. To improve outcomes for these children and their families, ***the National CASA Association supports court systems that include CASA/GAL volunteers and attorneys operating in accordance with each state's laws.***

Strong, cohesive partnerships with all professionals and service providers in the courtroom are essential to ensuring each child's safety, timely permanency, and well-being. America's most vulnerable children deserve comprehensive representation and all the resources possible to help them heal and thrive.

Since 1996, the Child Abuse Prevention and Treatment Act (CAPTA) has required states applying for funding under CAPTA to submit an assurance in the form of a certification by the governor that the state has in effect and is enforcing a state law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes—
...

(xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who ***may be an attorney or a court appointed special advocate*** who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child.

The United States Department of Health and Human Services enacted regulations to support the language around the representation provision. The intent of the regulations, which supports National CASA's position on supporting systems operating ***in accordance with the state's laws***, is to let individual states decide how to implement the GAL provision of CAPTA. The regulations include:

"Guardian ad litem. In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted,

accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian ad litem shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect." (former 45 C.F.R. 1340.14(g).)

Issue of Critical Importance:

- Thousands of children are being served by volunteer GALs in states that developed a structure to provide volunteer GAL services that they have determined best meets the needs of abused and neglected children in their states and their compliance with CAPTA mandates
- 30 states allow the CASA/GAL volunteer to serve in the role of GAL to meet compliance with CAPTA
- In many of our largest child serving states the volunteers have GAL status
- Programs in the majority of these states are heavily state funded to provide the volunteer GAL service
- If CAPTA does not allow the GAL to be a CASA/GAL volunteer, programs in those states risk losing their standing to serve children as GAL and/or state CASA/GAL funding is at risk if the state must pay for attorney representation
- Usually, CASA/GAL volunteers serve only one child (or sibling group) at a time. The national standards, promulgated by the American Bar Association and the National Association of Counsel for Children, recommend caseload maximums of 100 clients per full-time attorney. In states that require attorneys for children, the attorney-child client caseload is usually much higher. If CAPTA language is changed to exclusively require attorney representation it will likely amount to an unfunded mandate and children could be effectively left unserved and without a best interest advocate

It is imperative that we retain the provision allowing the CAPTA GAL to be either an attorney or a court appointed special advocate.

Please support National CASA in the retention of this language in the Child Abuse Prevention and Treatment Act.

11-3-17

Staff Note regarding the Delinquency Rules

In Rule XX (“definitions”), Workgroup 2 added the following definition:

> "Parent” as used in the delinquency rules includes a parent, guardian, or custodian.

The workgroup intends to use this definition going forward to avoid repeated references in the delinquency rules to “parent, guardian, or custodian,” and to instead simply say “parent.”

Rule 3.1. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence. [NEW]

(a) Contested Adjudication Proceedings. The Arizona Rules of Evidence apply in contested adjudication hearings in delinquency, dependency, termination, and Title 8 guardianship proceedings, except as otherwise provided by these rules or by agreement of all parties and the court.

(b) Other Proceedings. In any proceeding not covered by section (a), any evidence, including hearsay, 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, waste of time, or is subject to a privilege**.**

(c) Admissibility of a Child's Statement or Conduct. In all dependency, termination, and Title 8 guardianship proceedings, evidence of a child's 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.

(d) Admissibility of Reports.

(1) Child Safety Worker's Report. 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 not later than: [**NOTE:** Should relocate the definition of child safety worker report from current Rule 45 to Rule 37, which is the definitions provision.]

(A) one day before a Rule 51 temporary custody hearing; or

(B) fifteen days before any other hearing at which the report may be introduced.

(2) 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(b)(1) and the author of the report is available for cross-examination.

(3) 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.[**NOTE:** This subpart duplicates Rule 63(e), and that provision should be deleted.]

(4) Social Study. In a termination adjudication proceeding, a social study prepared pursuant to 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(b)(2)(E) and (d)(2). 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.

(5) Other Reports. The court may admit any other report that is court-ordered or required by statute or rule, if the report has been timely disclosed and the author of the report is available for cross-examination.

(6) Admission of Reports. If the court considers and affords any weight to a report under this section, the court must admit the report into evidence.

(7) Available for Cross-Examination. For purposes of this rule, a person is available for cross-examination if the person appears in court or is subject to the court's subpoena power, unless the person is subpoenaed and is unable or unwilling to comply with the subpoena.

~~R~~Rule 3.1. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence. [NEW]

(a) Contested Adjudication Proceedings. The Arizona Rules of Evidence apply in contested ~~delinquency~~ adjudication hearings in~~,~~ delinquency, dependency ~~adjudication~~, termination ~~adjudication~~, and Title 8 guardianship ~~adjudication~~ proceedings, except as otherwise provided by these rules or by agreement of all parties and the court.

(b) ~~Admissibility of Evidence When the Arizona Rules of Evidence Do Not Apply~~Other Proceedings. In any proceeding not covered by section (a), any ~~non-privileged~~ evidence, including hearsay, 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 of time, or is subject to a privilege.

(c) Admissibility of a Child's Statement or Conduct. In ~~any~~ all dependency, termination, and Title 8 guardianship proceedings, evidence of a child's statement or nonverbal conduct regarding acts of abuse or neglect perpetrated on the child is admissible ~~for all purposes~~ if the time, content, and circumstances of the statement or conduct provide sufficient indicia of its reliability.

(d) Admissibility of Reports.

(1) Child Safety Worker's Report. Before any dependency, Title 8 guardianship, or termination hearing, the court ~~may~~ must review a child safety worker's report and may ~~[shall?]~~ 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 not later than: [**NOTE:** Should relocate the definition of child safety worker report from current Rule 45 to Rule 37, which is the definitions provision.]

(A) one day before a Rule 51 temporary custody hearing~~the preliminary protective hearing~~; or

(B) ~~ten~~ fifteen days before any other hearing at which the report may be introduced.

(2) 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(bb)(1) and the author of the report is available for cross-examination.

1. **(3) Report Ordered Under Rule 616163(fee).** In a Title 8 guardianship adjudication hearing, in addition to reports admitted into evidence under this sectionthis section [should this say, under Rule 63(e)?], the court must review the investigative report prepared under Rule 61(f) and [must must?] may admit it into evidence the investigative report prepared under Rule 611(ef).[**NOTE:** This subpart duplicates Rule 63(e), and that provision should be deleted.]

(3) **(4) Social Study.** In a termination adjudication proceeding, a social study prepared pursuant to 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(b)(2)(E) and (d)(2). 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.)

(3) **(5) Other Reports.** The court may admit any other report that is court-ordered, ororordered or required by law statute or rule, if the report has been timely disclosed and the author of the report is available for cross-examination.

(6) Admission of Reports. If the court considers and affords any weight to a report under this section, the court must admit the report into evidence.

2.

(7) Available for Cross-Examination. For purposes of this rule, the party seeking to introduce the report is responsible for making a person is is available for cross-examination if the person appears in court or is subject to the court's subpoena power, unless the person is subpoenaed and is unable or unwilling to comply with the subpoena.

Rule 6. Change of Judge [Current Rule 2(A) & (B)]

(a) Definitions. In this rule,

(1) the term "judge" includes a judge, a commissioner, and a judge pro tem.

(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) ~~if the party cannot receive a fair and impartial hearing because of the interest or prejudice of the assigned judge~~.

(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 an 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 it may decide the issues based on any affidavits and memoranda filed by the parties. The presiding judge must decide the issue of interest or prejudice by a preponderance of the evidence.

(4) ***Assignment.*** Depending on the findings of the presiding judge, the presiding judge may assign the action back to the original judge or make a new assignment.

(5) ***Waiver.*** A party loses 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.

[**Workgroup Note:** Compare FLR 6 , which allows a party to notice the originally assigned judge when a case is reversed and remanded, as long as they have not previously filed a notice.]

(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.

Derivation: Current Juvenile Rules 2(A) and 2(B).

Rule 2. Change of Judge or Commissioner

Any reference made to a “judge” shall also mean “commissioner”.

A. Change of Judge for Cause.

1. *Grounds.* In any juvenile case prior to the commencement of a hearing, any party shall be entitled to a change of judge if a fair and impartial hearing cannot be had by reason of the interest or prejudice of the assigned judge.

2. *Procedure.* Within five (5) days after discovery that grounds exist for change of judge, a party may file a motion verified by affidavit of the moving party, alleging specific grounds for the change. Copies shall be furnished to the parties and the presiding judge. No event occurring before the discovery shall constitute a waiver of the right to a change of judge for cause. Allegations of interest or prejudice which prevent a fair and impartial hearing may be preserved for appeal.

3. *Hearing.* Promptly after the filing of the motion, the presiding judge shall set a hearing on the matter before a judge other than the judge being challenged. The hearing judge shall decide the issues by a preponderance of the evidence and following the hearing, shall return the matter to the presiding judge who shall as quickly as possible assign the action back to the original judge or make a new assignment, depending on the findings of the hearing Judge. If the named judge is the only judge in the county where the action is pending, that judge shall also perform the functions of the presiding judge. If the named judge is also the presiding judge, the functions of the presiding judge shall be performed by the judge designated by standing order of the presiding judge.

