

Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, February 28, 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	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Approval of the January 24, 2020 meeting minutes	<i>Justice Berch</i>
Item no. 3	Workgroup reports and discussion of rules Workgroup 1: Rule 7 and Rule 103(a)&(b) Workgroup 2: Rules 16, 18, 19, and 21. Rule 22 (revisited) Workgroup 3: Rule 40 (revisited), Rules 40.3 and 40.4 (new) Workgroup 4: Rule 62 (revisited), Rules 64 and 65	<i>Ms. McQuality, Ms. Beckmann</i> <i>Ms. Beringhaus, Mr. Meaux</i> <i>Judge Quigley, Mr. Gilmore, Mr. Truman</i> <i>Professor Atwood</i>
Item no. 4	Roadmap Next meetings: Friday, April 3, 2020 (Room 119) Friday, May 8, 2020 (Room 119) Friday, June 12, 2020 (Room 119)	<i>Justice Berch</i>
Item no. 5	Call to the Public Adjourn	<i>Justice Berch</i>

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: January 24, 2020

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong, Professor Barbara Atwood, Beth Beckmann, Dale Cardy, Kathleen Coughlin, Maria Christina Fuentes by her proxy Steve Selover, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, 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, Hon. Anna Young

Absent: Tina Mattison, Kent Volkmer, Hon. Rick Williams

Guests: Nina Preston, Chanetta Curtis, Nancy Rodriguez, Shari Andersen-Head, Rachel Roche

AOC Staff: Caroline Lutt-Owens, Joseph Kelroy, Mark Meltzer, Angela Pennington

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the fourth Task Force meeting to order at 10:00 a.m. She commended the members for their excellent attendance at Task Force meetings. She noted that some members have attended meetings of more than one workgroup, which helps to identify and address recurring issues in different parts of the rules. The Chair then reviewed materials in today's meeting packet. In addition to the agenda, draft minutes, and eighteen draft rules, the packet includes three other documents concerning the rules on today's agenda. The first document is a Maricopa County job description of a child welfare specialist, which is pertinent to Rule 40.1. The second document is a position statement from the National Council of Judicial and Family Court Judges concerning the use of CASAs as GALs; it pertains to several rules, including Rule 40. The third document concerns the pending delinquency rules and contains a proposed provision in Rule XX that defines "parent" as including "a parent, guardian, or custodian," thereby eliminating the need to make repetitive references in subsequent rules to all three. The Chair also advised that clean versions of the draft rules in today's packet may continue to show strikethrough and underline to flag noteworthy text changes.

The Chair then referred members to draft meeting minutes of the December 13, 2019 Task Force meeting. Members had no corrections to the draft.

Motion: A member moved to approve the December 13, 2019 meeting minutes. The motion received a second and it passed unanimously. **JRTF 004** (**Staff note:** The motion approving the November 8, 2019, minutes, as shown on the first page of the December 13 minutes, should be numbered JRTF 003.)

2. Report from Workgroup 2. The Chair began today's rules review with presentations from Workgroup 2 members.

Rule 11 ("attorney's appearance and withdrawal"). Ms. Phillis made the presentation. She noted that this rule was initially presented at the November 8 meeting and returned to the workgroup for further consideration. After the workgroup's subsequent revisions, each of the two sections (one on appearance, the other on withdrawal) now has one subpart for court-appointed counsel and a second subpart for a retained attorney. Under the revised provisions, a court-appointed attorney is "automatically relieved" from representation at the end of the case (i.e., no hearings are set and the time for filing a notice of appeal has expired), whereas retained counsel must file a notice of withdrawal when the case ends.

In response to a question about substitution of counsel, Ms. Phillis advised that substitutions are uncommon, but if one is requested, counsel would presumably follow routine substitution procedures. Another member asked whether court-appointed counsel could file documents after being automatically relieved, such as a motion for early termination of probation. Ms. Phillis advised that this rule would not answer this question; rather the answer should be in court-appointed counsel's contract with the county. She added that the filing of such a motion would probably be allowed in Maricopa County, which compensates court-appointed counsel on a per-case basis. Ms. McQuality said that clerks would prefer that court-appointed counsel memorialize their withdrawal in the case management system by a filing a notice, but Ms. Phillis explained that this would result in paperwork that the proposed rule would avoid. Members concluded the discussion by approving Rule 11.

Rule 12 ("the juvenile's attendance at court proceedings; restraints"). Mr. Meaux presented this rule on behalf of the workgroup. In section (a) ("personal appearance"), the workgroup added two events—a detention hearing and an advisory hearing—to a list of events requiring the juvenile's personal attendance. It also sequenced the events identified in this section in the order in which those events occur. Under draft section (b) ("telephonic or video appearance"), an appearance by telephone or video is considered a personal appearance. A subpart in section (c) ("voluntary appearance") said that the juvenile "has not provided an acceptable reason for the non-appearance." Members agreed that the court has discretion to determine what constitutes an "acceptable reason," but they changed this to instead say, "has not provided good cause for the non-appearance," which they agreed was a clearer legal standard. A member expressed concern that a juvenile's non-appearance at an advisory hearing might be deemed voluntary, and the court might issue a warrant, without confirming that the juvenile had been served with a summons. However, members concluded that section (d) ("failure to appear") took this into account, and that as a practical matter, a judicial officer will confirm that the juvenile was served before issuing a warrant. See further the discussion concerning Rule 26(b)(2), *infra*.

Draft Rule 12(e) (“mechanical restraints”) modified the current provision. The description of mechanical restraints was relocated from the end to the beginning of section (e). In addition, the workgroup revised a few of the factors justifying the use of restraints. Members discussed whether a proposed modification to the second factor (“the juvenile ~~is likely to flee~~, has expressed an intention to flee, or has previously attempted to flee”) required a further edit, such as “has demonstrated or expressed an intention to flee” so the intention would not be limited to verbal or written expressions. Members concluded that the edit was unnecessary, and that a judicial officer could decide whether an expressed intention includes a demonstrated intention. The workgroup deleted the factor that “a juvenile detention officer...recommended the use of mechanical restraints,” recognizing that a judicial officer rather than a detention officer makes that determination and because a detention officer would customarily provide input under the other factors. Members also agreed that the words “through counsel” (i.e., a juvenile...my object to the use of restraints through counsel”) were unnecessary because counsel, not the juvenile, would ordinarily make the objection. Members then approved Rule 12 as modified.

Rule 13 (“attendance of witnesses and appearance of attorneys by telephone or video conference”). Ms. Beringhaus noted that in section (a) (“at adjudication proceedings”), the word “parties” was deleted in the phrase “all parties and witnesses must personally appear” to avoid confusion with Rule 12(b), which permits a juvenile, with court approval, to personally appear by telephone or video. She also noted that the workgroup clarified the language of section (b) (“at other proceedings”), but it made no substantive changes. Members approved the rule as presented.

Rule 14 (“combining hearings”). Ms. Phillis explained that the first sentence of the draft derives from the current rule, and the second sentence is new. Ms. Phillis explained that the current rule excludes transfer hearings, but the first sentence of the draft rule does not have this exclusion because a transfer hearing might lead to a plea and a disposition, which could be combined under the proposed rule.

The ensuing discussion focused on the second sentence, which says, “The court also may combine a delinquency hearing and a dependency hearing involving the same child.” One member proposed adding criteria about when the court could combine these hearings, and suggested that some hearings, particularly adjudications, should not be combined. Another member was concerned that the rule might conflict with procedural requirements in statutes. Ms. Phillis replied that juvenile courts already combine hearings for cross-over youth, and this new sentence simply recognizes the current practice. A judge member observed that judicial officers exercise sound discretion in combining hearings; adding criteria could be problematic because situations can be fluid or unique, and a rule should not limit the judicial officers’ ability to conduct hearings efficiently by combining them and doing what is in the child’s best interests. A member proposed adding to this sentence the words “in accordance with the law,” but others noted this would not be helpful because these words are implicit in every rule. At this

point, members approved Rule 14. The Chair noted that all the rules, including this one, will be open for public comment and opposing views.

Rule 15 (“motions”). Mr. Cardy observed that the workgroup’s revisions to Rule 15 borrowed from the motion provisions of Criminal Rule 1.9. However, the 10 days permitted under Criminal Rule 1.9 for filing a response was shorted to 5 days in draft Rule 15 because of the compressed schedule of delinquency proceedings. Members agreed to these two edits in section (b) (“time for filing”): “A motion must be filed and served not later than 10 days....” Regarding the first edit (adding “and served”), Mr. Cardy noted that the workgroup deleted current section (b) (“filing”), which currently requires the filing party to provide a copy of the motion to the assigned judge and probation officer, and this proposed rule would supersede that provision. Regarding the other edit, members agreed that “not later than” will be the Task Force’s convention going forward, and the phrase “no later than” when it appeared in subsequent sections of this rule was changed accordingly. A member observed that although draft section (b) included a time for filing a motion “unless otherwise ordered by the court,” there was no comparable “otherwise ordered” provision in section (c) (“response and reply”). Members then reorganized the rule to permit the court to extend the time for filing a motion, a response, or a reply. With these changes, members approved Rule 15.

Rule 17 (“computation of time”). Ms. Beringhaus noted that section (a) (“computation”) expressly follows the time computation provisions of Criminal Rule 1.3. She also noted that section (b) (“excluded time”) is substantively unchanged from the current provision, but it has been extensively reorganized. She also explained that the “juvenile’s inability to be arrested, cited, or detained in Arizona” falls within “the juvenile’s absence,” and therefore the former phrase was deleted. Members had no questions and approved Rule 17 as presented.

Rule 22 (“referral; diversion”). The current rule is titled “pre-petition investigation and diversion” but the current rule never mentions investigations and the title was revised accordingly. The draft rule focuses on two subjects: referral and diversion (because a high number of referrals are resolved by diversion.) Mr. Cardy, who presented this rule, suggested resequencing the five items in section (a) (“referral”) so that the juvenile’s name is the first item and a concise statement of facts is the fourth, and members agreed with his suggestion. Mr. Cardy also noted that four words in current section (a), which say that a referral can come from “an individual or agency,” seemed unnecessary, and those words were deleted. In section (b) (“record of referral”), the workgroup changed “authorized juvenile court officer” to “authorized juvenile court personnel,” because of vagaries about who or what constituted an “officer.” In section (c) (currently titled “diversion or deferral”), the word “deferral” was removed from the title. Mr. Cardy explained that deferral is a post-petition process, which is largely county-specific, although the workgroup might at a later time address deferral in subsequent rules. Draft section (c) includes a new definition of “diversion” (“a way of resolving a referral under A.R.S. § 8-321 without filing a petition”). Section (d) (“submission”)

restates the current rule but does not change its substance. Members approved the rule as modified.

Rule 24 (“content of a petition”). Mr. Cardy continued with a presentation of Rule 24. He noted that in section (a) (“content”), the workgroup deleted the sentence, “A prosecutor may file a petition alleging delinquent or incorrigible acts,” because that is understood. Section (a) identified four informational items the petition must include. As in Rule 22, Mr. Cardy suggested resequencing these four items, with the name of the juvenile listed first and a concise statement of facts listed fourth, and members agreed. The fourth item refers to “the law or standard of conduct allegedly violated.” The workgroup recommended removing “standard of conduct” because it is vague and confusing. Although some members thought “standard of conduct” was necessary to allege an incorrigible act, even an incorrigible act requires a violation of law, and after discussion, members agreed to delete that phrase. In section (b) (“amendments to a petition”), Mr. Cardy noted the workgroup’s modification of the current rule clarifies that only a prosecutor can move to amend a petition. Members then approved draft Rule 24.

Rule 25 (“filing a petition”). Ms. Smith presented the rule. The workgroup shortened section (a) (“filing”) by removing unnecessary verbiage. Section (b) (“time limit for filing”) is substantively the same as the current rule, except that it includes a subpart on diversion that was previously contained in a separate section. A member proposed adding an actor to section (b) to clarify that only a prosecutor can file a petition, in contrast to a dependency petition, which a private person can file. After reviewing A.R.S. § 8-301, members thought this addition was not needed, but they agreed to reconsider this decision later, if necessary. Otherwise, Rule 25 was approved.

Rule 26 (“notice to appear; service; failure to appear”). Ms. Phillis presented Rule 26. She said that although the workgroup made no significant changes to section (a) (“notice to appear”), it made notable changes to section (b) (“service of the petition and notice to appear”). Under subpart (1), the initial attempt at service, like the current rule, is by first class mail. However, the current rule only requires service on a juvenile who is at least 14 years of age. The workgroup believes that every juvenile should be served, regardless of age. Also, the workgroup’s draft of section (b) clarifies that “a single notice may be mailed to both the parent and the juvenile if they have the same residence address.” Ms. Phillis advised that a notice to a parent has the same content as a notice to a juvenile.

Members discussed two due process issues: is a child more likely to receive notice if the child is mailed a separate copy of the notice? And what is the rationale or origin for the 14 years of age requirement? After discussion, no one had an answer to the latter question, and members concurred on removing that limitation. As to the former question, and for clarification, members added a clause in subpart (1) that requires service on the parent or guardian if the child is not living with the parent, which is a common scenario for a dually adjudicated child. Members are interested in receiving public

comments on both issues. Subpart (2) (“certified mail; personal service”) did not require extensive discussion, and members agreed that the court “may approve” service by certified mail or personal service for not appearing at the advisory hearing after receiving a notice to appear by first class mail.

In section (c) (“failure to appear”), the workgroup added a new subpart concerning a “discretionary warrant.” The term, which has not yet been defined in the rule, would allow the child or a law enforcement officer to call the court and get a new court date following a failure to appear. This warrant would presumably be used for minor offenses and only when the juvenile did not have a significant record or prior failures to appear. The document would still be referred to as a warrant to give the officer legal authority to stop and detain the child. Pima County already uses this process and refers to the court-issued document as a “provisional warrant.” Members preferred that term, and it will be defined in Rule XX. Members did not believe that electronically issued provisional warrants would present processing challenges because they would be handled like other warrants. Members made stylistic changes to the wording of subpart (c)(2) to improve its clarity and to clarify that the court may issue a warrant under this section only for a juvenile. Members then approved Rule 26 as modified.

3. Report from Workgroup 1. Workgroup 1 presented next.

Rule 3.1 (“applicability of the Arizona Rules of Evidence”). Rule 3.1 was initially presented at the December 13 meeting. Today, Judge Armstrong confirmed the members’ previous changes to this rule, including their resolution of the “must/may” alternatives. Judge Armstrong also did further research concerning section (b) (“other proceedings”) and the appropriate evidentiary standard that judges should use in ancillary proceedings. Arizona case law indicated that formal rules of evidence do not apply in transfer, disposition, and probation hearings. A federal treatise, Wright and Miller, cited a Supreme Court decision for the proposition that the rules of evidence are inapplicable at a suppression hearing. (One Ninth Circuit case took a contrary view.) Arizona Rules of Evidence, Rule 104(a), also supports draft Rule 3.1(b). Judge Armstrong therefore concluded, and members concurred, that the text of draft Rule 3.1(b) is correct, and that the standards in the rules of evidence are relaxed in non-adjudication hearings.

Judge Armstrong then reviewed section (d) (“admissibility of reports”). First, he noted that the addition of draft Rule 3.1(d)(3) (“report ordered under Rule 61(f)”) obviates the need for draft Rule 63(e) (“reports”) and members agreed. Members then discussed Rule 3.1 subparts (d)(6) (“admission of reports”) and (d)(7) (“available for cross-examination”). Mr. Withey had informally suggested a change to subpart (d)(6) that would require the court to admit a report into evidence “before” the court considers it. Although members initially adopted this suggestion, they agreed after further discussion that its effect would be to admit reports automatically, which was not their intent. They consequently used language like the previous draft (“If the court considers ~~and affords~~ ~~any weight to~~ a report under this section, the court must admit the report into evidence.”)

(Staff Note: Workgroup 1 subsequently met and made further changes to this provision, which it will present at a future Task Force meeting.)

The phrase “available for cross-examination” is used in the current rule, but it is not defined. Subpart (d)(7) attempts to fill this gap by providing that a witness is available for cross-examination if the witness appears in court or is subject to the court’s subpoena power. Some members reiterated their previous opposition: that the draft language would require a party who objects to the admission of a report to subpoena the author, which would undermine the purpose of the objection. These members noted that in addition to shifting a foundational burden to the objecting party, it would also shift to the objecting party the cost of procuring the witness’ appearance, and that could be expensive if the witness is an expert. Members discussed alternatives. One alternative was to provide separate provisions governing the availability of case managers and experts. Another alternative was to require the actual presence of a case manager, although sometimes the case manager who authored the report is no longer employed by DCS. A drastic alternative would remove the phrase “available for cross-examination” from the content of this rule, but members rejected that option. Still another alternative was to limit “available for cross-examination” to an actual appearance in the courtroom or, possibly, availability by telephone. Members did not reach consensus on any of these options. Judge Kreamer suggested that members who oppose the draft language of subpart (d)(7) prepare a written alternative, and the Chair agreed with that suggestion. Members then approved Rule 3.1, except for subpart (d)(7).

Rule 6 (“change of judge”). Provisions for a change of judge are currently in Rule 2. Judge Kreamer noted that draft Rule 6(a) expands on the current rule’s definition of “judge” by including a judge pro tem in addition to a commissioner. Section (a) also adds a definition of “presiding judge,” which is defined to include the presiding judge’s designee. Section (b) is simply titled “for cause,” and in parallel, section (c) is titled “without cause.” The grounds cited in the current rule for a change for cause (“if a fair and impartial hearing cannot be had by reason of the interest or prejudice of the assigned judge”) have been deleted. Draft Rule 6(a) instead refers to A.R.S. § 12-409(B), which includes similar language as well as other grounds. The affidavit required under subpart (b)(2)(A) is no longer limited to an affidavit from the moving party. Subpart (b)(3) allows the presiding judge to decide the challenge summarily and without holding a hearing. The waiver provisions of subpart (b)(5) apply only if the party has participated in a contested hearing, and not simply an uncontested one, before the judge in question.

The workgroup revised subpart (c)(1) to clarify that a party has a right to only one request without cause. Current Rule 2(B)(3) says that a party “loses the right,” but the workgroup changed this to “waives the right,” which is clearer and consistent with the terminology in draft Rule 6(b). Judge Kreamer also reviewed the provisions of subpart (c)(4) concerning remand by an appellate court. Unlike some other sets of restyled rules, a remand under this draft does not renew the right to a change of judge when the case remains assigned to the original judge. The revised subpart clarifies that the time for

filing a request following remand begins to run with a notice that the case has been reassigned to a new judge. Members then approved Rule 6.

4. Report from Workgroup 3. Workgroup 3 presented four rules.

Rule 38 (“assignment and appointment of an attorney; advisory attorney”). Judge Quigley initially presented this rule at the November 8 meeting, and today she presented modifications to the previous draft. The title of section (b) (formerly, “appointment of an attorney”) was revised (now, “appointment of an attorney for parent or guardian”) to reflect its more focused content. A newly added section (c) (“appointment of an attorney or guardian ad litem for a child”) states, “children in dependency cases are presumed indigent and are entitled to a court-appointed attorney or a guardian ad litem, or both.” A new section (e) (“advisory attorney”) says, “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.” Judge Quigley explained that an advisory attorney is useful for facilitating resolutions when parents seek pre-petition advice. A member requested that this provision say “assigned” rather than “neither assigned nor appointed” to assure that the county pays for these services. Members agreed with the request. Another member requested that in section (a), the phrase “representation by law or by ICWA” conclude with a period after “law” because ICWA is law. Members accordingly changed the provision to say, “by law, including ICWA.” Members approved Rule 38 as modified.

Rule 40 (“appointment of a guardian ad litem”). Mr. Gilmore presented this rule. Section (a) (“guardian ad litem for a child”) provides that the court may appoint a GAL or a CASA to protect the best interests of a child. Section (a) further provides that the GAL must be an attorney. One member asked whether this provision was consistent with A.R.S. § 8-221, which provides a child the right to counsel. Mr. Gilmore replied that Rule 40.1 allows the GAL to file pleadings, which implies that the GAL must be an attorney. Judge Young noted that allowing the court to appoint a CASA makes the provision compliant with the Child Abuse Prevention and Treatment Act (“CAPTA”). Members then added the words “or CASA” to the title of the rule. In the body of section (a), members added the words “or both” after the words “may appoint a guardian ad litem or a CASA,” which clarifies that the court can appoint either a GAL or a CASA, or if the circumstances require, the court can appoint a GAL and a CASA. Judge Young noted the requirement that a GAL be an attorney is a topic on the January 30 agenda of the Committee on Juvenile Court.

The workgroup combined current sections (b) and (c), both of which lack titles, into a new section (b) with the title “guardian ad litem for parent, guardian, or Indian custodians.” However, draft section (b) did not say that the GAL needed to be an attorney, although that was the members’ intent. To address this, members added a new section (a) (“generally”) that says, “a guardian ad litem appointed under this rule must

be an attorney.” The subsequent sections were renumbered (b) and (c), and the attorney requirement was deleted from the second section because section (a) applies to both.

Although section (c) now suggests that a GAL would protect another person’s interests, a member would add to the draft a provision that the GAL’s job is not necessarily to act in the person’s (parent’s) best interests, but rather, it is to advocate on the person’s behalf. The member believes that the proper role of the GAL in these circumstances is to assist the person by ascertaining and communicating their wishes. Other members reported that they have seen parents’ GALs advocate for termination of their parental rights, which might not serve parents’ wishes or their best interests. Another member questioned whether section (c) is consistent with A.R.S. § 8-221 or provisions of the Arizona Code of Judicial Administration (“ACJA”). Should Rule 40(c) clarify the GAL’s role and authority? Judge Quigley informed members that Judge Jay Polk had recently raised an issue at a State Bar committee meeting concerning the process for appointing a GAL under the civil rules; he had proposed the appointment of a special investigator, rather than a GAL, to make a preliminary determination of incapacity. Should the Task Force consider a similar process for the juvenile rules? Judge Quigley advised that Workgroup 3 will study these issues further, and that it also might propose changes to the statute.

Rule 40.1 (“duties and responsibilities of an appointed attorney and guardian ad litem for a child”). Mr. Gilmore also presented Rule 40.1. Although he reviewed each section of the draft rule, he noted that the workgroup did not make many changes because another committee had recently drafted the current rule. However, for ease of use, staff added about a dozen titles to the currently untitled provisions of this rule. Mr. Gilmore noted that the workgroup also added a new sentence in section (a) (“explain the role”) that says, “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.” Regarding section (c) (“participate in the proceeding”), member discussed whether a GAL could call or cross-examine witnesses; they agreed that GAL had that authority.

The workgroup’s draft of section (d) (“meet with the child”) allowed “trained support staff” to fulfill the responsibility of having “meaningful communication” with the child before every substantive hearing after the preliminary protective hearing. The provision does not expressly require face-to-face contact because the child might be out-of-state, and because some adolescent children reportedly prefer communications by text messaging or other electronic means. Although Rule 40.1 does not define “support staff,” Ethical Rule 5.2 does. After further discussion, members agreed to delete “trained support staff” from section (d) because the subject is addressed in section (h) (“use support staff”). Moreover, members agreed to retain a sentence in section (d) that provides, “upon a showing of extraordinary circumstances, a judge may modify the requirements of this section regarding a particular substantive hearing.” In section (e) (“observe placements”), Mr. Gilmore noted that the workgroup clarified the requirement by including the words “if practical and appropriate.” A subsequent provision that

requires the attorney and GAL to “identify conflicts of interest” was deleted because that requirement is addressed in the Ethical Rules. The workgroup recommended retaining a portion of the current comment; Judge Armstrong then recommended changing the title from “comment” to “comment to the 2022 amendment.” After agreeing to these recommendations, members approved Rule 40.1 as modified.

Rule 40.2 (“duties and responsibilities of attorneys and guardians ad litem who represent parents, guardians, and Indian custodians”). Judge Young presented Rule 40.2. She initially noted that the workgroup modified the current title to inform readers that the rule applied to GALs as well as attorneys, and to those who represent guardians and Indian custodians as well as parents. Like restyled Rule 40.1, restyled Rule 40.2 includes section titles. Current section (A), which is untitled, but which concerns ethical conflicts, was deleted for the same reason a corresponding provision in Rule 40.1 was removed—that the identification of conflicts is addressed in the Ethical Rules. A new section (a) (“meaning of parent”) defines a “parent” for purposes of this rule to include a parent, a court-appointed guardian, and an Indian custodian, which avoids the need to repeat this trilogy throughout the rule. A provision concerning communicating with the parent, which is in current section (F), was relocated as section (b) (“communicate with the parent”) to give it primacy and to emphasize its importance. The workgroup modified section (c) (“explain the role”), which corresponds to current section (B); and Task Force members further modified the provision for consistency with revisions to Rule 40. As revised, it says, “an attorney must explain to a parent the attorney’s role and the ethical obligations associated with that role.”