4. *Waiver.* A party loses the right to change of judge for cause when the party allows a proceeding to commence or continue without objection after learning of the cause for challenge.

B. Change of Judge Upon Request.

1. *Grounds.* Any party shall be entitled to request a change of judge as a matter of right.

2. *Procedure.* A party may exercise his or her right to a change of judge by making a request in open court on the record or by filing a pleading entitled "Notice of Change of Judge" signed by counsel, if any, stating the name of the judge to be changed. A notice of change of judge shall be filed within five (5) days after notice to the requesting party of the assignment of the case to a judge. In the case of a reversal of a judgment or order by an appellate court, a notice of change of judge shall be filed within ten (10) days after the filing of the mandate from an appellate court with the clerk of the court.

3. *Waiver.* A party loses the right to a change of judge upon request when the party participates before that judge in any contested matter or hearing. Such waiver shall apply to all successive petitions or supplemental petitions filed with respect to the same juvenile or, in the case of a dependency action, the same minor or any other minor known to have at least one biological or adoptive parent in common with such minor, and to all proceedings after remand by an appellate court.

C. Duty of Judge. When a notice or an affidavit for change of judge is timely filed, the judge named in the notice or affidavit shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent harm to the child before the action can be transferred to another judge.

D. Remand by Appellate Court. When an action is remanded by an appellate court for a new hearing or proceeding, all rights to change of judge exist as set forth in this rule unless the matter is reassigned to the original judge.

~~Work Group 1 Draft 1/13/2020~~

Rule 6. Change of Judge [Current Rule 2(A) & (B)]

(a) Definitions. In this rule,

(1) the term "judge" includes a judge, a commissioner, and a judge pro tem.

(2) the term "presiding judge" includes the presiding judge's designee.

~~(a)~~**(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) ~~if the party cannot receive a fair and impartial hearing because of the interest or prejudice of the assigned judge~~.

(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 an 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 ~~the~~a judge designated by ~~a standing order of~~ the presiding judge. ~~[**Staff Note:** Staff suggests adding a rule in Part I that directs a party who files a document (other than a case initiation document, which must be served pursuant to specific rules) to provide copies of the document to the other parties.]~~

~~(2)~~ (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 it may decide the issues based on any affidavits and memoranda filed by the parties. ~~must set a hearing on the matter before a judge other than the judge being challenged.~~ The ~~hearing~~ presiding judge must decide the issue of interest or prejudice by a preponderance of the evidence.

~~(3)~~**(4)** ***Assignment.*** ~~The hearing judge must then return the matter to the presiding judge, and d~~Depending on the findings of the ~~hearing~~ presiding judge, the presiding judge may assign the action back to the original judge or make a new

assignment. ~~If the judge who is challenged is the only judge in the county where the action is pending, that judge must also perform the functions of the presiding judge. If the named judge is the presiding judge, the functions of the presiding judge must be performed by the judge designated by a standing order of the presiding judge.~~

~~(4)~~**(5)** ***Waiver.*** A party loses 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.

~~(b)~~**(c)** ~~**Upon Request**~~**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 ~~the court notifies parties~~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 ~~matter or hearing~~ 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 ~~biological or adoptive~~ 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.

~~(3)~~ [**Workgroup Note:** Compare FLR 6 , which allows a party to notice the originally assigned judge when a case is reversed and remanded, as long as they have not previously filed a notice.]

~~(c)~~(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 ~~absolutely~~ necessary ~~[**Staff Note:** Is there a difference between 'necessary' and 'absolutely necessary?']~~ to prevent harm to the child before the action can be ~~transferred~~ reassigned to another judge.

~~(d) **Remand by Appellate Court.** All rights in this rule to a change of judge exist when an action is remanded by an appellate court for a new hearing or proceeding and the action is assigned to a new superior court judge. [**Staff Note:** Isn't the second part of this sentence, after the word "and," immaterial? It seems that the rule is designed primarily to allow a party to challenge the original judge following an appellate remand. See, e.g., FLR 6.] If the appellate court reverses a judgment or order of the trial court, a party must file a notice of change of judge within 10 days after the filing of the appellate court mandate with the trial court.~~

Derivation: Current Juvenile Rules 2(A) and 2(B).

Arizona Revised Statutes Annotated
Rules of Procedure for the Juvenile Court (Refs & Annos)
Part I. General Provisions

Rule 2. Change of Judge or Commissioner

Any reference made to a "judge" shall also mean "commissioner".

A. Change of Judge for Cause.

1. *Grounds.* In any juvenile case prior to the commencement of a hearing, any party shall be entitled to a change of judge if a fair and impartial hearing cannot be had by reason of the interest or prejudice of the assigned judge.

2. *Procedure.* Within five (5) days after discovery that grounds exist for change of judge, a party may file a motion verified by affidavit of the moving party, alleging specific grounds for the change. Copies shall be furnished to the parties and the presiding judge. No event occurring before the discovery shall constitute a waiver of the right to a change of judge for cause. Allegations of interest or prejudice which prevent a fair and impartial hearing may be preserved for appeal.

3. *Hearing.* Promptly after the filing of the motion, the presiding judge shall set a hearing on the matter before a judge other than the judge being challenged. The hearing judge shall decide the issues by a preponderance of the evidence and following the hearing, shall return the matter to the presiding judge who shall as quickly as possible assign the action back to the original judge or make a new assignment, depending on the findings of the hearing Judge. If the named judge is the only judge in the county where the action is pending, that judge shall also perform the functions of the presiding judge. If the named judge is also the presiding judge, the functions of the presiding judge shall be performed by the judge designated by standing order of the presiding judge.

4. *Waiver.* A party loses the right to change of judge for cause when the party allows a proceeding to commence or continue without objection after learning of the cause for challenge.

B. Change of Judge Upon Request.

1. *Grounds.* Any party shall be entitled to request a change of judge as a matter of right.

2. *Procedure.* A party may exercise his or her right to a change of judge by making a request in open court on the record or by filing a pleading entitled “Notice of Change of Judge” signed by counsel, if any, stating the name of the judge to be changed. A notice of change of judge shall be filed within five (5) days after notice to the requesting party of the assignment of the case to a judge. In the case of a reversal of a judgment or order by an appellate court, a notice of change of judge shall be filed within ten (10) days after the filing of the mandate from an appellate court with the clerk of the court.

3. *Waiver.* A party loses the right to a change of judge upon request when the party participates before that judge in any contested matter or hearing. Such waiver shall apply to all successive petitions or supplemental petitions filed with respect to the same juvenile or, in the case of a dependency action, the same minor or any other minor known to have at least one biological or adoptive parent

in common with such minor, and to all proceedings after remand by an appellate court.

C. Duty of Judge. When a notice or an affidavit for change of judge is timely filed, the judge named in the notice or affidavit shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent harm to the child before the action can be transferred to another judge.

D. Remand by Appellate Court. When an action is remanded by an appellate court for a new hearing or proceeding, all rights to change of judge exist as set forth in this rule unless the matter is reassigned to the original judge.

Rule 11. 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 he or she 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 (1) if no hearings are scheduled, and (2) 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 11. Attorney's Appearance and Withdrawal

(a) Appearance.

(1) ***Court Appointed Attorney.*** ~~An attorney~~A court-appointed attorney ~~-~~must enter an appearance by personally appearing in open court and advising the court that he or she is representing ~~a party~~the juvenile, or by filing a notice of appearance and providing copies to the assigned judicial officer and the ~~State~~prosecutor. ~~[**Staff Note:** Current Rule 9 defines parties as the juvenile and the State. Appointed defense counsel shouldn't need to provide the notice of appearance to the juvenile, which is counsel's own client, and staff accordingly changed "all parties" in the current rule to "the State" in this draft. But is the State, which has filed the petition, required to provide a notice of appearance? If so, this section will need to be modified.]~~

~~**(a)**~~**(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 ~~of an Attorney~~.

(1) ***Court Appointed Attorney.*** Unless the court ~~orders~~ permits otherwise, ~~an~~ a court-appointed attorney is automatically relieved of representing a juvenile ~~[appointed to represent a juvenile] must represent the juvenile until~~ (1) if no hearings are scheduled, and ~~-~~ (~~1~~2) the time for filing a notice of appeal has expired. ~~in any pending matter has expired, and (2) no hearings are scheduled. An attorney may file a notice of withdrawal at that time advising of the date the appeal time expired and that no hearing is pending.~~

~~**(1)**~~**(2)** ***Retained Attorney.***

(A) *Before the disposition hearing.* ~~-~~A retained attorney may withdraw from a case before the disposition hearing only by motion.

~~**(b)**~~**(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 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;

(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 provided an acceptable reason 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 ~~to the juvenile or another person~~. A juvenile appearing before a judicial officer ~~in mechanical restraints~~ may object to the use of restraints ~~through counsel~~. 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 ~~towards others~~;

(B) the juvenile ~~is likely to flee,~~ has expressed an intention to flee or has previously attempted to flee from detention;

(C) ~~a probation juvenile detention officer, detention administrator or designee has recommended the use of mechanical restraints;~~

(D) 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' presence, that 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 ~~Policies and Procedures in effect for the courts in the specific county and as required by the~~ Arizona Juvenile Detention Standards.

(5) Any restraints must allow the juvenile to read, handle documents, and write.