Section (e) is titled “participate in proceedings,” and contains provisions concerning both attorneys and GALs. Members agreed that it would be appropriate to separate the respective responsibilities of attorneys and GALs that are detailed in this rule. Accordingly, references in section (e) to the GAL will be deleted, the title of Rule 40.2 will be modified by removing a reference to the GAL, and a new rule (possibly numbered 40.3) will detail the GAL’s duties. Members further agreed that because there are lengthy but similar provisions in Rules 40.1 and 40.2 concerning continuing education, and to avoid duplication, those provisions will be removed from these rules and combined in a new rule. Members also agreed to delete the proposed comment to Rule 40.2 and to incorporate its substance in the body of the rule, including a statement that Rule 40.2 applies to retained as well as court-appointed attorneys.

5. Report from Workgroup 4. Professor Atwood then presented two rules on behalf of Workgroup 4.

Rule 63.1 (“successor permanent guardianships”). The current rule includes references to various sections of A.R.S. § 8-872, which are followed by text that substantially duplicates what’s in the statute. The workgroup retained the statutory references but removed the redundant text. Members observed that this approach is reasonable because (a) even if the statutory language changes in the future, the rule will continue to be correct, and (b) any differences between the language of the rule and that

of the statute could raise legal issues. Most users of these rule are law-trained and can readily locate the statute. One member suggested referring to the statute generally and deleting the section references, but members retained the statutory section references because they correspond to the section references in the rule. Professor Atwood added that the rule uses the phrase “if the child is an Indian child,” which should be the convention going forward when a rule refers to the applicability of ICWA. Members discussed but declined the suggestion to include a requirement in this rule for submission of a proposed order. They also declined a suggestion that the rule refer to the appointment of a GAL or an attorney for the child, because Rules 38 and 40 would be applicable. Members concluded the discussion by approving Rule 63.1.

Rule 63.2 (“initial successor permanent guardianship hearing”). Professor Atwood reviewed each section of the draft rule. In sections (a) (“generally”) and (c) (“procedures”), members changed a reference to Rule 63.1(d) to instead refer to A.R.S. § 8-874(D), because Rule 63.1(d) directs the moving party to provide notice as required by the statute. Professor Atwood noted that Rule 63.2(d) (“child’s position”) resembles the language of a corresponding provision in Rule 63(d)(3). In section (g) (“provisional permanent guardian”), members discussed whether to include criteria for the appointment of a provisional permanent guardian, but they declined to do so because judges will use their discretion and the statute does not contain criteria. In section (h) (“other orders”), Task Force members removed the words “natural or adoptive” before parents. The workgroup had previously changed “relatives or kin” to “relatives or others.” Members also rephrased portions of section (i) (“denial of the motion”) by changing, for example, “if the motion to appoint a successor permanent guardian is denied” to “if the court denies the motion or does not appoint a successor permanent guardian....” It made other stylistic changes to this section but in doing so, it did not intend any substantive deviation from the statutory provisions regarding reunification services. Members concluded their discussion by approving Rule 63.2.

6. Roadmap; call to the public; adjourn. The next three Task Force meetings are set for February 28, April 3, and May 8. These meetings will be in Room 119 and will begin at 10:00 a.m. After factoring in the number of rules members approved at today’s meeting, the Chair estimated that during the November, December, and January Task Force meetings, members had approved about 25% of the rules. By extrapolation, a discussion of the remaining 75% of the rules would require nine meetings. However, our goal is to circulate a complete draft of the rules after the October 23rd meeting, which is only eight meetings away. Accordingly, and to meet this goal, members will need to maintain the pace of approval shown at today’s meeting. If that isn’t feasible, the Task Force might need to schedule one or two additional meetings. The Chair noted that because of the annual rule petition cycle, the Court does not favor extensions of time to file rule restyling petitions. The Chair appreciates the members’ continuing good attendance at workgroup meetings, and the excellent quality of their work product.

There was no response to a call to the public. The meeting adjourned at 3:47 p.m.

MEMORANDUM

To: Juvenile Rules Task Force
From: Beth Beckmann, Work Group 1
Re: Aggrieved Party and Final Order, Rule 103
Date: February 20, 2020

Section 8-235, A.R.S., states that “any aggrieved party in any juvenile court proceeding under this title may appeal from a final order of the juvenile court to the court of appeals in the manner provided in the Arizona rules of procedure for the juvenile court as adopted or approved by the Arizona supreme court.” Mirroring the statute, Rule 103(A), Ariz. R. P. Juv. Ct., provides as follows: “Any aggrieved party may appeal from a final order of the juvenile court to the court of appeals.” Unlike other jurisdiction statutes, such as A.R.S. §§ 12-2101, 13-4032, and 13-4033, pertaining to civil and criminal appeals, or procedural rules, *see, e.g.*, ARPOP 42 (identifying orders of protection and injunctions against harassment that may be appealed), neither § 8-235 nor the juvenile rules specifies the kinds of orders from which an appeal may be taken. On a case-by-case basis, our courts have defined “aggrieved party” and identified those orders considered final and appealable and those that are not. WG 1 believes incorporating this body of case law into the juvenile rules, specifically Rule 103, will promote efficiency and predictability by making it clear to litigants, their attorneys and juvenile as well as appellate courts, which orders may be appealed. This memorandum cites the authority for the proposed changes to the rule.

Aggrieved Party. “To qualify as an aggrieved party, the judgment must operate to deny the party some personal or property right or to impose a substantial burden on the party.” *Jewel C. v. Dep’t of Child Safety*, 244 Ariz. 347, ¶ 3 (App. 2018) (quoting *In re Pima Cty. Juv. Action No. B-9385*, 138 Ariz. 291, 293 (1983)). Jewel was the dependent child’s great grandmother and her status as a permissive intervenor gave her limited rights that did not include the right to challenge the change of custody to the “psychological paternal grandmother.” The court distinguished placement orders that affect the rights of a parent, which the parent, as an aggrieved party, may appeal. Consistent with that principle, a parent whose rights have been severed cannot appeal a subsequent order changing the child’s placement. *Antonio M. v. Ariz. Dep’t of Econ. Sec.*, 222 Ariz. 369 (App. 2009). The proposed change to Rule 103 includes the definition of aggrieved party.

Appealable Orders. As Division One of the court of appeals recently noted in *Jessicah C. v. Dep’t of Child Safety*, 2020 WL 284010, ¶ 12 (Ariz. App. Jan. 21, 2020), “Arizona appellate opinions have not spoken with one voice about what constitutes a ‘final order’ from which an appeal can be taken in a juvenile matter.” Our supreme court provided

some guidance in *In re Yavapai County Juv. Action No. J-8545*, 140 Ariz. 10, 14-15 (1984), stating our courts should not adopt a “narrow, technical conception of what constitutes a final order,” which is “inappropriate in cases involving the important and fundamental right to raise one’s children.” The court added that “[a]n order that disposes of an issue such that it conclusively defines the rights and/or duties of a party in a dependency proceeding in the juvenile court of this state, such as an order declaring a child or children dependent and an order dismissing a dependency proceeding in toto, is a final order subject to appeal by an aggrieved party.” *Id.* See also *Francisco F. v. Ariz. Dep’t of Econ. Sec.*, 228 Ariz. 379, ¶ 7, (App. 2011) (same). The determination of finality and appealability focuses on “the practical effect that the . . . order would have on that right.” *In re Maricopa Cty. Juv. Action No. JD-5312*, 178 Ariz. 372, 374 (App. 1994). In contrast, a juvenile court order is interlocutory if “it directs an inquiry into a matter of fact preparatory to a final decision and . . . contemplate[s] further proceedings that will determine the outcome of the case.” *Rita J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 512, ¶ 8 (App. 2000). The latter includes an order entered after a permanency hearing. *Id.* Similarly, the court of appeals determined last summer that a mother’s appeal from the juvenile court’s order denying her motion to have the child returned to her custody pursuant to Rule 59, Ariz. R. P. Juv. Ct., was not a final, appealable order, although the court accepted special-action relief and denied relief, finding the issue was moot. *Brionna J. Dep’t of Child Safety*, 247 Ariz. 346, ¶ 10 (App. 2019). And just last month, in *Jessicah C.*, 2020 WL 284010, ¶ 12, the court determined that an order granting DCS’s motion to change physical custody of a dependent child from the mother to DCS was not a final order for purposes of the mother’s appeal, relying, in part, on *Brionna J.*, particularly for the proposition that the order did not change the child’s dependent status and did not have a substantial impact on her ability to participate in services by DCS.

Final order in delinquency and incorrigibility proceedings.

- Disposition order following adjudication. See *Rita J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 512, ¶ 3 (App. 2000) (“[T]he final order in a delinquency action is the disposition order.”) (citing *In re Maricopa Cty. Juv. Action No. J-78151-S*, 119 Ariz. 320, 321 (App. 1978)); see also *In re Maricopa Cty. Juv. Action No. J-74222*, 20 Ariz. App. 570, 571, (1973) (dismissing, as premature, appeal from adjudication of delinquency and holding disposition order “is the only final order subject to appeal”).
- Restitution order. A disposition order is not final until restitution has been considered and ruled upon. *In re Eric L.*, 189 Ariz. 482, 484 (App. 1997) (delinquency disposition order is “necessarily interlocutory in nature when restitution remains an unresolved issue”). But, our supreme court stated in *In re Alton D.*, 196 Ariz. 195 (2000), that although the restitution order is the final order for appeal purposes, the court must not retain jurisdiction indefinitely but must set a reasonable deadline for presenting restitution claims. The court may retain jurisdiction to consider and enter a restitution order, *In re Richard B.*, 216 Ariz. 127,

¶ 13 (App. 2007), but if the court sets a deadline and it passes, the disposition is final.

- Order transferring juvenile for adult prosecution. *See In re Mario L.*, 190 Ariz. 381 (App. 1997). But note that an order denying a motion to transfer a juvenile for criminal prosecution as an adult is not a final, appealable order because the underlying delinquency proceeding is still pending. *State ex rel. Romley v. Superior Court*, 170 Ariz. 339, 341, 823 P.2d 1347, 1349 (App. 1991).
- Orders in probation violation proceedings. *See In re J.A.*, 242 Ariz. 305 (App. 2017); *see also In re Thomas D.*, 231 Ariz. 29 (App. 2012) (appeal from order terminating probation as unsuccessful).

Final orders in other juvenile proceedings.

- A dependency adjudication order and the disposition are appealable orders, as are subsequent orders reaffirming a child's dependent status after dependency review hearings and ratifying or changing a child's placement. *Lindsey M. v. Ariz. Dep't of Econ. Sec.*, 212 Ariz. 43, ¶ 8 (App. 2006). Thus, in *Lindsey M.*, the incarcerated parent was found to be an aggrieved party as to a disposition order following a dependency adjudication and placement of the child in foster care, given her fundamental right to raise her child. However, a foster parent is not an aggrieved party, like a parent, who may challenge a placement order. *See In re Maricopa Cty. Juv. Action No. J-57445*, 143 Ariz. 88, 92 (App.1984).
- Order dismissing a dependency after a periodic review of a determination of dependency or of a custodial arrangement. *In re Yavapai Cty. Juv. Action No. J-8545*, 140 Ariz. 10, 14-15 (1984).
- Order granting or denying a motion to intervene. *Bechtel v. Rose*, 150 Ariz. 68, 71 (1986); *see also Allen v. Chon-Lopez*, 214 Ariz. 361, 364-65, ¶¶ 6-7 (App. 2007); *William Z. v. Ariz. Dep't of Econ. Sec.*, 192 Ariz. 385, 386, ¶¶ 4-5 (App. 1998).
- Order relieving DCS of its obligation to provide reunification services "is a final, appealable order." *Francisco F. v. Ariz. Dep't of Econ. Sec.*, 228 Ariz. 379, ¶ 8, (App. 2011)
- Order terminating visitation is a final, appealable order. *In re Maricopa Cty. Juv. Action No. JD-5312*, 178 Ariz. 372, 374-75, (App. 1994).
- Order severing a parent's right is a final order, because "[a] final order is one which ends the proceedings, leaving no question open for further judicial action." *In re Pima Cty. Juv. Action No. S-933*, 135 Ariz. 278, 280 (1982).
- Order denying a motion or petition to terminate parental rights. *See Ariz. Dep't of Econ. Sec. v. Rocky J.*, 234 Ariz. 437 (App. 2014) (appeal by ADES of denial of its motion to terminate father's parental rights); *see also E.R. v. Dep't of Child Safety*, 237 Ariz. 56 (App. 2015) (guardian ad litem's appeal on behalf of minor of denial of DCS's petition to terminate father's parental rights). *But see A.R. v. Dep't of Child Safety*, 246 Ariz. 402 (App. 2019) (child's GAL appealed denial of severance of mother's rights, finding severance was not in the child's best interest; but the

appellate court questioned whether the GAL had standing to appeal the order and found “the ruling is not a final order because Mother’s dependency case is still ongoing in the juvenile court,” accepting special-action jurisdiction of the case).

- Denial of a motion to set aside under Rule 46(E), Ariz. R. P. Juv. Ct., is a final, appealable order, just as a motion to set aside judgment under Rule 60(c)(1), Ariz. R. Civ. P., is a final, appealable order. *Christy A. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 299, ¶ 1 (App. 2007) (direct appeal from denial of motion to set aside entry of default and default judgment terminating parental rights). An order granting such a motion is appealable as well. *Andrew R. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 453 (App. 2010)(father’s appeal from order granting mother’s motion to set aside judgment of paternity and denying his motion for change of physical custody to him); *cf. M & M Auto Storage Pool v. Chem. Waste Mgmt., Inc.*, 164 Ariz. 139, 141 (App. 1990) (“An order denying or granting a motion to set aside a judgment under Arizona Rule of Civil Procedure 60 is appealable as a ‘special order made after final judgment.’”).
- Order of adoption. *Jared P. v. Glade T.*, 221 Ariz. 21, ¶ 30 (App. 2009) (finding putative father, who was an Indian for purposes of ICWA, could challenge adoption of his daughter even though he failed to comply with A.R.S. § 8-106(G) and take steps to establish paternity). *See also Marco C. v. Sean C.*, 218 Ariz. 216 (App. 2008) (appeal of adoption order by biological father who failed to file a notice of claim of paternity within 30 days of child’s birth required by § 8-106.01(B)).
- Granting, denying or revoking a Title 8 guardianship. *Navajo Nation v. Dep’t of Child Safety*, 246 Ariz. 463 (App. 2019) (Navajo Nation appeals order appointing permanent guardian for child subject to ICWA); *Ariz. Dep’t of Econ. Sec. v. Stanford*, 234 Ariz. 477 (App. 2014) (acknowledging order establishing permanent guardianship appealable but accepting special-action jurisdiction because issue raised was significant question of law to avoid delay in children’s possible placement); *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553 (App. 1997) (maternal aunt of dependent child appeals order revoking permanent guardianship).
- An order granting or denying emancipation. *In re Caitlyn B.*, 2017 WL 1279023 (Ariz. App. Apr. 6, 2017) (memorandum decision) (minor’s appeal from denial of petition for emancipation).

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JESSICAH C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.P., *Appellees*.

No. 1 CA-JV 19-0207
FILED 1-21-2020

Appeal from the Superior Court in Maricopa County
No. JD532456
The Honorable David K. Udall, Judge

JURISDICTION ACCEPTED; RELIEF DENIED

COUNSEL

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amanda Adams
Counsel for Appellee Department of Child Safety

OPINION

Presiding Judge Samuel A. Thumma delivered the opinion of the Court, in which Judge Jennifer M. Perkins and Judge Paul J. McMurdie joined.

T H U M M A, Judge:

JESSICAH C. v. DCS, J.P.
Opinion of the Court

¶1 Jessica C. (Mother) appeals from an order granting a motion by the Department of Child Safety (DCS) to change physical custody of J.P., her dependent child. Although this court lacks appellate jurisdiction, treating Mother's appeal as a petition for special action, this court accepts jurisdiction but denies relief.

FACTS AND PROCEDURAL HISTORY

¶2 In April 2019, DCS filed a dependency petition alleging Mother was unable to parent J.P., who was not yet two years old, because of domestic violence and substance abuse. From that time forward, J.P. has been in DCS' legal custody pursuant to a court order. For a time, however, J.P. remained in Mother's physical custody.

¶3 At a June 2019 hearing, Mother did not contest the dependency allegations. As a result, and after reviewing the dependency petition and a DCS report, the court found J.P. dependent as to Mother. Mother does not challenge that dependency finding, or the resulting disposition adopting a family reunification case plan. Instead, she seeks to appeal from an order granting DCS' motion, made at that same hearing after the dependency finding, to change physical custody of J.P. from Mother to DCS.

¶4 When making that motion, counsel for DCS asked whether the court would like oral argument or testimony on the motion. When the court asked whether Mother objected to the motion or wanted written filings, Mother's counsel responded, "my client does object to the change of physical custody and request[s] a hearing. So if the Court doesn't have a time for the hearing today, I would request a hearing or I'm ready to proceed with oral argument," adding "[w]hatever the Court prefers." The court then heard oral argument.

¶5 Counsel for DCS explained that Mother had not consistently participated in drug testing and also tested positive for methamphetamines in May and June 2019. Although Mother requested a hair follicle test, she missed the first appointment to provide a sample and refused to provide a sample at the second. Counsel for DCS argued there was no one in the home that could mitigate the safety risks created by Mother's "ongoing substance abuse," adding it was not in J.P.'s best interests to be at home with Mother.

¶6 In response, Mother's counsel denied that Mother was using illegal substances, arguing "[she] is complying with her services." Counsel further claimed Mother's employment was the reason she missed the drug tests, asserting she was willing to undergo a hair follicle test.

JESSICAH C. v. DCS, J.P.
Opinion of the Court

¶7 The guardian ad litem joined in DCS' motion, expressing concern about Mother's use of methamphetamines and her refusal to provide a sample for a hair follicle test. Although Mother and the DCS case manager were present, no one testified. After hearing argument, the court granted DCS' motion "[b]ased on Mother's positive drug test and refusal to give a hair follicle" sample. Mother then timely filed a notice of appeal.

DISCUSSION

I. This Court Lacks Appellate Jurisdiction Over Mother's Appeal.

¶8 This court has an independent obligation to determine whether it has appellate jurisdiction. *Dabrowski v. Bartlett*, 246 Ariz. 504, 511 ¶ 13 (App. 2019). If appellate jurisdiction is lacking, an appeal cannot proceed, and any decision in such an appeal would be void. *See Legacy Found. Action Fund v. Citizens Clean Elections Comm'n*, 243 Ariz. 404, 406 ¶ 9 (2018) (citing cases).

¶9 Appellate jurisdiction is defined by statute. *See, e.g., Campbell v. Arnold*, 121 Ariz. 370, 371 (1979); *Brionna J. v. Dep't of Child Safety*, 247 Ariz. 346, 349 ¶ 7 (App. 2019). An aggrieved party may "appeal from a final order of the juvenile court." A.R.S. § 8-235(A); *accord* Ariz. R.P. Juv. Ct. 103(A) ("Any aggrieved party may appeal from a final order of the juvenile court to the court of appeals."). "But, '[n]either the rules nor the statute define a final order for purposes of appeal.'" *Francisco F. v. Ariz. Dep't of Econ. Sec.*, 228 Ariz. 379, 381 ¶ 7 (App. 2011 (quoting *Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, 513 ¶ 2 (App. 2000))). As the party seeking to appeal, Mother has the burden to show this court has appellate jurisdiction. *See* Ariz. R.P. Juv. Ct. 106(A) (stating Ariz. R. Civ. App. P. 13(a)(4), which requires a statement of appellate jurisdiction, applies to juvenile appeals).

¶10 In claiming this court has appellate jurisdiction over her challenge to the order changing physical custody of J.P., a dependent child, Mother cites *Jewel C. v. Dep't of Child Safety*, 244 Ariz. 347, 350-51 ¶ 8 (App. 2018), and *In re Maricopa Cty. Juv. Action No. JD-500116*, 160 Ariz. 538, 542 (App. 1989). Neither case shows that appellate jurisdiction is present here.

¶11 *Jewel C.* held that an order granting a motion to change a dependent child's physical custody was not a "final order" from which an appeal could be taken. 244 Ariz. at 351 ¶¶ 7-8. In doing so, *Jewel C.* repeated that "[a] final order is one 'that disposes of an issue such that it conclusively defines the rights and/or duties of a party in a dependency proceeding.'" 244 Ariz. at 349 ¶ 3 (quoting *Francisco F.*, 228 Ariz. at 381 ¶ 7). Mother's appeal here does not challenge such a "final order." *Brionna J.*, decided

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more recently and discussed more fully below, rejected the “final order” analysis in *JD-500116*. 247 Ariz. at 349 ¶ 10. In short, the cases cited by Mother do not show this court has appellate jurisdiction over her appeal.

¶12 Arizona appellate opinions have not spoken with one voice about what constitutes a “final order” from which an appeal can be taken in a juvenile matter. Compare *In re Yavapai Cty. Juv. Action No. J-8545*, 140 Ariz. 10, 14–15 (1984) (stating, in finding an order dismissing a dependency is appealable, “an aggrieved party may appeal an order issued pursuant to the juvenile court’s periodic review of a determination of dependency or of a custodial arrangement”) with *In re Pima Cty. Juv. Action No. S-933*, 135 Ariz. 278, 280 (1982) (stating, in reinstating an appeal from an order granting severance, “[a] final order is one which ends the proceedings, leaving no question open for further judicial action”). Dependency and disposition orders are appealable. *Lindsey M. v. Ariz. Dep’t of Econ Sec.*, 212 Ariz. 43, 45 ¶ 8 (App. 2006) (“[A] dependency disposition order . . . is a final, appealable order.”). Mother, however, did not appeal from the dependency or disposition order; her appeal is from the order changing physical custody of J.P., issued after the dependency finding.

¶13 Several opinions have found appellate jurisdiction lacking for similar challenges to orders changing physical custody of dependent children. Those opinions conclude such orders are not “final orders” subject to appeal, but that they could be challenged by special action. See, e.g., *Brionna J.*, 247 Ariz. at 349–50 ¶¶ 9–12 (order denying motion for change of physical custody from placement to parent is not a “final order”); *Jewel C.*, 244 Ariz. at 350 ¶ 8 (order granting motion for change of physical custody from one placement to another is not a “final order”); *In re Maricopa Cty. Juv. Action No. J-57445*, 143 Ariz. 88, 92 (App. 1984) (same). But see *In re Maricopa Cty. Juv. Action No. JD-500116*, 160 Ariz. 538, 542–53 (App. 1989) (order changing physical custody was a “final order” under prior rule); *Gila River Indian Comm. v. Dep’t of Child Safety*, 238 Ariz. 531, 533 ¶ 7 (App. 2015) (without discussion, exercising appellate jurisdiction over order denying motion to change physical custody). Although *Brionna J.* was an appeal by a parent, 247 Ariz. at 347 ¶ 1, these other cases finding appellate jurisdiction was lacking involved appeals by individuals other than a parent, see *Jewel C.*, 244 Ariz. at 349 ¶ 1 (appeal by great-grandparent); *No. J-57445*, 143 Ariz. at 89 (appeal by foster placement). But Section 8-235(A), which is the claimed basis for appellate jurisdiction here, does not suggest that the definition of a “final order” turns on who is seeking to appeal.

JESSICAH C. v. DCS, J.P.
Opinion of the Court

¶14 Particularly instructive are cases in which a parent has filed a motion to return a dependent child to that parent’s care. *See* Ariz. R.P. Juv. Ct. 59. Even then, the order resolving such a motion is not a “final order” from which an appeal can be taken. *See Brionna J.*, 247 Ariz. at 349–51 ¶¶ 8–14 (ruling on a Rule 59 motion is not a “final order,” meaning a party seeking to challenge the order must seek special action relief). If that order is not a “final order” from which an appeal can be taken, it is difficult to see how, applying the same statute, the order Mother seeks to challenge here would be a “final order” from which an appeal can be taken.

¶15 “[B]ecause dependency proceedings implicate the ‘important and fundamental right to raise one’s children,’” this court does “not apply a ‘narrow, technical conception of what constitutes a final order’ under A.R.S. § 8-235(A).” *Brionna J.*, 247 Ariz. at 349 ¶ 8 (quoting *J-8545*, 140 Ariz. at 14). Instead, this court must consider “the practical effect” the order would have. *Maricopa Cty. Juv. Action No. JD-5312*, 178 Ariz. 372, 374 (App. 1994) (citing *J-8545*, 140 Ariz. at 14). Like other orders changing physical custody of dependent children, the order Mother seeks to challenge here “does not . . . change a child’s dependent status,” and does not have a “‘substantial impact’ on a parent’s ability to participate in services.” *Brionna J.*, 247 Ariz. at 349–50, ¶ 10. The order changing physical custody also does not “purport[] to be conclusive.” *Id.*

¶16 None of this is to say that review by this court should not be available. It should. And where appropriate, review by this court should be available on an expedited basis. “Given the fluid, time-sensitive nature of placement determinations,” *id.* at 350 ¶ 14, and given there is no “equally plain, speedy, and adequate remedy by appeal,” Ariz. R.P. Spec. Act. 1(a), review by special action is appropriate. Indeed, review by special action is preferable because it allows an accelerated review by this court.