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

(a) Personal Appearance. ~~A~~ A juvenile must personally appear in court ~~as the court directs and~~ for the following proceedings:

~~(a)~~ **(1)** a detention hearing;

~~An~~**(2)** an advisory hearing;

~~y~~ **(3)** a transfer hearing;

(4) a change of plea hearing;

~~(1)~~ **(5)** an adjudication hearing;

~~(2)~~ **(6)** a~~ny~~ disposition hearing;

~~(3) any transfer hearing; and~~

~~(4) any change of plea.~~

(b) Telephonic or Video Appearance. If the parties agree and if authorized by the court, the juvenile may personally appear by ~~telephonically~~ telephone or by video conferencing. ~~[**Staff Note:** The rule should clarify whether a telephonic appearance under (b) constitutes a personal appearance under (a).]~~

(c) Voluntary Absence. The court may infer that a~~the~~ juvenile's absence is voluntary if the juvenile ~~was notified of the following~~:

(1) was notified of the ~~the~~ date, time, and place of the hearing;

(2) ~~the right~~was ordered to be present at the hearing, ~~and [**Staff Note:** Does the court advise the juvenile of the right to be present, or does it order the juvenile to appear?]~~

(3) ~~that~~ was advised that the hearing would proceed in the juvenile's absence if the juvenile failed to appear; and~~.~~

~~(3)~~**(4)** has not provided an acceptable reason 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. ~~[**Staff Note:** The preceding sentence does not distinguish between a voluntary and involuntary absence. Should it?]~~ 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. ~~[**Staff Note:** Because the preceding sentence refers to "any hearing," does it conflict with section (c), which suggests that a voluntary absence is permitted?]~~

(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. ~~[**Staff Note:** The preceding, descriptive provision was relocated from the end of current section (e).]~~

(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 ~~to the juvenile or another person~~. A juvenile appearing before a judicial officer ~~in mechanical restraints~~ may object to the use of restraints ~~through counsel~~. 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.

~~(1)~~**(2)** Relevant factors in determining whether the use of mechanical restraints is warranted include:

(A) the juvenile has displayed threatening or physically aggressive behavior ~~towards others~~;

(B) the juvenile ~~is likely to flee,~~ has expressed an intention to flee~~,~~ or has previously attempted to flee from detention~~secure care [**Staff Note:** Is "secure care" another way of saying "detention?"]~~;

(C) ~~a probation juvenile detention officer, detention administrator or designee, or juvenile detention officer has recommended the use of mechanical restraints;~~

(D) 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' presence, that warrants the use of mechanical restraints.

~~(2)~~**(3)** A prior judicial determination ~~by a court~~ that the juvenile should appear ~~in~~ free of mechanical restraints remains in effect until ~~further order of~~ the court orders otherwise.

~~**(3)** A juvenile brought before the judicial officer in mechanical restraints may object to the restraints through counsel. After the judicial officer has heard from the juvenile, the State, and any detention personnel, and considered the factors listed in subpart (1), the judicial officer must approve or disapprove of the use of restraints.~~

(4) ~~Except when a juvenile appears before a judicial officer at a hearing in the juvenile's delinquency case, [**Staff Note:** Not certain what the preceding phrase means. Don't subparts 1-3 apply only to delinquency cases? If this provision~~

~~applies to the use of restraints outside of court, or if it applies when the juvenile appears in a case other than their own, it would be clearer if the rule explicitly said so] the~~ The use of mechanical restraints outside the courtroom is governed by the ~~Policies and Procedures in effect for the courts in the specific county and as required by the~~ Arizona Juvenile Detention Standards.

(5) Any restraints must ~~provide the juvenile with limited hand movement that~~ allow~~s~~ the juvenile to read, handle documents, and write.

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

(a) At Adjudication Proceedings. All witnesses must personally appear for adjudication proceedings, 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 13. Attendance of Witnesses and Appearance of Attorneys ~~and Counsel~~ by Telephone or Video Conference

(a) At Adjudication Proceedings. All witnesses must personally appear for adjudication proceedings, unless the court orders otherwise after considering the juvenile's constitutional right of confrontation. ~~[**Staff Note:** Staff's draft deleted "parties." If parties under current Rule 9 are the juvenile and the State, and if the juvenile can appear by phone under Rule 12(b), shouldn't this provision apply only to witnesses?]~~

(b) At Other Proceedings. For proceedings other than adjudications, a party may ~~move~~ request the court to permit witness testimony or ~~argument~~an attorney's appearance~~, or the appearance of counsel,~~ by telephone or video conferencing. Unless the court orders otherwise, the ~~motion~~ request must be in writing. ~~[**Staff Note**: Should this section include a specific reference to witnesses?]~~

Rule 14. Combining Hearings

The court may conduct at one time any combination of the advisory, adjudication, disposition, or other delinquency hearings. The court also may combine a delinquency hearing and a dependency hearing involving the same child.

Rule 14. ~~Consolidation of~~ Combining Hearings

~~The court may hear multiple matters at one time, including the advisory hearing, the detention hearing—if one is necessary—the adjudication hearing, the disposition hearing, or any combination of hearings. But this provision does not apply to a hearing concerning a transfer to another court.~~The court may conduct at one time any combination of the advisory, adjudication, disposition, or other delinquency hearings. The court also may combine a delinquency hearing and a dependency hearing involving the same child.

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. A motion must be filed no later than 10 days before a contested hearing, unless otherwise allowed by the court.

(c) 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 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.

(d) Oral Argument. On a party's request or on its own, the court may set a motion for argument or hearing.

(e) 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 timely adjudication. If the court grants a continuance, it must state its reasons on the record.

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. A motion must be filed no later than 10 days before a contested hearing, unless otherwise allowed by the court.

~~**(a)**~~

~~**(b) Filing.** A party must file a written motion with the clerk. At the time of filing, the filing party must provide a copy of the motion to the assigned judge, and must serve by mail, hand delivery, fax, or electronic means copies of the motion on other parties and the assigned probation officer. [**Staff Note:** Is the first sentence necessary? And can the second sentence be subsumed into a preliminary rule, as previously suggested?]~~

(c) 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 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.

(d) Oral Argument. On a party's request or on its own, the court may set a motion for argument or hearing.

~~**(c)**~~**(e) 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 timely adjudication. If the court grants a continuance, it must state its reasons on the record.

~~**Staff Note:** How does a party request oral argument on a motion? Should the rule include a provision for that? See, for example, Civil Rule 7.1(d) and Criminal Rule 1.9(e), which address the subject of oral argument.~~

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 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(C);

(C) delays resulting from the juvenile being referred to a diversion or community-based alternative program, and

(D) the juvenile's absence. ~~or the juvenile's inability to be arrested, cited, or detained in Arizona.~~

(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, but only when the congestion is attributable to extraordinary circumstances, and 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 17. Computation of Time

~~[**Staff Note:** This rule appears to be incomplete. Although it refers to Criminal Rule 1.3 for computing time, and although it contains a provision for excluded time, it does not have a provision for time limits. (Why does there need to be a provision for excluded time if there's no provision for time limits?) Compare Criminal Rule 8.2, which specifies a number of days for concluding a criminal proceeding.]~~

~~(1)~~ **(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 behalf of the juvenile are excluded including the following:~~The following periods are excluded from the computation of the time limits in these rules~~

~~(2) :~~

~~(1) Delays occasioned by or on behalf of the juvenile including, but not limited to:~~delays caused by

(A) ~~delays caused by~~ an examination and hearing to determine ~~competency~~competence, and if the juvenile is found incompetent, the time for restoration to competence;~~;~~

~~(A)~~

~~the juvenile's absence or incompetence~~~~the juvenile's inability to be arrested, cited, or detained in Arizona.~~

~~(B) ;~~

~~(C) a reasonable time, not exceeding 30 days, for the parties to prepare for a hearing after the juvenile's warrant hearing or restoration to competency; or~~

~~(D) the juvenile's inability to be arrested, cited, or detained in Arizona.~~

~~(2) Delays necessitated by the court's calendar congestion, but only when the congestion is attributable to extraordinary circumstances, and 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;~~

~~(3)~~**(B)** delays resulting from continuances requested by the juvenile and granted by the court under Rule 15(C); ~~or~~

(C) delays resulting from the juvenile being referred to a diversion or community-based alternative program, and~~.~~

(D) the juvenile's absence. ~~or the juvenile's inability to be arrested, cited, or detained in Arizona.~~

(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, but only when the congestion is attributable to extraordinary circumstances, and 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;

~~(4)~~

Rule 22. Referral; Diversion

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

(1) 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;

(2) the name, age, gender, and address of the juvenile named in the referral;

(3) the names and addresses, if known, of the parent, guardian, or custodian of the juvenile or the juvenile's spouse, if any; and

(4) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody.

(5) The signature of the person responsible for filing the referral.

(b) 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.

(c) 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.

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

Rule 22. Referral; Diversion

(a) Referral. A referral ~~from an individual or agency~~ for incorrigible or delinquent conduct must include:

(1) 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;

(2) the name, age, gender, and address of the juvenile named in the referral;

(3) the names and addresses, if known, of the parent, guardian, or custodian of the juvenile or the juvenile's spouse, if any; and

(4) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody.

(5) The signature of the person responsible for filing the referral.