¶17 For these reasons, this court lacks appellate jurisdiction over Mother’s appeal. However, given the interests involved, including the best interests of a child, this court in its discretion construes Mother’s appeal as a petition seeking special action relief and accepts special action jurisdiction. *See Brionna J.*, 247 Ariz. at 350 ¶¶ 13-14; *A.R. v. Dep’t of Child Safety*, 246 Ariz. 402, 405 ¶ 5 (App. 2019) (“Even if jurisdiction by appeal is lacking, this court has the ‘discretion to consider the matter as a special action.’”) (citation omitted).

II. Mother Has Shown No Reversible Error.

¶18 Mother argues her due process rights were violated when the court granted DCS' motion "without notice or an evidentiary hearing." Mother contends she lacked notice of the allegations in the motion, and, as a result, she was not able to adequately prepare for the hearing. Mother also argues that she did not have an opportunity to be heard in a meaningful manner and that she was entitled to an evidentiary hearing, not just oral argument. Mother, however, waived any claim that the court deprived her of due process when it ruled without taking evidence because she explicitly agreed to proceed with the motion on oral argument alone.

¶19 "Waiver is either the express, voluntary, intentional relinquishment of a known right or such conduct as warrants an inference of such an intentional relinquishment." *Am. Cont'l Life Ins. Co. v. Ranier Constr. Co.*, 125 Ariz. 53, 55 (1980). Waiver occurs through "acts inconsistent with an intent to assert the right." *Id.*; accord *Aleise H. v. Dep't of Child Safety*, 245 Ariz. 569, 572-73 ¶¶ 11-13 (App. 2018) (citing cases). Although Mother initially objected to the motion for change of physical custody and requested a hearing, Mother's counsel then stated she was "ready to proceed with oral argument." This statement to the superior court that Mother was "ready to proceed" by way of oral argument is inconsistent with her argument now that she was denied a right to an evidentiary hearing. Agreeing to an oral argument without any indication Mother was unprepared to do so also is inconsistent with later asserting a lack of notice.

¶20 The record does not suggest Mother offered to testify or present evidence. Neither did she make an offer of proof or otherwise identify potential evidence she might offer. The court has substantial discretion when considering evidence concerning the placement of children. *See Ariz. R.P. Juv. Ct. 56* (stating a court "may consider evidence, in the form of testimony or documents"). The court considered the evidence in the record, including the DCS report provided earlier in the hearing, and arguments offered before granting the motion. Mother has not shown how the lack of an evidentiary hearing caused her prejudice.

¶21 Mother is bound by the assertions of her counsel; she "cannot gamble on the court's ruling by submitting a matter without objection and then, following an adverse ruling[,] complain." *Hale v. Brown*, 84 Ariz. 61, 65 (1958). By offering to proceed with the motion and stating she was ready for oral argument, Mother waived any claim that the failure to provide her a full evidentiary hearing deprived her of due process.

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CONCLUSION

¶22 Treating Mother's appeal as a petition for special action, this court accepts jurisdiction but denies relief.



AMY M. WOOD • Clerk of the Court
FILED: AA

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)

ADOPTION OF AND)
AUTHORIZATION TO MODIFY)
THE JUVENILE REFERRAL FORMS)

Administrative Order
No. 2020 - 31

Pursuant to Rule 22(A), Rules of Procedure for the Juvenile Court, “any referral of incorrigible or delinquent conduct filed by an individual or agency shall be in writing, signed by the person responsible for the filing.”

The Administrative Office of the Courts, Arizona Supreme Court, has provided the Arizona Department of Public Safety with referral forms to distribute to local law enforcement agencies. Recently, the Juvenile Justice Services Division (JJSD) made modifications to the Juvenile Referral Form, including an electronic fillable version, and requests adoption of the revised forms.

JJSD has also requested that the Administrative Director of the Courts be authorized to approve all further revisions to the Juvenile Referral Forms through an Administrative Directive.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED adopting the Juvenile Referral Forms (Exhibits A and B attached and incorporated) for any referral of incorrigible or delinquent conduct filed by an individual or agency.

IT IS FURTHER ORDERED that the Director of the Administrative Office of the Courts be given the authority to approve all revisions to the Juvenile Referral Forms through an Administrative Directive.

Dated this 12th day of February, 2020.

ROBERT BRUTINEL
Chief Justice

EXHIBIT A
Multipart paper copy

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY, JUVENILE DIVISION**

JUVENILE REFERRAL

PAGE ONE OF

LAST NAME		FIRST	MIDDLE	RACE	ETHNICITY	GENDER	AGE
A.K.A.		SOCIAL SECURITY NUMBER (SSN)		BIRTH DATE (DOB)		JUVENILE EMAIL	
HEIGHT	WEIGHT	HAIR	EYES	SCARS, MARKS, TATTOOS		JUVENILES SOCIAL MEDIA HANDLE	
HOME ADDRESS – CITY AND ZIP CODE			MAILING ADDRESS – CITY AND ZIP CODE			INTERPRETER NEEDED NO YES LANGUAGE	
JUVENILE RESIDES WITH (FULL NAME; IF DIFFERENT FROM PARENT)			RELATIONSHIP			PARENT/GUARDIAN EMAIL	
PARENTS/GUARDIAN				HOW WERE PARENTS/GUARDIAN NOTIFIED? OFFICER: DATE/TIME:			
PARENTS/GUARDIAN ADDRESS – CITY AND ZIP CODE (if different from home)					PARENTS PHONE (work/home/call)		JUVENILE CELL PHONE
JUVENILE RELEASED TO CUSTODY OF: (RELATIONSHIP/CONTACT #)				JUVENILE'S EMPLOYER		SCHOOL	GRADE

OFFENSES

DATE	TIME	OFFENSE DESCRIPTION	A.R.S.
1 POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION
DATE	TIME	OFFENSE DESCRIPTION	A.R.S.
2 POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION
DATE	TIME	OFFENSE DESCRIPTION	A.R.S.
3 POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION

ARREST LOCATION	PHYSICAL CONDITION OF JUVENILE
IS THE VICTIMS' RIGHTS REQUEST/WAIVER FORM ATTACHED? YES _____ NO _____	CO-DEFENDANT NAMES
DID VICTIM REQUEST HIS/HER RIGHTS? YES _____ NO _____	

DETAILS OF OFFENSE(S) (ATTACH WRITTEN REPORT WITH COMPLETE DETAILS AND AFFIDAVIT OF PROBABLE CAUSE IF DETENTION IS REQUESTED)

IF DETENTION REQUESTED, STATE REASON SEE RULE 23.D. ARIZONA RULES OF PROCEDURE FOR JUVENILE COURT

- _____ (1) THAT OTHERWISE THE JUVENILE WILL NOT BE PRESENT AT ANY HEARING; OR
- _____ (2) THAT THE JUVENILE IS LIKELY TO COMMIT AN OFFENSE INJURIOUS TO SELF OR OTHERS; OR
- _____ (3) THAT THE JUVENILE MUST BE HELD FOR ANOTHER JURISDICTION; OR
- _____ (4) THAT THE INTEREST OF THE JUVENILE OR THE PUBLIC REQUIRE CUSTODIAL PROTECTION; OR
- _____ (5) THAT THE JUVENILE MUST BE HELD PENDING THE FILING OF A COMPLAINT PURSUANT TO A.R.S. §13-501.

EXPLANATION:

REFERRING AGENCY	ORI AZ	DATE OF REFERRAL
NAME OF COMPLAINANT- (OFFICER)	OFFICER I.D.	SIGNATURE OF COMPLAINANT- (OFFICER)
REFERRAL RECEIPT DATE:	INTAKE DISPO DATE:	SWID NUMBER

PAGE TWO OF TWO

LAST NAME	FIRST	MIDDLE	RACE	ETHNICITY	GENDER	AGE
A.K.A.	SOCIAL SECURITY NUMBER (SSN)		BIRTH DATE (DOB)		EMAIL	

OFFENSES						
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
4	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
5	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
6	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
7	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
8	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
9	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
10	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		
	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.		
11	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION		

12	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.
	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION
13	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.
	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION
14	DATE	TIME	OFFENSE DESCRIPTION	A.R.S.
	POLICE REPORT #		CONNECT-UP REPORT #	OFFENSE LOCATION

EXHIBIT B

Fillable PDF

Rule 22. Referral; Diversion

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

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

(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 7. Form of Filed Documents; Proposed Orders [Staff Note: Current Rule 1(D), which concerns format, does not have a provision regarding electronic filing. Draft Rule 7 is a lengthy rule, and if electronic filing is not used now, and is not contemplated in the foreseeable future, members might want to eliminate section (c) on electronic filing.]

THIS DRAFT ADDS AN ANALOG TO CIVIL RULES 5.1(A) AND (B), SHOWN BELOW AS SECTIONS (a) and (b). IN LIGHT OF THESE ADDITIONS, DOES THE TITLE OF RULE 7 NEED REVISION?

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

(b) Effective Date of Filing.

(1) Generally.

- (A)** Except for documents submitted directly to a judge under Rule 7(a), a document is deemed filed on the date the clerk receives and accepts it.
- (B)** If a document is submitted directly to a judge under Rule 7(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.
- (C)** If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.
- (D)** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.
- (E)** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

(c) **Caption.** Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:

- (1) to the left of the center of the page starting at line 1:
 - (A) the filing attorney's or self-represented person's name, address, telephone number, and email address; and
 - (B) if an attorney, the attorney's State Bar of Arizona attorney identification number; and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney;
- (2) centered on or below line 6 of the page, the title of the court;
- (3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;
- (4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;
- (5) immediately below the case number, a brief description of the nature of the document; and
- (6) below the document description, the judge to whom the case is assigned (if known).

(d) **Document Format.** Unless the court orders otherwise, all filed documents – other than a document submitted as an exhibit or attachment to a filing – must be prepared as follows:

- (1) ***Text and Background.*** The text of every document must be black on a plain white background. All documents filed must be single-sided.
- (2) ***Type Size and Font.*** Notwithstanding any local rule, every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.
[**WORKGROUP Note:** “at least a 13-point type size,” though contained in the CV and FL Rules, allows a filer to use a very large type size. I would suggest we leave that out (a Counter Clerk would not be able to determine the type size for purposes of rejecting any filing with a 12-point type size) or add “no greater than a 15-point type size.”]

- (3) **Page Size.** Each page of a document must be 8 ½ by 11 inches.
- (A) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.
 - (B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.
 - (C) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.
- (4) **Margins and Page Numbers.** Margins must be set as follows: a margin at the top of the first page and each subsequent page of not less than 1 ½ inches [**Staff Note:** with the requirements of (a)(1) and (2) 2 inches would start the filing person’s name, address, etc., on line 4]; a left-hand margin of not less than 1 inch; a right-hand margin of not less than ½ inch; and a margin at the bottom of each page of not less than ½ inch. Except for the first page, the bottom margin must include a page number.
- (5) **Handwritten Documents.** Handwritten documents are discouraged but if a document is handwritten, the text must be legible.
- (6) **Line Spacing.** Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.
- (7) **Headings and Emphasis.** Headings must be underlined or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.
- (8) **Citations.** Case names and citation signals must be in italics or underlined.
- (9) **Originals.** Parties must file original documents, except for attachments.
- (10) **Court Forms.** Printed court forms may be single-spaced, but those requiring a judicial officer’s signature must provide ample space for the signature. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging. [**Staff Note:** This should not include minute entries generated by a Courtroom Clerk.]

(e) Electronically Filed Documents.

(1) *Format.*

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

(2) *Formats of Attachments.*

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

(3) *Bookmarks and Hyperlinks.*

- (A) *Bookmarks.*** A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

(B) *Hyperlinks.* A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Materials accessed via hyperlinks are not a part of the official court record. The use of hyperlinks is encouraged.

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

(f) Proposed Orders; Proposed Judgments.

(1) *Required Format.* A proposed order or proposed judgment must be prepared as provided in this rule. It must be submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. On the signature page, there must be at least two lines of text above the signature.

(2) *Service and Filing.* Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

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

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Derivation: This draft rule derives from Civil Rules 5.2 [form of documents] and 5.1(d) [proposed orders] with modifications. It would replace current Juvenile Rule 1(D).

Rule 7. Form of Filed Documents; Proposed Orders [Staff Note: Current Rule 1(D), which concerns format, does not have a provision regarding electronic filing. Draft Rule 7 is a lengthy rule, and if electronic filing is not used now, and is not contemplated in the foreseeable future, members might want to eliminate section (c) on electronic filing.]

THIS DRAFT ADDS AN ANALOG TO CIVIL RULES 5.1(A) AND (B), SHOWN BELOW AS SECTIONS (a) and (b). IN LIGHT OF THESE ADDITIONS, DOES THE TITLE OF RULE 7 NEED REVISION?

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

(b) ~~(b)~~ Effective Date of Filing.

(1) Generally.

(A) Except for documents submitted directly to a judge under Rule 7(a), a document is deemed filed on the date the clerk receives and accepts it.

(B) If a document is submitted directly to a judge under Rule 7(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(C) If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless the clerk

later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

(D) If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

~~(A)~~ If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

(E)

(c) ~~(e)~~ Caption. Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:

~~(a)~~

(1) to the left of the center of the page starting at line 1:

~~(1)~~

(A) the filing attorney's or self-represented person's name, address, telephone number, and email address; and~~and~~

~~(A)~~

(B) if an attorney, the attorney's State Bar of Arizona attorney identification number; and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney;

(2) centered on or below line 6 of the page, the title of the court;

- (3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;
- (4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;
- (5) immediately below the case number, a brief description of the nature of the document; and
- (6) below the document description, the judge to whom the case is assigned (if known).

~~(A) —~~

- ~~(2) centered on or below line 6 of the page, the title of the court;~~
- ~~(3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;~~
- ~~(4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;~~
- ~~(5) immediately below the case number, a brief description of the nature of the document; and~~
- ~~(6) below the document description, the judge to whom the case is assigned (if known).~~

~~(a)~~ **(d) Document Format.** Unless the court orders otherwise, all filed documents – other than a document submitted as an exhibit or attachment to a filing – must be prepared as follows:

- (1) ***Text and Background.*** The text of every document must be black on a plain white background. All documents filed must be single-sided.
- (2) ***Type Size and Font.*** Notwithstanding any local rule, every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin. –[Staff WORKGROUP Note: “at least a 13-point type size,” though contained in the CV and FL Rules, allows a filer to use a very large type size. I would suggest we leave that out (a Counter Clerk would not be able to determine the type size for purposes of rejecting any filing with a 12-point type size) or add “no greater than a 15-point type size.”]

- (3) **Page Size.** Each page of a document must be 8 ½ by 11 inches.
- (A) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.
 - (B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.
 - (C) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.
- (4) **Margins and Page Numbers.** Margins must be set as follows: a margin at the top of the first page and each subsequent page of not less than ~~2-1 ½~~ 2 inches [Staff Note: with the requirements of (a)(1) and (2) 2 inches would start the filing person's name, address, etc., on line 4]; ~~a margin at the top of each subsequent page of not less than 1 ½ inches;~~ a left-hand margin of not less than 1 inch; a right-hand margin of not less than ½ inch; and a margin at the bottom of each page of not less than ½ inch. Except for the first page, the bottom margin must include a page number.
- (5) **Handwritten Documents.** Handwritten documents are discouraged but if a document is handwritten, the text must be legibly legible ~~printed and may not include cursive writing or script.~~
- (6) **Line Spacing.** Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.
- (7) **Headings and Emphasis.** Headings must be underlined or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.
- (8) **Citations.** Case names and citation signals must be in italics or underlined.
- (9) **Originals.** ~~Unless filing electronically, only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer-generated duplicates. [Question: When would more than one copy of a document be filed?]~~ Parties must file original documents, except for attachments.
- (10) **Court Forms.** Printed court forms may be single-spaced, but those requiring a judicial officer's signature must ~~be double-spaced~~ provide ample space for the signature. Printed court forms must be single-sided. All printed court forms

must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging. [Staff Note: This should not include minute entries generated by a Courtroom Clerk.]

(b)(e) Electronically Filed Documents.

(1) *Format.*

(A) *File Type.* A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, .docx format, or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified such as .odt, .docx, or other format permitted by Administrative Order, and must not be password protected.

(A)(B) *Size.* A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

(2) *Formats of Attachments.*

(A) *Generally.* An exhibit or an attachment to an electronically filed document also may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

(B) *Official Records.* A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

(C) *Notarized Documents.* A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.

(D) *Certified Mail, Return Receipt Card.* When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card, or electronic return receipt, are scanned and filed.

(E) *National Courier Service.* When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

(3) *Bookmarks and Hyperlinks.*

(A) *Bookmarks.* A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

(B) *Hyperlinks.* A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Materials ~~accessed via hyperlinks that is not in the official court record does not become~~ are not a part of the official court record ~~merely because it is made accessible by a hyperlink.~~ The use of hyperlinks is encouraged.

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

~~(e)~~(f) **Proposed Orders; Proposed Judgments.**

(1) *Required Format.* A proposed order or proposed judgment must be prepared as provided in this rule. It must be submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. On the signature page, there must be at least two lines of text above the signature.

(2) *Service and Filing.* Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

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

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Derivation: This draft rule derives from Civil Rules 5.2 [form of documents] and 5.1(d) [proposed orders] with modifications. It would replace current Juvenile Rule 1(D).

Rule 16. Discovery

~~[Staff Note: Recently restyled Criminal Rule 15 (“disclosure”) begins with the State’s disclosure duties. The corresponding Juvenile Rule seems odd because it begins with items not subject to disclosure. Criminal Rule 15 does not introduce those general standards until Rule 15.4, after stating the State’s and the defendant’s affirmative duties. Staff suggests that this rule should be similarly organized, and staff accordingly included only a limited number of edits in this rule pending further discussion.]~~

(a) Disclosure by the State.

(1) *Time Limits.* Within 10 days of the advisory hearing, the prosecutor must make available to the juvenile the material and information that is in the prosecutor’s possession or control.

(2) *Material and Information.* The prosecutor must disclose the following material and information:

- (A) the names, addresses, and the relevant written or recorded statements of all persons the prosecutor will call as witnesses at the adjudication hearing;
- (B) all statements of the juvenile and of any co-defendant—juvenile or adult.
- (C) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;
- (D) for each expert who has examined a defendant or any evidence in the case, or who the State intends to call at trial:
 - (i) the expert's name, address, and qualifications;
 - (ii) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and
 - (iii) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;
- (E) a list of all papers, documents, photographs, tangible objects, or electronically stored information which the prosecutor will use at the adjudication hearing, and upon written request must make available to the juvenile any specified items contained in the list for examination, testing and reproduction. The prosecutor may impose reasonable conditions, including an appropriate

stipulation concerning chain of custody, to protect physical evidence produced under this section; and

(F) all material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

(2) ***Prosecutor's Duty to Obtain Information.*** The prosecutor's obligation under this rule extends to material and information in the possession or control of the prosecutor, members of the prosecutor's staff, and any other persons and law enforcement agencies that have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

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

(b) Disclosure by Juvenile.

(1) ***Physical Evidence.*** At any time after the filing of a petition, on the prosecutor's written request and if ordered by the court, the juvenile, in the presence of counsel, must: ~~The juvenile is entitled to the presence of counsel at the taking of evidence in connection with the allegations contained in the petition, as requested in writing by the prosecutor, at any time after the filing of the petition. This rule shall supplement and not limit any other procedures established by law. The juvenile shall:~~

(A) appear in a line-up;

(B) speak for identification by witnesses;

(C) be fingerprinted, palm printed, footprinted, or voice printed;

(D) pose for photographs not involving re-enactment of an event;

(E) try on clothing;

(F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials which involve no unreasonable intrusions of the juvenile's body;

(G) provide handwriting samples; or

- (H) submit to a reasonable physical or medical examination, provided such examination does not include a psychiatric or psychological examination.

~~The juvenile is entitled to the presence of counsel when evidence is taken under this section in connection with the allegations contained in the petition, as requested in writing by the prosecutor, at any time after the filing of the petition. This rule supplements and does not limit any other procedures established by law.~~

- (2) **Notice of Defenses.** Within 15 days of the advisory hearing, the juvenile must provide the prosecutor with written notice of all defenses that the juvenile will introduce at the adjudication hearing including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, mistaken identity, and good character. The notice shall specify for each defense the persons, including the juvenile, who will be called as witnesses at the adjudication hearing. The notice may be signed by either the juvenile or the juvenile's attorney and must be filed with the court.
- (3) **Disclosures by Juvenile.** Simultaneously with the filing of the notice of defenses, the juvenile must provide to the prosecutor:
 - (A) the names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements they made that are related to the case;
 - (B) for each expert who has examined a juvenile or any evidence in the case, or who the State intends to call at the adjudication hearing:
 - (i) the expert's name, address, and qualifications;
 - (ii) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and
 - (iii) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;
 - (C) a list of all papers, documents, photographs, other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing. On written request, the juvenile must make available to the prosecutor any specified items contained in the list for examination, testing, and reproduction.
- (4) **Extent of Juvenile's Duty to Obtain Information.** The juvenile's obligation under this rule extends to material and information within the possession or

control of the juvenile, the juvenile's attorney, and the attorney's staff and agents.

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

(c) Disclosure Standards.

- (1) ***Materials Not Subject to Disclosure.*** The following materials and information shall not be subject to disclosure:
- (A) ***Work Product.*** Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecutor, members of the prosecutor's legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff; and
 - (B) ***Informants.*** Disclosure of the existence or identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational effectiveness, provided the failure to disclose will not infringe on the constitutional rights of the juvenile.
- (2) ***Use of Materials.*** Any materials furnished to an attorney pursuant to this rule shall not be disclosed to the public but only to those necessary to the proper disposition of the case.
- (3) ***Statements.*** The term "statement" shall mean:
- (A) a writing signed or otherwise adopted or approved by a person;
 - (B) a mechanical, electrical or other recording of a person's oral communications or a transcript thereof; and
 - (C) a writing containing a verbatim record or a summary of a person's oral communications.
- (4) ***Adjudication Hearing.*** References to an adjudication hearing include a probation violation hearing.

(d) Excision and Protective Orders.

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

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

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

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

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

(2) *A Court's Discretion to Authorize Excision.* If the court finds that only a portion of material or other information is subject to disclosure under Rule 16, it may enter an order authorizing the disclosing party to excise the portion that is not subject to disclosure.

(3) *Protective and Excision Order Proceedings.* If a party files a motion seeking a protective or excision order or requesting the court to determine whether any material or other information is subject to disclosure, the court may conduct an *in camera* inspection of the material. Counsel for all parties have the right to be heard on the matter before any *in camera* inspection is conducted.

(4) *Preserving the Record.* If the court orders that any portion of any material or information is not subject to disclosure under Rule 16, the entire text of the material or information must be sealed and preserved in the record for appeal.

(5) *Claims of Privilege or Protection.* A party who redacts a portion of a disclosed document must clearly identify the redaction and state the legal basis, if it is not clear from the context.

(e) *Continuing Duty to Disclose.* Each party has a continuing duty to disclose all information or materials that are subject to disclosure upon discovery of such information or materials. If additional information or materials are discovered, all parties must be notified and disclosure must be promptly made.

(f) *Sanctions.* If it is brought to the court's attention that a party violated a disclosure obligation under Rule 16 or any court order, the court may impose any of the following sanctions:

(1) ordering disclosure of the information not previously disclosed;

- (2) granting a continuance;
- (3) holding a witness, party, or counsel in contempt;
- (4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed;
- (5) dismissing all or part of a petition, with or without prejudice;
- (6) declaring a mistrial when necessary to prevent a miscarriage of justice; or
- (7) any other appropriate sanction.

Rule 16. Discovery

~~[Staff Note: Recently restyled Criminal Rule 15 (“disclosure”) begins with the State’s disclosure duties. The corresponding Juvenile Rule seems odd because it begins with items not subject to disclosure. Criminal Rule 15 does not introduce those general standards until Rule 15.4, after stating the State’s and the defendant’s affirmative duties. Staff suggests that this rule should be similarly organized, and staff accordingly included only a limited number of edits in this rule pending further discussion.]~~

~~(a) **General Standards.** The provisions governing discovery are subject to the following general provisions, except as provided by local rule. [Staff Note: Are local rules concerning discovery and disclosure necessary?]~~

~~(1) **Materials Not Subject to Disclosure.** The following materials and information shall not be subject to disclosure:~~

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

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

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

~~(3) **Statements.** The term “statement” shall mean:~~

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

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

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

~~(4) **Adjudication Hearing.** Reference made to the adjudication hearing shall also mean the revocation of probation hearing, as well as the adjudication hearing.~~

~~(b) **(a) Disclosure by the State.**~~

(1) Time Limits. Within ~~ten (10)~~10 days of the advisory hearing, the prosecutor ~~shall~~must make available to the juvenile ~~for examination and reproduction the following~~ the material and information ~~within~~ that is in the prosecutor's possession or control.