(b) Record of Referral. ~~An authorized juvenile court officer~~Any authorized juvenile court personnel ~~[**Staff Note:** Staff suggests including in Rule 2 a definition of "authorized juvenile court officer" to distinguish this person from a judicial officer.]~~ who receives a referral must make a record of the referral in the manner prescribed by the juvenile court in each county. ~~[**Staff Note:** How does the court typically make a record of a referral? Are referrals assigned a case number? Who has access to the record?]~~

(c) Diversion ~~or Deferral~~. ~~[**Staff Note:** Are these two terms interchangeable? If they mean different things, should the rule include an explanation of the difference? Staff also suggests a standalone rule on diversion; compare Criminal Rule 38.]~~

(1) ***Meaning.*** "Diversion" ~~or "deferral" are ways of processing a juvenile delinquency~~ is a way of resolving a referral under A.R.S. § 8-321 ~~or incorrigibility matter that obviate~~without filing a petition ~~the need for a~~ .~~court adjudication. [**Staff Note:** The preceding sentence, as modified, was taken from current Rule 9(A). It is of some value, but it does not distinguish the meaning of these two terms.]~~

(2) ***Prosecutorial Discretion.*** The prosecutor has sole discretion to divert ~~or defer~~ the prosecution of a juvenile ~~who is accused of an incorrigible or delinquent act~~ to a community~~-~~based ~~alternative~~ 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 ~~court administering the program must notify the victim,~~victim must be notified as provided by A.R.S. § 8-388. ~~by law. [**Staff Note:** If the diversion process avoids a court proceeding, shouldn't the prosecutor rather than the court have the duty to notify the victim?]~~

(d) Submission. If the juvenile is not eligible for diversion,~~After reviewing a referral, t~~ the authorized juvenile court ~~officer~~ personnel must submit the referral to the prosecutor. ~~if the offense has not been designated for diversion. [**Staff Note:** Does the substance of sections C and D require clarification? Section D requires the juvenile court officer to submit a referral to the prosecutor if the offense is not designated for diversion; but if – as section C requires – the prosecutor alone has discretion to defer, the only way the prosecutor could have made that decision is if the juvenile court officer had already referred the matter to the prosecutor.]~~

Rule 24. Content of a Petition

(a) Content. ~~A prosecutor may file a petition alleging delinquent or incorrigible acts.~~ A petition must be captioned: "In the Matter of___, a person under the age of 18 years." The petition must be under oath and ~~may be based on information and belief. The petition must~~ include the following information:

(1) a concise statement of the facts, with reasonable particularity regarding the time, date, place, and manner of the alleged acts of the juvenile, and the law ~~or standard of conduct [**Staff Note:** Does "standard of conduct" refer to incorrigibility rather than delinquency?]~~ allegedly violated by such acts that bring the juvenile within the jurisdiction of the court;

(2) the name, age, gender, and address of the juvenile named in the petition;

(3) the names and addresses, if known, of the parent, guardian, or custodian of the juvenile or the juvenile's spouse, if any; and

(4) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody.

(b) Amendments to a Petition. Prior to 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 24. Content of a Petition

(a) Content. ~~A prosecutor may file a petition alleging delinquent or incorrigible acts.~~ A~~The~~ petition must be captioned: "In the Matter of___, a person under the age of 18 years." The petition must be under oath and ~~may be based on information and belief. The petition must~~ include the following information:

(1) a concise statement of the facts, with reasonable particularity regarding the time, date, place, and manner of the alleged acts of the juvenile, and the law ~~or standard of conduct [**Staff Note:** Does "standard of conduct" refer to incorrigibility rather than delinquency?]~~ allegedly violated by such acts that bring the juvenile within the jurisdiction of the court;

(2) the name, age, gender, and address of the juvenile named in the petition;

(3) the names and addresses, if known, of the parent, guardian, or custodian of the juvenile or the juvenile's spouse, if any; and

(4) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody.

(b) Amendments to a Petition. Prior to adjudication, a~~The court~~ prosecutor may file a motion requesting a court order that permits ~~may order~~ amendments to a petition ~~on any party's motion before adjudication,~~. ~~but the~~If the court grants the motion, it must allow ~~court must grant~~ the parties sufficient time to ~~meet~~ respond to the new allegations.

ddRule 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 not later than 30 days after the matter is resubmitted to the prosecutor for action.

ddRule 25. Filing a Petition

(a) Filing. All petitions ~~alleging delinquent or incorrigible acts~~ must be filed with the court clerk. ~~[**Staff Note:** Is this necessary? Do prosecutors have questions about where to file a petition? If so, perhaps there should be a general rule that contains this information. See, for example, Civil Rule 5.1(a), which says, "The filing of documents with the court is accomplished by filing them with the 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.

~~(c)~~ **(3)** ***Diversion.*** ~~If a referral is sent to a diversion program administered by the juvenile court, the prosecutor, or a community based alternative program, t~~The time limit for filing a petition is tolled during the period required to comply with the terms of diversion. ~~If the juvenile is deemed ineligible for diversion, the p~~If ~~rosecutor must file a petition not later than 30 days~~ the juvenile does not complete diversion, a petition must be filed not later than 30 days after the matter is resubmitted to the prosecutor for action. ~~after the matter is resubmitted to the prosecutor.~~

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; and

(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.

(5) if the juvenile is appearing for an offense listed in A.R.S. Sec. 13-610(O)(3), advise the juvenile 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. [**Workgroup note:** remove or relocate this provision?]

(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 parent [**Workgroup note:** leave in or omit the 14 year-old provision?], and if the juvenile is 14 years of age or older, the juvenile~~, and upon counsel representing any party~~. 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.

(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) ***Discretionary Warrant.*** Whenever it appears ~~by affidavit or testimony~~ that the juvenile cannot be found, or the juvenile's address cannot be ascertained after reasonable efforts to do so, ~~or the person will not otherwise appear,~~ the court may

issue a discretionary warrant to secure that person's appearance. [**Workgroup note:** The workgroup will define a "discretionary warrant" in Rule XX.]

(2) ***Warrant.*** If it appears the juvenile's failure to appear was willful, and 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.

(3) ***Contempt.*** If a parent without good cause failed 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 failure of a parent to appear does not prevent the court from proceeding.

Rule 26. ~~Service of Petition and~~ Notice to Appear; Service; Failure to Appear

(a) Notice to Appear. After the State has filed a petition ~~alleging an incorrigible or delinquent act~~, the juvenile and the juvenile's parent~~, guardian, or custodian~~ must be given a written notice to appear in court. The court for good cause may waive the appearance of the parent~~, guardian or custodian, as provided by law~~. 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; and

(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.

(5) ~~If~~ if the juvenile is appearing for an offense listed in A.R.S. Sec. 13-610(O)(3), advise the juvenile 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.~~summoned. [**Workgroup note:** remove or relocate this provision?]

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

(1) ***~~Requirement~~First Class Mail.*** The petition and notice to appear must be served by first class mail upon the parent [**Workgroup note:** leave in or omit the 14 year-old provision?], ~~guardian, custodian,~~ and ~~juvenile~~ if the juvenile is 14 years of age or older, the juvenile~~, and upon counsel representing any party~~. A single notice may be mailed to both the parent and the juvenile if they have the same residence address.

(2) ***~~Service by~~ 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~~finds that it is impracticable to personally serve the juvenile or the juvenile's parent, guardian, or custodian~~ , ~~the court~~ may approve:

***(*A)** service by certified ~~or registered~~ mail, return receipt requested. Return of the receipt or an affidavit of service is prima facie evidence of service.

(B) personal service by an authorized juvenile court officer or an officer authorized to serve process in a civil action.

~~(1)~~

~~(2) *Who May Serve.*~~ Each party must be personally served.~~ by an authorized juvenile court officer or an officer authorized to serve process in a civil action, except as otherwise provided.~~

~~**Service by Mail.** If the court finds that it is impracticable to personally serve the juvenile or the juvenile's parent, guardian, or custodian, the court may approve service by certified or registered mail, return receipt requested. Return of the receipt or an affidavit of service is prima facie evidence of service.~~

Failure to Appear.

~~(3)~~**(c)**

(1) ~~***Inability to Serve***~~***Discretionary Warrant*.** Whenever it appears ~~by affidavit or testimony~~ that the ~~person~~ juvenile ~~to be served with a notice to appear~~ cannot be found, or the ~~person's~~ juvenile's address cannot be ascertained after reasonable efforts to do so, ~~or the person will not otherwise appear,~~ the court may issue ~~an~~ a discretionary~~arrest~~ warrant to secure that person's appearance. [**Workgroup note:** The workgroup will define a "discretionary warrant" in Rule XX.]

(2) ***Warrant.*** If it appears the juvenile's failure to appear was willful, and 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.

~~(4)~~

~~(c)~~**(1)** ***Contempt.*** If a ~~person~~parent without good cause failed 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 ~~person~~ parent should not be held in contempt ~~[**Staff Note:** If the preceding sentence only contemplates an OSC hearing for a parent, guardian, or custodian, the rule should use those terms rather than "person."]~~ The order to show cause must be served as required under section (b). The failure of a parent~~, guardian or custodian~~ to appear does not prevent the court from proceeding.