(1) (2) Material and Information. The prosecutor must disclose the following material and information:

(A) the names, ~~and~~ addresses, and the relevant written or recorded statements of all persons ~~whom~~ the prosecutor will call as witnesses at the adjudication hearing ~~together with their relevant written or recorded statements;~~

(B) all statements of the juvenile ~~and~~ of any ~~co-defendant—other~~ juvenile ~~or adult~~, for whom there is a companion adjudication hearing scheduled for the same time;

(C) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;

(D) for each expert who has examined a defendant or any evidence in the case, or who the State intends to call at trial:

(i) the expert's name, address, and qualifications;

(ii) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(iii) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;

(E) the names and addresses of experts who have personally examined the juvenile or any evidence in the particular case, together with the results of physical examinations and scientific tests, experiments or comparisons, including all written reports or statements made by an expert in connection with the particular case;

(F) a list of all papers, documents, photographs, tangible objects, or electronically stored information which the prosecutor will use at the adjudication hearing, and upon ~~further~~ written request ~~shall~~must make available to the juvenile any specified items contained in the list for examination, testing and reproduction ~~any specified items contained in the list~~. The prosecutor may impose reasonable conditions, including an appropriate

stipulation concerning chain of custody, to protect physical evidence produced under this section; and

~~(E)~~**(F)** all material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

- (2) ***Prosecutor's Duty to Obtain Information.*** The prosecutor's obligation under this rule extends to material and information in the possession or control of the prosecutor, members of the prosecutor's staff, ~~and~~ of any other persons and law enforcement agencies ~~who that~~ have participated in the investigation or evaluation of the case and who are under the prosecutor's control.
- (3) ***Disclosure by Court Order of Court.*** ~~Upon motion of~~ On the a juvenile's motion and a showing that the juvenile has substantial need for additional material or information not otherwise covered in these rules, and the court's finding that the juvenile is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means, the court may order any person to make the material or information available to the juvenile ~~if the juvenile is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means~~. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

~~(e)~~**(b) Disclosure by Juvenile.**

- (1) ***Physical Evidence.*** At any time after the filing of a petition, on the prosecutor's written request and if ordered by the court, the juvenile, in the presence of counsel, must: ~~The juvenile shall be~~ is entitled to the presence of counsel at the taking of evidence in connection with the allegations contained in the petition, as requested in writing by the prosecutor, at any time after the filing of the petition. ~~This rule shall supplement and not limit any other procedures established by law. The juvenile shall:~~
- (A) appear in a line-up;
 - (B) speak for identification by witnesses;
 - (C) be fingerprinted, palm printed, footprinted, or voice printed;
 - (D) pose for photographs not involving re-enactment of an event;
 - (E) try on clothing;
 - (F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials which involve no unreasonable intrusions of the juvenile's body;

(G) provide handwriting samples; or

(H) submit to a reasonable physical or medical examination, provided such examination does not include a psychiatric or psychological examination.

~~(H) The juvenile is entitled to the presence of counsel when evidence is taken under this section in connection with the allegations contained in the petition, as requested in writing by the prosecutor, at any time after the filing of the petition. This rule supplements and does not limit any other procedures established by law.~~

(2) *Notice of Defenses/Witnesses.* Within ~~fifteen (15)~~ 15 days of the advisory hearing, the juvenile ~~shall~~ must provide the prosecutor with written notice ~~specifying of~~ all defenses ~~which that~~ the juvenile will introduce at the adjudication hearing including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, ~~marriage~~, mistaken identity, and good character. The notice shall specify for each defense the persons, including the juvenile, who will be called as witnesses at ~~trial~~ the adjudication hearing in support thereof. ~~It~~ The notice may be signed by either the juvenile or the juvenile's ~~counsel~~ attorney and ~~shall~~ must be filed with the court.

(3) *Disclosures by Juvenile.* Simultaneously with the filing of the notice of defenses/~~witnesses as required by this rule~~, the juvenile ~~shall~~ must ~~make available~~ provide to the prosecutor ~~for examination and reproduction~~:

(A) the names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements they made that are related to the case ~~by them in connection with the particular case~~;

~~(B) for each expert who has examined a juvenile or any evidence in the case, or who the State intends to call at the adjudication hearing:~~

~~(i) the expert's name, address, and qualifications;~~

~~(ii) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and~~

~~(iii) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;~~

~~(B) the names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests,~~

~~experiments or comparisons, including all written reports and statements made by the expert in connection with the particular case; and~~

(C) a list of all papers, documents, photographs, other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing. On written request, the juvenile must make available to the prosecutor any specified items contained in the list for examination, testing, and reproduction.

~~(4) **Additional Disclosure upon Request.** The juvenile, upon written request, shall make available to the prosecutor for examination, testing, and reproduction any item listed pursuant to this rule.~~

~~(5)~~ **(4) Extent of Juvenile's Duty to Obtain Information.** The juvenile's obligation under this rule extends to material and information within the possession or control of the juvenile, the juvenile's attorneys, and the attorney's staff and agents.

~~(5) **Disclosure by Court Order of the Court.** On the prosecutor's motion that the prosecutor has substantial need for additional material or information not otherwise covered in these rules, and the court's finding that the prosecutor is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means, the court may order any person to make the material or information available to the prosecutor. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. ~~pon motion of the prosecutor, and a showing that the prosecutor has substantial need for additional material or information not otherwise covered in these rules, the court may order any person to make the material or information available to the prosecutor if the prosecutor is unable, without undue hardship, to obtain the material or information or substantial equivalent by other means and that disclosure thereof will not violate the juvenile's constitutional rights. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.~~~~

(c) Disclosure Standards.

(1) Materials Not Subject to Disclosure. The following materials and information shall not be subject to disclosure:

(A) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecutor, members of the

prosecutor's legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff; and

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

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

(3) Statements. The term "statement" shall mean:

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

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

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

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

~~(6)~~

(d) Excision and Protective Orders. ~~{Staff Note: Consider replacing this section with Criminal Rule 15.5 ("excision and protective orders"). Rule 15.5 was recently restyled, and it is clearer and better organized than this section.}~~

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

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

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

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

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

(2) *A Court's Discretion to Authorize Excision.* If the court finds that only a portion of material or other information is subject to disclosure under Rule 16, it may enter an order authorizing the disclosing party to excise the portion that is not subject to disclosure.

(3) *Protective and Excision Order Proceedings.* If a party files a motion seeking a protective or excision order or requesting the court to determine whether any material or other information is subject to disclosure, the court may conduct an *in camera* inspection of the material. Counsel for all parties have the right to be heard on the matter before any *in camera* inspection is conducted.

(4) *Preserving the Record.* If the court orders that any portion of any material or information is not subject to disclosure under Rule 16, the entire text of the material or information must be sealed and preserved in the record for appeal.

(5) *Claims of Privilege or Protection.* A party who redacts a portion of a disclosed document must clearly identify the redaction and state the legal basis, if it is not clear from the context.

~~(1) *Discretion of the Court.* Upon motion of any party and good cause shown, the court may order that the disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond five (5) days prior to the date for adjudication, or that any other disclosures required by this rule be denied, deferred or regulated when it finds:~~

~~(A) that the disclosure would result in a risk of harm outweighing any usefulness of the disclosure to any party; and~~

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

~~(2) *Discretion of the Court to Authorize Excision.* Upon motion of any party, if the court finds that only a portion of a document or other material is discoverable under these rules, it may authorize the disclosing party to excise that portion of the material which is not discoverable and disclose the remainder.~~

~~(3) *Excision and Protective Order Proceedings.* Upon motion of the party seeking a protective or excision order or requesting that the court determine whether material or information is discoverable, the court may permit that party to present the material or information for the inspection to the court without disclosure to the other parties. Counsel for all other parties shall be entitled to be present when such presentation is made.~~

~~(4) **Preservation of Record.** If the court enters an order that any material, or any portion thereof, is not discoverable under this rule, the entire text of the material shall be sealed and preserved in the record to be made available to the appellate court in the event of an appeal.~~

(e) **Continuing Duty to Disclose.** Each party has a continuing duty to disclose all information or materials ~~which~~ that are subject to disclosure upon discovery of such information or materials. If additional information or materials are discovered, all parties ~~shall~~ must be notified and disclosure ~~shall~~ must be promptly made. ~~{Staff Note: Consider replacing this section with Criminal Rule 15.6 (“continuing duty to disclose; final disclosure deadline; extension.”). Rule 15.5 was recently restyled and it includes a more complete timeline for disclosure.}~~

(f) **Sanctions.** If ~~at any time during the course of the proceeding~~ it is brought to the court’s attention ~~of the court~~ that a party violated a disclosure obligation under Rule 16 or has failed to comply with any provisions of this rule or any court order issued pursuant thereto, the court may impose any sanction which it finds just under the circumstances including any of the following sanctions ~~but not limited to:~~

- (1) ordering disclosure of the information not previously disclosed;
- (2) granting a continuance;
- (3) holding a witness, party, or counsel in contempt;
- (4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; ~~or~~
- (4)(5) dismissing all or part of a petition, with or without prejudice;
- (6) declaring a mistrial when necessary to prevent a miscarriage of justice; ~~or-~~
- (5)(7) any other appropriate sanction.

~~{Staff Note: Consider this section in conjunction with Criminal Rule 15.7 (“disclosure violations and sanctions.”)}~~

Rule 18. Speedy Justice

- (a) Duty of Counsel.** The prosecutor and the juvenile's attorney must advise the court of the impending expiration of time limits in the juvenile's case. The court may consider defense counsel's failure to do so in determining whether to dismiss a petition with prejudice.
- (b) Motion to Dismiss.** On the juvenile's motion or on its own, the court may set a hearing to determine whether the time limits in these rules have been violated. If the court finds time limits were violated, it must dismiss the petition without prejudice, unless it finds that the interests of justice require dismissal with prejudice.

Rule 18. Speedy Justice

~~(a) **Duty of Prosecutor.** The prosecutor must advise the court of relevant facts for determining the order of cases on the calendar.~~

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

~~(e)~~**(b) Motion to Dismiss.** On the juvenile's motion or on its own, the court may set a hearing to determine whether the time limits in these rules, ~~after subtracting any periods excluded under Rule 17,~~ have been violated. If the court ~~so~~ finds time limits were violated, it must dismiss the petition without prejudice, unless it finds that the interests of justice require dismissal with prejudice.

Rule 19. Records and Proceedings

(a) Juvenile Court Delinquency Files.

(1) *Legal File.*

- (A) *Public Access.*** The legal file must be open to public inspection, except for portions of the file that are confidential or ordered closed by the judge.
- (B) *Contents.*** The juvenile court's legal file consists of all pleadings, motions, minute entries, orders, or other documents as provided by rule or court order.
- (C) *Confidential Documents.*** Within the legal file, the clerk must file and segregate confidential documents, including any documents and information originating in the social file. [WG 2 recommends flagging A.R.S. section 8-208 for possible amendment and consistency with this rule.]
- (D) *Closed Documents.*** The court may close all or part of the legal file after making findings of a need to protect the welfare of the juvenile or the victim, or a clear public interest in confidentiality.

(2) *Social File.*

- (A) *No Public Access.*** A juvenile's social file is confidential and is not open to public inspection without a court order.
- (B) *Contents.*** The social file is maintained by the probation department and consists of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, DCS records, police reports, disposition reports, detention records, and records and reports or work product of the probation department.

(b) *Proceedings.* Delinquency proceedings are open to the public, except upon the court's written finding of a need to protect the interests of a victim, the juvenile, a witness, the State, or a clear public interest in confidentiality.

(1) *Request to Close Proceeding.*

- (A) *Notice of Request.*** Any person who requests that all or a portion of a proceeding be closed to the public must give the parties notice of the request. The person also must give notice to any other person designated by the court, which may include media representatives.
- (B) *Hearing.*** The court must hold a hearing before the proceeding to determine whether the proceeding should be closed and must consider the positions of the parties.

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

- (i) be emotionally harmful to a participant or victim; or
- (ii) inhibit testimony or the disclosure or discussion of information material to the truth finding or rehabilitation process.

(c) Release of Juvenile Court Files.

- (1) ***Release to Juvenile Probation Departments.*** The juvenile court may release a legal and social file to a juvenile probation department in another jurisdiction when release is necessary for the juvenile's supervision.
- (2) ***Release to Federal Authorities.*** Upon request of the United States Attorney's Office, the juvenile court must promptly release to that office for presentment to a federal magistrate judge any records concerning a juvenile who is arrested for a criminal offense, pursuant to 18 U.S.C. § 5032.