~~**(d) Warrants.** If it appears the juvenile's failure to appear was willful, and for good cause and in the interest of justice, the court may compel the juvenile's attendance by issuing a warrant for the juvenile's arrest.~~

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 or by 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 or Guardian Ad Litem for a Child. Children in dependency cases are presumed indigent and are entitled to a court-appointed attorney or a guardian ad litem, or both.

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

(e) Advisory Attorney. If authorized by a county, an attorney who is neither assigned nor appointed may provide legal advice to a parent or guardian before a petition is filed.

Rule 38. Assignment, and Appointment of an Attorney; Advisory Attorney[WG Note: Recommends changing "counsel" to "attorney" globally.]

(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 or by ICWA. [**Staff Note:** Is ICWA not included in the phrase "by law?"]

(2) ***Duration.*** The assigned attorney must provide representation from the filing of a dependency petition notice of the assignment through the preliminary protective hearing, or until the court formally appoints or otherwise relieves the assigned attorney. [**Staff Note:** Does representation ever begin before a petition is filed? The answer appears to be "no," but staff nonetheless poses the question.] [The attorney for a child shall meet with the child before the preliminary protective hearing, if possible, or if not possible, within fourteen (14) days after the preliminary protective hearing. The attorney for the child shall also meet with the child before all substantive hearings. Upon a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.] [**Staff Note:** The sentences within the brackets are redundant to Rule 40.1(D) and should be deleted.]

(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 for the preliminary protective hearing.

[**Staff Note:** It appears that while indigency is a requirement for the appointment of an attorney, it is not a requirement for the assignment of counsel. If this is incorrect, these provisions will need to be modified.]

(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 counsel, as provided by lawunder A.R.S. § 8-221. [**Staff Note:** Staff has an ongoing concern with inserting the phrase "as provided by law" repeatedly in these rules, as noted at the beginning of this draft.] In determining whether a person is indigent, the court must [may?]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.

~~(b)~~**(c) Appointment of an Attorney or Guardian Ad Litem for a Child.** Children in dependency cases are presumed indigent and are entitled to a court-appointed attorney or a guardian ad litem, or both.

(d) Manner of Appointment. The court must enter an order or issue a minute entry assigning, appointing, or denying ~~counsel to~~ a person an attorney.~~.~~

~~(c)~~**(e) Advisory Attorney.** If authorized by a county, an attorney who is neither assigned nor appointed may provide legal advice to a parent or guardian before a petition is filed.

Rule 40. Appointment of a Guardian Ad Litem

(a) Guardian Ad Litem for a Child. The court may appoint a guardian ad litem or a CASA to protect the best interests of the child. The guardian ad litem must be an attorney.

(b) Guardian Ad Litem for Parent, Guardian, or Indian Custodians. -If the court has reason to believe that a parent, guardian or Indian custodian is unable to protect their own interests because of mental health or competency issues, intellectual functioning, or because they are under the age of eighteen, the court may appoint a guardian ad litem.

Rule 40. Appointment of a Guardian Ad Litem

(a) Guardian Ad Litem for a Child. The court may appoint a guardian ad litem or a CASA to protect the best interests of the child. ~~[**Staff Note:** Is it "interest," singular, or "interests," plural?]~~ The guardian ad litem ~~may~~ must be an attorney ~~or a volunteer court-appointed special advocate, or another qualified person~~. ~~[The guardian ad litem must meet with the child before the preliminary protective hearing, or if not possible, within 14 days after that hearing. The guardian ad litem also must meet with the child before all substantive hearings. For extraordinary circumstances, a judge may modify this requirement.] [**Staff Note:** The sentences within the brackets are redundant to Rule 40.1(D) and should be deleted. If the volunteer special advocate ("VSA") is a guardian ad litem, what is that person's title? Are the titles of VSA and CASA interchangeable? Is the difference that one is a volunteer and the other is paid?]~~

(b) Guardian Ad Litem for ~~Minor~~ Parent~~s~~, Guardian~~s~~, ~~and~~ or Indian Custodians. ~~In any proceeding where a parent, guardian, or Indian custodian is under 18 years of age, the court may appoint a guardian ad litem to protect the~~ best ~~interests of that person. [**Staff Note:** The current rules says, "interests of such parent," but the rule appears to also apply to non-parent guardians and custodians. Who can serve as a GAL under this provision and the one that follows? Must the GAL be an attorney? What if the person's interests are already protected by a court-appointed attorney?]~~ If the court has reason to believe that a parent, guardian or Indian custodian is unable to protect their own interests because of mental health or competency issues, intellectual functioning, or because they are under the age of eighteen, the court may appoint a guardian ad litem.

~~**(c) Guardian Ad Litem for Issues of Competence.** If the court has reason to believe that a parent, guardian, or Indian custodian might be incompetent, the court may appoint a guardian ad litem to conduct an investigation and report to the court on whether the person may be incompetent and in need of protection. The court must conduct hearings and enter orders as necessary to protect that person's interests. [**Staff Note:** Does this section raise privilege and confidentiality issues?][**11/22 WG note**: John and Denise will study this section and report back to the workgroup.]~~

Rule 40.1. Duties and Responsibilities of an Appointed Attorney and Guardian Ad Litem for a Child

[**Staff Note:** Rule 40 permits the court to appoint a GAL for a parent under the age of 18, or for an incompetent parent, i.e., for persons other than a dependent child. Does Rule 40.1 apply to those appointments? If the answer is 'yes,' Rule 40.1 will require additional revisions.]10/25 WG: consider definition of GAL]

[**Staff Note**: Although this rule is titled, "duties of an appointed attorney and GAL for a child," the rule doesn't appear to distinguish these two roles, except in section (a), where the appointed person must inform the child which role they have. i.e., most of the provisions in this rule provide that "an attorney or GAL" must do this or that, suggesting that their roles are coextensive and duplicative. Does this require clarification?]

[**11/22 workgroup note:** will consider a separate provision re appointment of an attorney for a child, possibly in Rule 38. John and Denise will also consider separate rules that define the roles of the attorney and the GAL. They will also consider the **sequence of the sections of this rule.**

11/22 workgroup note: Should the GAL always be an attorney? X-ref A.R.S. section 8-221(A). WG supported the concept. COJC will consider this at its January 30, 2020 meeting.]

(a) Explain the Role. The attorney must represent the position of the child and the guardian ad litem must advocate for what is in the best interests of the child. An attorney appointed for a child must explain to the child and the child's caregivers their role as a guardian ad litem or as an attorney, and the ethical obligations associated with their role. ~~Same~~

(b) Provide Information About Court Proceedings. An attorney and guardian ad litem 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, 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 guardian ad litem must participate in discovery, file pleadings, and subpoena witnesses. An attorney and guardian ad litem must develop a position for each hearing, including potential placements. The duties of an attorney and guardian ad litem ~~may~~ include identifying appropriate family and professional resources for the child. The attorney and

guardian ad litem must inquire of the child regarding potential placements and communicate this information to the DCS and court as appropriate.

(d) Meet with the Child. The attorney and guardian ad litem 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, guardian ad litem, or their trained support staff must have meaningful communication with the child before every substantive hearing. Substantive hearings include all preliminary protective hearings, all periodic review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship or termination. At each substantive hearing the attorney must inform the court of the child's position concerning pending issues and the guardian ad litem must inform the court of what is in the child's best interests. If the child is not present, the attorney or guardian ad litem must provide an explanation for the child's absence.

(e) Observe Placements. In all cases, if practicable and appropriate, an attorney and guardian ad litem 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 guardian ad litem must maintain appropriate contact and communications with caregivers, child safety investigators and workers, service providers, childcare providers, CASAs, relatives, and any other significant person in the child's life.

(g) Attend Meetings. To the extent possible, a child's attorney and guardian ad litem 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 guardian ad litem 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.

~~**Identify Conflicts of Interest.** An attorney and guardian ad litem must promptly identify any potential and actual conflicts of interest that would impair their ability to represent a child. Either the attorney or the guardian ad litem, if necessary, must move to withdraw or to seek the appointment of an additional attorney or guardian ad litem if he or she deems such action necessary.~~

(i) Possess General Knowledge. An attorney and guardian ad litem 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 guardian ad litem must be knowledgeable about how to access these services and advocate for appropriate services for the child.

(j) Obtain Continuing Education.

(1) ***Generally.*** An attorney and a guardian ad litem must be familiar with the substantive juvenile law. They must stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools.

(2) ***Initial Training.*** An attorney or a guardian ad litem must complete an introductory 6 hours of court approved training before their first appointment unless otherwise determined by the presiding judge of the juvenile court in which the attorney or guardian is practicing for good cause shown and an additional 2 hours within the first year of practice in juvenile court.

(3) ***Later Training.*** Each year, an attorney or guardian ad litem must complete at least 8 hours of continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development (including infant/toddler mental health), bonding and attachment, effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, ICWA, parent and child immigration status issues, the need for timely permanency, the traumatic effects of parental domestic violence on a child, and other issues concerning abuse or neglect of children.

(4) ***Affidavit of Completion.*** Attorneys or guardian ad litems must provide the presiding juvenile judge or the judge's designee with an affidavit of completion of the 6-hour court-approved training requirement before appointment as attorney or guardian ad litem for a child, unless the presiding judge of the juvenile court in which the appointment is made waives this requirement. Thereafter, and concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, ~~an~~ attorneys and guardian ad litems must file an affidavit of completion with the presiding juvenile judge or the judge's designee of the later training required by this rule. An initial and a later affidavit of completion must include a list of courses, including the dates and number of hours for each course, and the name of the training provider.

COMMENT

~~All attorneys and guardians ad litem appointed to represent children in dependency cases in the State of Arizona shall adhere to this rule. Privately retained attorneys shall become equally familiar with this rule.~~ 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 guardians ad litem 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 40.1. Duties and Responsibilities of an Appointed Attorney and Guardian Ad Litem for a Child

[**Staff Note:** Rule 40 permits the court to appoint a GAL for a parent under the age of 18, or for an incompetent parent, i.e., for persons other than a dependent child. Does Rule 40.1 apply to those appointments? If the answer is 'yes,' Rule 40.1 will require additional revisions.]10/25 WG: consider definition of GAL]

[**Staff Note**: Although this rule is titled, "duties of an appointed attorney and GAL for a child," the rule doesn't appear to distinguish these two roles, except in section (a), where the appointed person must inform the child which role they have. i.e., most of the provisions in this rule provide that "an attorney or GAL" must do this or that, suggesting that their roles are coextensive and duplicative. Does this require clarification?]

[**11/22 workgroup note:** will consider a separate provision re appointment of an attorney for a child, possibly in Rule 38. John and Denise will also consider separate rules that define the roles of the attorney and the GAL. They will also consider the **sequence of the sections of this rule.**

11/22 workgroup note: Should the GAL always be an attorney? X-ref A.R.S. section 8-221(A). WG supported the concept. COJC will consider this at its January 30, 2020 meeting.]

(a) Explain the Role. The attorney must represent the position of the child and the guardian ad litem must advocate for what is in the best interests of the child. An attorney appointed for a child must explain to the child and the child's caregivers their role as a guardian ad litem or as an attorney, and the ethical obligations associated with their role. ~~Same~~

(b) Provide Information About Court Proceedings. An attorney and guardian ad litem must keep the child informed ~~inform the child~~, in an age and developmentally appropriate manner, of the nature of ~~the~~ each court proceeding, ~~**Staff Note**the attorney's role in the proceeding [**Staff Note**: an explanation of the attorney's role is covered in the first section of this rule, and a portion of this sentence, or section (a), is therefore redundant]: an explanation of the attorney's role is covered in the first section of this rule, and a portion of this sentence, or section (a), is therefore redundant],~~ the child's right to attend hearings and speak with the judge, ~~the~~ any benefits or consequences of the child's participation or lack of participation, the possible outcomes of each hearing, other legal rights ~~with regards to~~regarding the dependency proceeding, and must ~~advise~~explain ~~the child of~~ the outcome~~s~~ of each ~~substantive~~ hearing~~.~~ to the child. ~~samesame~~

(c) Participate in the Proceeding. When appropriate, an attorney and guardian ad litem must participate in discovery, file pleadings, and subpoena witnesses. An attorney and guardian ad litem must develop ~~the child's~~a position for each hearing, including potential placements. ~~A guardian ad litem must advocate for what is in the best interest of the child.~~ The duties of an attorney and guardian ad litem ~~may~~ include identifying appropriate family and professional resources for the child. The attorney and guardian ad litem must inquire of the child regarding potential placements and communicate this information to the DCS ~~and court~~ as appropriate. ~~[**Staff Note:** Should 'must' in the last sentence be 'should?' How can counsel inquire of the child if the child is too young?]~~

(d) Meet with the Child. The attorney and guardian ad litem 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~~ guardian ad litem, or their trained support staff ~~for the child~~ must have meaningful ~~in person~~ communication with the child before every substantive hearing. Substantive hearings include all preliminary protective hearings, all periodic 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 regarding a particular substantive hearing.~~ At each substantive hearing the attorney ~~or guardian ad litem~~ must inform the court of the child's position concerning pending issues ~~and~~ and the guardian ad litem must inform the court of what is in the child's best interests. ~~and, i~~If the child is not present, the attorney or guardian ad litem must provide an explanation for the child's absence.

~~(d)~~(e) Observe Placements. ~~If the child is under the age of 5 or is not able to communicate effectively, meetings should include observations within each placement home. At each substantive hearing the attorney or guardian ad litem must inform the court of the child's position concerning pending issues and, if the child is not present, must provide an explanation for the child's absence.~~ In all cases, if practicable and appropriate, ~~,~~ an attorney and guardian ad litem ~~for the child should also communicate with placements, and if practicable,~~ should observe the child's residential environment and the child's interaction with the caregiver~~placement~~. ~~Upon a showing of extraordinary circumstances, a judge may modify the requirements of this section regarding a particular substantive hearing. [**Staff Note:** Consider relocating this section as the first or second section of this rule.]~~

~~(e)~~(f) Confer with Others. To meet the obligation of informed representation, an attorney and guardian ad litem must maintain appropriate contact and communications with ~~caretakers~~caregivers, child safety investigators and workers,

service providers, childcare providers, CASAs, relatives, and any other significant person in the child's life ~~as may be appropriate~~.

~~(f)~~**(g) Attend Meetings.** To the extent possible, a child's attorney and guardian ad litem should attend or provide input at a DCS staffing, Foster Care Review Board review, and Child and Family Team meeting.

~~(g)~~**(h) Use Support Staff.** ~~An~~ Except for the initial meeting with the child, an attorney and guardian ad litem 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. ~~[**Staff Note:** What is the purpose and meaning of this section? That the attorney can delegate professional responsibilities?]~~

~~**Identify Conflicts of Interest.** An attorney and guardian ad litem must promptly identify any potential and actual conflicts of interest that would impair their ability to represent a child. Either the attorney or the guardian ad litem, if necessary, must move to withdraw or to seek the appointment of an additional attorney or guardian ad litem if he or she deems such action necessary. [**Staff Note:** Is this provision necessary? Isn't it already covered by Supreme Court Rule 42?]~~

~~() **Responsibility to Court.** Each attorney of record and guardian ad litem is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared. If an attorney changes his or her office address, the attorney must notify the clerk and the court administrator, in each of the counties in which that attorney has actions that are pending, of the attorney's current office address and telephone number.~~

~~(h)~~**(i) Possess General Knowledge.** An attorney ~~or~~ and ~~a~~ guardian ad litem 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 ~~a~~ guardian ad litem must be knowledgeable about how to access these services and advocate for appropriate services for the child. ~~[**Staff Note:** Suggest moving this general section closer to the beginning of this rule.]~~

~~(i)~~**(j) Obtain Continuing Education.**

(1) ***Generally.*** An attorney and a guardian ad litem must be familiar with the substantive juvenile law. They must stay abreast of changes and developments in relevant federal and state laws and regulations, Rules of Procedure for the

Juvenile Court, court decisions and federal and state laws concerning education and advocacy for children in schools.

(2) ***Initial Training.*** An attorney or a guardian ad litem must complete an introductory 6 hours of court approved training before their first appointment unless otherwise determined by the presiding judge of the juvenile court in which the attorney or guardian is practicing for good cause shown and an additional 2 hours within the first year of practice in juvenile court.

(3) ***Later Training.*** Each year, an attorney or guardian ad litem must complete at least 8 hours of continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development (including infant/toddler mental health), bonding and attachment, effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, ICWA, parent and child immigration status issues, the need for timely permanency, the traumatic effects of parental domestic violence on a child, and other issues concerning abuse or neglect of children. ~~This training and continuing education may qualify as mandatory Continuing Legal Education under State Bar of Arizona requirements. [**Staff note**: MCLE is a Supreme Court, not a State Bar, requirement. Consider replacing it with the following sentence.] If this training qualifies under Supreme Court Rule 45, it may count towards the mandatory continuing legal education requirement of that rule.~~

(4) ***Affidavit of Completion.*** Attorneys or guardian ad litems must provide the presiding juvenile judge or the judge's designee~~,~~ with an affidavit of completion of the 6-hour court-approved training requirement before ~~with an affidavit of completion of the 6-hour court-approved training requirement before~~ appointment as attorney or guardian ad litem for a child, unless the presiding judge of the juvenile court in which the appointment is made waives this requirement. Thereafter, and concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, ~~an~~ attorneys and guardian ad litems must file an affidavit of completion with the presiding juvenile judge or the judge's designee of the later training required by this rule. An initial and a later affidavit of completion must include a list of courses, including the dates and number of hours for each course, and the name of the training provider.

COMMENT

~~All attorneys and guardians ad litem appointed to represent children in dependency cases in the State of Arizona shall adhere to this rule. Privately retained attorneys shall become equally familiar with this rule.~~ 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 guardians ad litem 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 and Guardians Ad Litem Who Represent Parents, Guardians, and Indian Custodians

(a) Meaning of "Parent." For purposes of this rule only, "parent" includes a parent, a court-appointed guardian, and an Indian custodian.

(b) Communicate with the Parent. The attorney must communicate with the parent before the preliminary protective hearing or as soon thereafter as possible. The attorney or guardian ad litem must communicate with the parent before every hearing. The attorney and guardian ad litem must establish procedures for regular communications with a parent and must timely reply to a parent's communications.

(c) Explain the Role. An attorney to a parent their role as an attorney or guardian ad litem, and the ethical obligations associated with their role.

(d) Provide Information and Explain Requirements. The attorney and guardian ad litem must review the allegations of the dependency petition and explain to the parent the nature of the proceedings including terminology, timelines and 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 and guardian ad litem must explain the requirements of court orders and the case plan.

(e) Participate in the Proceeding. The attorney must, as appropriate, participate in discovery, file pleadings, subpoena witnesses, provide the parent or guardian with disclosure and court documents, and develop the parent or guardian ad litem'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 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. [The guardian ad litem must advocate for the best interests of the parent.]

(f) Possess General Knowledge. An 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.

(g) Obtain Continuing Education.

(1) ***Generally.*** An attorney and guardian ad litem must be familiar with substantive juvenile law and stay abreast of changes and developments in relevant federal and state statutes, regulations, rules, and case law.

(2) ***Initial Training.*** An attorney and guardian ad litem must complete an introductory 6 hours of court- approved training before the first appointment, unless the presiding judge of the juvenile court determines otherwise for good cause.

(3) ***Later Training.*** An attorney and guardian ad litem must complete an additional 2 hours of court-approved training within the first year of practice in juvenile court. Each year thereafter, ~~an attorney~~ they must complete at least 8 hours of education and training specifically on juvenile law and related topics, such as child welfare policy and procedures, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, domestic violence, the effects of trauma, cultural awareness, social issues surrounding families involved in the dependency process, motivational interviewing, child and adolescent development (including the mental health of infants and toddlers), the effects of parental incarceration, the Indian Child Welfare Act, parent and child immigration issues, the need for timely permanency, and other training concerning abused or neglected children.

(4) ***Affidavit of Completion.*** An attorney and guardian ad litem must provide the presiding juvenile judge or the judge's designee with an affidavit of completion of the 6-hour court-approved training requirement before appointment as the attorney or guardian ad litem for a parent or guardian, unless the presiding judge of the juvenile court in which the appointment is made waives this requirement. Thereafter, and concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or guardian ad litem must file an affidavit of completion with the presiding juvenile judge or the judge's designee of the later training required by this rule. An initial and a later affidavit of completion must include a list of courses, including the dates and number of hours for each course and the name of the training provider.

COMMENT TO THE 2022 AMENDMENTS

~~This rule applies to court-appointed and privately retained attorneys and guardians ad litem. 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 guardians ad litem 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.~~

This rule applies to court-appointed and privately retained attorneys and guardians ad litem.

The comment to Rule 40.1 also applies to attorneys and guardians ad litem under Rule 40.2.

Rule 40.2. Duties and Responsibilities of Attorneys and Guardians Ad Litems Who Represent Parents ~~or~~, Guardians, and Indian Custodians

(a) Meaning of "Parent." For purposes of this rule only, "parent" includes a parent, a court-appointed guardian, and an Indian custodian.

~~**(a) Identify Conflicts of Interest.** The attorney for a parent must promptly identify any potential and actual conflicts of interest that would impair his or her ability to represent the parent. The attorney must, if necessary, move to withdraw. [**Staff Note:** Presumably this incomplete sentence means that the attorney must move to withdraw if there is an irreconcilable conflict. But isn't that an obvious ethical requirement? Does it need to be stated in this rule?] An attorney must not accept more cases than he or she can ethically handle. [**Staff Note:** Isn't this again an obvious ethical requirement?]~~

(b) Communicate with the Parent. The attorney must communicate with the parent ~~parent or guardian~~ before the preliminary protective hearing or as soon thereafter as possible. The attorney or guardian ad litem must communicate with the parent before every ~~substantive~~ hearing. The attorney and guardian ad litem must establish procedures for regular ~~client~~ communications with a parent and must timely reply to a parent's communications. ~~from a client. [**Staff Note**: Should this provision be the first section of this rule?]~~

~~(b)~~**(c) Explain the Role.** ~~The attorney must inform the parent of the attorney's role and ethical obligations, including the concepts of privilege and confidentiality.~~ An attorney ~~appointed for~~to a parent their ~~a parent or guardian must explain to the client their~~ role as an attorney or guardian ad litem, and the ethical obligations associated with their role.

~~(c)~~**(d) Provide Information and Explain Requirements.** The attorney and guardian ad litem must review the allegations of the dependency petition and explain to the parent ~~or guardian~~ the nature of the proceedings including terminology, timelines and courtroom protocol, the parent~~'s or guardian's~~ 's legal rights in the dependency action, various parties and participants associated with the action, ways that the parent ~~or guardian~~ can affect case outcomes, consequences of the parent ~~or guardian~~ not attending hearings, and possible consequences of being placed on the ~~DES~~ DCS Central Registry. The attorney and guardian ad litem must explain the requirements of court orders and the case plan.

~~(d)~~**(e) Participate in the Proceeding.** The attorney must, ~~as required~~as appropriate, participate in discovery, file pleadings, subpoena witnesses, provide the parent or guardian with disclosure and court documents, and develop the parent or guardian ad

litem's position for each hearing. The attorney must advocate for appropriate services for the parent ~~or guardian~~ and explain to the parent the procedural and substantive status of the case. The attorney must notify court when an interpreter is needed. Except for the preliminary protective hearing, ~~I~~if a parent is incarcerated, the attorney must ensure that the proper notice or motion is filed to enable the parent ~~or guardian~~ to participate in the hearing. [The guardian ad~~t~~ litem ~~shall~~ must advocate for the best interests of the parent ~~or guardian~~.]

~~**(e) Communicate with the Parent.** The attorney must communicate with the parent or guardian before the preliminary protective hearing or as soon thereafter as possible. The attorney or guardian ad litem must communicate with the parent before every substantive hearing. The attorney and guardian ad litem must establish procedures for regular client communications and must timely reply to communications from a client. [**Staff Note**: Should this provision be the first section of this rule?]~~

~~(f) **Responsibility to Court**. Each attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared. If an attorney changes his or her office address, the attorney must notify the clerk and court administrator, in each of the counties in which that attorney has actions that are pending, of the attorney's current office address and telephone.~~

~~(g)~~ **(f) Possess General Knowledge.** An 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.

(g) ~~h)~~ Obtain Continuing Education.

(1) ***Generally.*** An attorney and guardian ad litem must be familiar with substantive juvenile law and stay abreast of changes and developments in relevant federal and state statutes, regulations, rules, and case law.

(2) ***Initial Training.*** An attorney and guardian ad litem must complete an introductory 6 hours of court- approved training before the first appointment, unless the presiding judge of the juvenile court determines otherwise for good cause.

(3) ***Later Training.*** An attorney and guardian ad litem must complete an additional 2 hours of court-approved training within the first year of practice in juvenile court. Each year thereafter, ~~an attorney~~ they must complete at least 8 hours of education and training specifically on juvenile law and related topics, such as

child welfare policy and procedures, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, domestic violence, the effects of trauma, cultural awareness, social issues surrounding families involved in the dependency process, motivational interviewing, child and adolescent development (including the mental health of infants and toddlers), the effects of parental incarceration, the Indian Child Welfare Act, parent and child immigration issues, the need for timely permanency, and other training concerning abused or neglected children. ~~If this training qualifies under Supreme Court Rule 45, it may count towards the mandatory continuing legal education requirements of that rule.~~

~~(3)~~

(4) ***Affidavit of Completion.*** An attorney and guardian ad litem must provide the ~~court~~ presiding juvenile judge or the judge's designee with an affidavit of completion of the 6-hour court-approved training requirement before appointment as the attorney or guardian ad litem for a parent or guardian, unless the presiding judge of the juvenile court in which the appointment is made waives this requirement. Thereafter, and concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or guardian ad litem must file an affidavit of completion with the presiding juvenile judge or the judge's designee of the later training required by this rule. An initial and a later affidavit of completion must include a list of courses, including the dates and number of hours for each course and the name of the training provider.

COMMENT TO THE 2022 AMENDMENTS

~~This rule applies to court-appointed and privately retained attorneys and guardians ad litem. 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 guardians ad litem 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.~~

This rule applies to court-appointed and privately retained attorneys and guardians ad litem.

The comment to Rule 40.1 also applies to attorneys and guardians ad litem under Rule 40.2.

~~(4)~~

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, the 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)~~, including the name, sex, address, and date and place of birth of each child who is the subject of the motion; the name and address of the permanent guardian; the reason why the permanent guardian is no longer able or willing to serve as permanent guardian of the child; and the name and address of the proposed successor permanent guardian, if any~~.

(b) Affidavit. If the motion identifies a proposed successor permanent guardian, the motion must be accompanied by an affidavit by the proposed successor permanent guardian that includes the information required by law A.R.S. § 8-874(B).~~, including the relationship between the proposed successor permanent guardian and the child and the proposed successor permanent guardian's agreement to assume the duties and responsibilities of permanent guardian, including compliance with all court orders. [**Staff Note:** Section (B) reiterates the requirements of A.R.S. § 8-874(B).]~~

(1) ~~of the hearing, a copy of the motion, and the court's temporary orders to the permanent guardian, the DCS, the child's attorney, the child's parents, and any other interested person as ordered by the court. The person filing the motion must provide these documents by first class mail unless the court orders that notice be given by other means.~~

(2) ~~If the child is subject to the Indian Child Welfare Act of 1978 [**Staff Note:** Is "of 1978" significant or is whatever was in the 1978 version also in the most recent version?], the person filing the motion must provide notice pursuant to 25 U.S.C. § 1912, to the Indian parent, the Indian custodian, and the child's tribe. If the identity or location of the Indian child's parent cannot be determined, the person filing the motion shall provide notice to the U.S. Secretary of the Interior pursuant to 25 U.S.C. § 1912. [**Staff Note:** Section (C) reiterates the requirements of~~

(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).

(1) ~~within 30 days after the motion is filed, set a date for an initial successor permanent guardianship hearing;~~

(2) ~~appoint counsel for the proposed successor guardian pursuant to Rule 38(B), if the appointment is appropriate;~~

(3) ~~appoint counsel for the child if a guardian ad litem has not been appointed; and~~

(4) ~~enter appropriate temporary orders, which may include:~~

(A) ~~placing the child in the temporary custody of an individual, agency, or the DCS, and directing the DCS to provide services that are necessary for the child's safety and well-being;~~

(B) ~~directing the DCS to complete a criminal record check and home study to determine the suitability of the proposed successor permanent guardian as the child's permanent guardian; or~~

(C) ~~directing the DCS to conduct an investigation to determine whether dependency proceedings should be initiated.~~

(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 63.1. 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, the DCS or any interested party may file a motion ~~[**Staff Notes:** Motion or petition? See previous staff notes]~~ 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)~~law [**Staff Note:** The information required by law is set out in A.R.S. § 8-874. Should the rule simply reference the information required by this statute?]~~, ~~including the name, sex, address, and date and place of birth of each child who is the subject of the motion; the name and address of the permanent guardian; the reason why the permanent guardian is no longer able or willing to serve as permanent guardian of the child; and the name and address of the proposed successor permanent guardian, if any~~.

(b) Affidavit. If the motion identifies a proposed successor permanent guardian, the motion must be accompanied by an affidavit ~~-~~by the proposed successor permanent guardian that includes the information required by law A.R.S. § 8-874(B).~~, including the relationship between the proposed successor permanent guardian and the child and the proposed successor permanent guardian's agreement to assume the duties and responsibilities of permanent guardian, including compliance with all court orders. [**Staff Note:** Section (B) reiterates the requirements of A.R.S. § 8-874(B).]~~

~~**(c) Notice.**~~

(1) ~~The court must order the person filing the motion to provide a notice of the hearing, a copy of the motion, and the court's temporary orders to the permanent guardian, the DCS, the child's attorney, the child's parents, and any other interested person as ordered by the court. The person filing the motion must provide these documents by first class mail unless the court orders that notice be given by other means.~~

(2) ~~If the child is subject to the Indian Child Welfare Act of 1978 [**Staff Note:** Is "of 1978" significant or is whatever was in the 1978 version also in the most recent version?], the person filing the motion must provide notice pursuant to 25 U.S.C. § 1912, to the Indian parent, the Indian custodian, and the child's tribe. If the identity or location of the Indian child's parent cannot be determined, the person filing the motion shall provide notice to the U.S. Secretary of the Interior pursuant to 25 U.S.C. § 1912. [**Staff Note:** Section (C) reiterates the requirements of A.R.S. § 8-874(D).]~~

~~(d)~~**(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).

(1) ~~within 30 days after the motion is filed, set a date for an initial successor permanent guardianship hearing;~~

(2) ~~appoint counsel for the proposed successor guardian pursuant to Rule 38(B), if the appointment is appropriate;~~

(3) ~~appoint counsel for the child if a guardian ad litem has not been appointed; and~~

(4) ~~enter appropriate temporary orders, which may include:~~

(A) ~~placing the child in the temporary custody of an individual, agency, or the DCS, and directing the DCS to provide services that are necessary for the child's safety and well-being;~~

(B) ~~directing the DCS to complete a criminal record check and home study to determine the suitability of the proposed successor permanent guardian as the child's permanent guardian; or~~

(C) ~~directing the DCS to conduct an investigation to determine whether dependency proceedings should be initiated.~~

~~(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 determines whether service has been completed, whether notice of the hearing has been provided to those persons identified pursuant Rule 63.1(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 contained 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; and

(2) determine whether notice of the hearing has been provided to those persons identified in Rule 63.1(d) ~~in addition to the parent, Indian custodian and the child's~~

(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 within one year after the appointment.

It also may order the 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, setting a hearing to determine whether the appointment should be made permanent, and directing the 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 the natural or adoptive 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 motion to appoint a successor permanent guardian is denied or the court 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 to file a dependency petition regarding the child, and proceed as provided in A.R.S. § 8-874(J) and (K).

Rule 63.2. Initial Successor Permanent Guardianship Hearing

(a) Generally. At the initial successor permanent guardianship hearing, the court ~~must~~ determines whether service has been completed, whether notice of the hearing has been provided to those persons identified pursuant Rule 63.1(~~C~~d), ~~and the parent or Indian custodian and the child's tribe~~ and whether the parent, guardian, or Indian custodian admits, denies or does not contest the allegations contained in the motion for appointment of a successor permanent guardian.

(b) Burden of Proof.

(1) The moving party has the burden of proving the allegations contained 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).

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

(1) ~~under the regulations,~~ inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA; and

(2) determine whether notice of the hearing has been provided to those persons identified in Rule 63.1(~~C~~d) ~~in addition to the parent, Indian custodian and the child's tribe [**Staff Note:** Rule 63.1(C) includes notice to the parent, Indian custodian, and the child's tribe].~~

~~(2)~~**(3)** follow the procedures specified in Rule 63(d).and A.R.S. § 8-874(C).

~~(c)~~**(d)** ~~**Considerations.** If the child is at least 12 years of age, the court must consider the child's objection, and may consider the child's wishes, regarding the proposed successor permanent guardian. [**Staff Note:** Are the objection and wishes different? For clarity, it might say something like, "the child's objection to the motion or the child's agreement concerning the person appointed as a successor permanent guardian."]~~**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 ~~and Orders~~. ~~At the hearing,~~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 ~~[**Staff Note:** Is the moving party an "it?"]~~ 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) ~~that~~ the appointment would be in the child's best interests.~~, the court shall [**Staff Note:** Should this be "may" or "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.~~

~~**(d)**~~ **Review Hearing**. ~~At the hearing, the court may enter any orders that may be necessary for the child's safety and well-being, including:~~

(f) If the court enters an order appointing a successor permanent guardian, the court must set a review hearing within one year after the appointment. It also may order the 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, setting a hearing to determine whether the appointment should be made permanent, and directing the 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.

Other Orders.

~~**(1)**~~ The court also may enter orders necessary for the child's safety and well-being, including~~Appointing the proposed successor permanent guardian as a provisional permanent guardian of the child for a period not exceeding 9 months and setting a hearing to determine whether the appointment should be made permanent. [**Staff Note:** If the person had not previously been made a permanent guardian, as this provision suggests, it conflicts with the above paragraph that requires the court to "appoint the proposed successor permanent guardian as the child's permanent guardian."]~~

~~**(2)** Directing the 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 [**Staff Note:** "Provisional~~

~~permanent guardian," a phrase that is in the current rule, seems confusing; shouldn't it be a "provisional guardian?"] to make an application for guardianship subsidy and other available benefits. [**Staff Note:** Subparts 1 and 2 should be combined. They might not apply in some cases, whereas subpart 3 will apply in every case, and section (E) should make that clear.]~~

~~**(3)** If the court enters an order appointing a successor permanent guardian, the court must set a review hearing within one year after the appointment. It also may order the DCS or an agency to conduct an investigation and submit a written report before the hearing.~~

~~**(4)**~~**(h)** ~~The order appointing the successor permanent guardian may~~ providinge for contact between the child and the natural or adoptive parents, siblings, ~~and other~~ relatives, or ~~kin~~ others,~~[**Staff Note:** is there a difference between "relatives" and "kin?" If not, suggest deleting "kin"]~~ if contact is in the child's best interests. The court may order the parent to contribute to the support of the child and to pay any costs for visitation to the extent it finds the parent is able to contribute.

Denial of the Motion. ~~**[Staff Note: Suggest that subpart 5 be a standalone Section (F) rather than a subpart of Section (E). Subparts 1 through 4 pertain to orders if the court grants the motion. Subpart 5 concerns orders if the court denies the motion.]**~~

~~**(e)**~~**(i)** If the motion to appoint a successor permanent guardian ~~does not comply with law, or if~~is denied or the court does not appoint a provisional or ~~permanent~~ successor permanent guardian ~~[**Staff Note:** the latter 4-word phrase is also in the current rule; can it be shortened?],~~ , the court may enter orders necessary for the child's safety and well-being, and may order ~~the~~ DCS or the child's attorney to file a dependency petition regarding the child, and ~~it may enter temporary orders that are necessary for the child's safety and well-being. In that case, the court may direct the DCS not to provide reunification services to the child's parents unless the court finds by clear and convincing evidence that it would be in the child's best interests [**Staff Note:** is the remainder of this sentence necessary?] and shall provide direction unless such services are required~~proceed as provided in A.R.S. § 8-874(J) and (K).