Rule 19. Records and Proceedings

(a) **Juvenile Court Delinquency Files.** [~~Staff Note: Although it is in Part II, adding the word “delinquency” to the section title clarifies that this rule applies to delinquency cases. If it also applies to dependency cases, the rule should be relocated to Part I.~~]

(1) *Legal File.*

~~(A) *Contents.* The juvenile court’s legal file consists of all pleadings, motions, minute entries, orders, or other documents as provided by rule or court order.~~

~~(A) *Public Access.* With the exception of the portions of the file identified as confidential by law, rule, or court order, or ordered closed by the judge, ~~t~~The legal file must be open to public inspection ~~without a court order,~~ except for portions of the file that are confidential or ordered closed by the judge.~~

~~(B) *Contents.* The juvenile court’s legal file consists of all pleadings, motions, minute entries, orders, or other documents as provided by rule or court order.~~

~~(B) — The court must state its reasons for withholding the legal file, or portions thereof, from public inspection. [Staff Note: Does this last sentence duplicate the earlier sentence that begins, “in addition...” which requires a finding?]~~

~~(C) *Confidential Documents.* Within the legal file, the clerk must file and segregate confidential documents, including any documents and information originating in the social file, ~~including any information and documents from the social file submitted to the court as provided in Rule 30(A).~~ [WG 2 recommends flagging A.R.S. section 8-208 for possible amendment and consistency with this rule.]~~

~~(C)(D) *Closed Documents.* The court may close all or part of the legal file after making findings of a need to protect the welfare of the juvenile or the victim, or a clear public interest in confidentiality. ~~Within the legal file, the clerk must file and segregate confidential documents, including any information and documents from the social file submitted to the court as provided in Rule 30(A). In addition, the court may close all or part of the legal file upon a finding of a need to protect the welfare of the victim or another person, or a clear public interest in confidentiality.~~~~

~~(D) *Public Access.* With the exception of the portions of the file identified as confidential by law, rule, or court order, or ordered closed by the judge, the legal file must be open to public inspection ~~without a court order.~~ ~~The court must state its reasons for withholding the legal file, or portions thereof, from~~~~

public inspection. ~~[Staff Note: Does this last sentence duplicate the earlier sentence that begins, “in addition...” which requires a finding?]~~

(2) Social File.

(A) No Public Access. A juvenile’s social file is confidential, and ~~is it must be withheld from~~ **not open to** public inspection ~~without a court order, unless a court order allows otherwise.~~

(B) Contents. The social file is maintained by the probation department and consists of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, DCS records, police reports, disposition reports, detention records, and records and reports or work product of the probation department.

~~**(C) No Public Access.** A juvenile’s social file is confidential, and it must be withheld from public inspection, unless a court order allows otherwise.~~

(b) Proceedings. Delinquency, ~~incurability, diversion involving delinquent acts, and transfer~~ proceedings are open to the public, except upon the court’s written finding of a need to protect the ~~best~~ interests of a victim, the juvenile, a witness, the State, or a clear public interest in confidentiality.

(1) Request to Close Hearing Proceeding.

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

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

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

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

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

~~**(iii)** otherwise interfere with the emotional wellbeing of the victim.~~

~~[Staff Note: Is this included within (a)?]~~

(c) Release of Juvenile Court Files.

- (1) **Release to Juvenile Probation Departments.** ~~In addition to records open to public inspection, t~~The juvenile court ~~juvenile court~~ may release ~~all records in its possession~~a legal and social file to a juvenile probation department in another jurisdiction when release is necessary for the juvenile's supervision.
- (2) **Release to Federal Authorities.** Upon request of the United States Attorney's Office, the juvenile court must promptly release to that office for presentment ~~[Staff Note: Does the word "presentment" suggest what the magistrate should do with the records? Does the magistrate review the records, keep them, release them, etc.?] to a federal magistrate judge any records concerning a juvenile who is arrested for a criminal offense, pursuant to 18 U.S.C. § 5032.~~

Rule 21. Victims' Rights

- (a) Applicable Offenses.** The rights afforded victims by law apply to an act committed by a juvenile that would be a criminal offense if committed by an adult.
- (b) Enforcement.** ~~The victim has the right to be present at all proceedings where the juvenile has the right to be present.~~ The court must ensure that the rights of victims are enforced as provided in the Victims' Bill of Rights and A.R.S. §§ 8-381 et seq.

COMMITTEE COMMENT

~~All the specific rights afforded victims are set forth in statute and should be reviewed carefully. Due to the importance of victims' rights, many of those rights have been incorporated into these rules in order to ensure compliance with statutory mandates. Nothing in these rules should be interpreted in a manner which would, in any way, circumvent or otherwise interfere with those statutory rights.~~

Rule 21. Victims' Rights

- (a) **Applicable Offenses.** The rights afforded victims ~~under these rules, or as otherwise provided~~ by law apply to an act committed by a juvenile that ~~if committed by an adult would be either a misdemeanor, felony, petty offense, or violation of a local criminal ordinance~~ would be a criminal offense if committed by an adult.
- (b) **Rights Enforcement.** The victim has the right to be present at all proceedings where ~~the juvenile has the right to be present.~~ The court must ensure that the rights of victims, ~~including rights not specifically set forth in these rules,~~ are enforced ~~in a manner consistent with the protection and rehabilitation of the victim~~ as provided in the Victims' Bill of Rights and A.R.S. §§ 8-381 et seq.

COMMITTEE COMMENT

~~All the specific rights afforded victims are set forth in statute and should be reviewed carefully. Due to the importance of victims' rights, many of those rights have been incorporated into these rules in order to ensure compliance with statutory mandates. Nothing in these rules should be interpreted in a manner which would, in any way, circumvent or otherwise interfere with those statutory rights.~~

Rule 40. Appointment of a Guardian Ad Litem ~~or CASA~~

- (a) Generally.** The court appoints a guardian ad litem to protect the interests of a minor or an individual who may be incompetent or in need of protection. A guardian ad litem appointed under this rule must be an attorney.
- (b) Guardian Ad Litem ~~or CASA~~ for a Child.** The court may appoint ~~either~~ a guardian ad litem ~~or a CASA, or both,~~ to protect the best interests of the child.
- (c) Guardian Ad Litem for Parent, Guardian, or Indian Custodian.** 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.

Does 8-221(I) require any changes? This section provides,

In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests, OR AN ATTORNEY FOR THE CHILD. This guardian may be an attorney or a court appointed special advocate. [THE TEXT IN CAPITALS IS A PROPOSED REVISION]

Also, consider this revision to 8-221(A) [relocating the “in detention” language]:

- A. In all proceedings involving offenses that may result in detention, AND dependency or termination of parental rights that are conducted pursuant to this title, ~~and that may result in detention~~, a juvenile has the right to be represented by counsel.

One more revision to 8-522:

8-522. Dependency actions; special advocate; appointment; duties; immunity

- A. The presiding judge of the juvenile court in each county may appoint an adult as a special advocate ~~to be the guardian ad litem~~ for a child who is the subject of a dependency action. The court shall make this appointment at the earliest possible stage in the proceedings. A child, through the child's guardian ad litem or attorney, has the right to be informed of, to be present at and to be heard in any proceeding involving dependency or termination of parental rights.

FINALLY, SHOULD RULE 5 ON THE CASA BE RELOCATED TO PART III?

Rule 40. Appointment of a Guardian Ad Litem ~~or CASA~~

(a) Generally. ~~A guardian ad litem appointed under this rule must be an attorney. The court appoints a guardian ad litem to protect the interests of a minor or an individual who may be incompetent or in need of protection. A guardian ad litem appointed under this rule must be an attorney.~~

(b) Guardian Ad Litem ~~or CASA~~ for a Child. The court may appoint ~~either~~ a guardian ad litem ~~or a CASA, or both, 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?]~~

~~(a)~~

(b) Guardian Ad Litem for ~~Minor~~ Parents, Guardians, 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)

Does 8-221(I) require any changes? This section provides, 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.]~~

In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests, OR AN ATTORNEY FOR THE CHILD. This guardian may be an attorney or a court appointed special advocate. [THE TEXT IN CAPITALS IS A PROPOSED REVISION]

Also, consider this revision to 8-221(A) [relocating the "in detention" language]:

A. In all proceedings involving offenses that may result in detention, AND dependency or termination of parental rights that are conducted pursuant to this title, and that may result in detention, a juvenile has the right to be represented by counsel.

One more revision to 8-522:

8-522. Dependency actions; special advocate; appointment; duties; immunity

A. The presiding judge of the juvenile court in each county may appoint an adult as a special advocate to be the guardian ad litem for a child who is the subject of a dependency action. The court shall make this appointment at the earliest possible stage in the proceedings. A child, through the child's guardian ad litem or attorney, has the right to be informed of, to be present at and to be heard in any proceeding involving dependency or termination of parental rights.

(e) **FINALLY, SHOULD RULE 5 ON THE CASA BE RELOCATED TO PART III?**

Rule 40.3. Duties and Responsibilities of Guardian Ad Litem for a Parent

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

Note: Should the word "parent" be substituted for "client" in the provisions above?

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

(a) Scope. This rule applies to an attorney or guardian ad litem appointed by the court in a proceeding under Parts II and III of these rules, and who is or will be subject to the requirements of Rule 40.1, Rule 40.2, or Rule 40.3.

(b) Generally. An attorney and guardian ad litem must be familiar and stay current with substantive juvenile law, changes and developments in relevant federal and state laws—including laws concerning education and advocacy for children in schools—procedural rules, court decisions, and regulations.

(c) Initial Training. An attorney or guardian ad litem must complete

(1) an introductory 6 hours of court-approved training before their first appointment unless the presiding judge of the juvenile court in which the attorney or guardian is practicing for good cause determines otherwise, and

(2) an additional 2 hours within the first year of practice in juvenile court.

(d) Later Training. Each year, an attorney or guardian ad litem must complete at least 8 hours of continuing education and training. Education and training must be on juvenile law and related topics, such as the following:

(1) ***When Representing Children:*** 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.

(2) ***When Representing Parents and Custodians:*** 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.

~~**Or (1) and (2) combined [for the workgroup's consideration]:** 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, other issues concerning abuse or neglect of children, 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.~~

(a) Affidavit of Completion.

- (1) Initial Training.** An attorney or guardian ad litem must provide the presiding juvenile judge or the judge's designee with an affidavit of completion of the initial 6-hour court-approved training requirement before appointment as an attorney or guardian ad litem, unless the presiding judge of the juvenile court in which the appointment is made waives this requirement.
- (2) Later training.** Concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or 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 section (d). 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.

Rule 62. Initial Guardianship Hearing

- (a) Generally.** At the initial guardianship hearing, the court determines whether service has been completed under Rule 61(c), whether notice of the hearing has been provided to those persons identified in Rule 61(e), and whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion for guardianship.
- (b) Time Limits.** Unless the court orders or permits otherwise under A.R.S. § 8-864, the initial guardianship hearing must be held within 30 days after the Rule 60 permanency hearing, or if there has not been a permanency hearing, within 30 days after the filing of a motion for permanent guardianship.
- (c) Procedure.** At the initial guardianship hearing the court must:
- (1)** Inquire if any party has reason to know that the child at issue is an Indian child.
 - (2)** Appoint an attorney pursuant to Rule 38(B), unless an attorney had previously been appointed.
 - (3)** Appoint an attorney for the child if a guardian ad litem has not been appointed.
 - (4)** Determine whether service of process has been completed or waived as to each party pursuant to Rule 61, and whether notice of the hearing has been provided to those persons identified in Rule 61.
 - (5)** Determine whether the report ordered by the court has been completed and provided to the parties.
 - (6)** Advise the parent, guardian, or Indian custodian of their rights as follows:
 - (A)** the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;
 - (B)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party;
 - (C)** the right to trial by the court on the guardianship motion; and
 - (D)** the right to use the process of the court to compel the attendance of witnesses.
 - (7)** Determine whether the parent, guardian, or Indian custodian admits, denies or does not contest the allegations contained in the motion for guardianship.
 - (A) *Admitted or Not Contested.*** If the parent, guardian, or Indian custodian admits or does not contest the allegations, the court may proceed with the

guardianship adjudication hearing and enter findings and orders pursuant to Rule 63.

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

(C) *Failure to Appear.* If the parent, guardian, or Indian custodian fails to appear at the initial guardianship hearing without good cause, the court may proceed with the guardianship adjudication under Rule 63, based on the record and evidence presented, if the petitioner or moving party has proven grounds upon which to establish a guardianship, and the court finds that the parent, guardian, or Indian custodian:

(i) had notice of the initial guardianship hearing;

(ii) was properly served pursuant to [Rule 61](#); and

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

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

(1) Enter findings as to service upon the parties and notification of those persons designated to receive notice, and the court's jurisdiction over the subject matter and persons before the court.

(2) Set a continued initial guardianship hearing as to any party who was not served and did not appear.

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

(A) failure to appear at the guardianship pre-trial conference, settlement conference, or guardianship adjudication hearing without good cause may result in a finding that they waived legal rights and are deemed to have admitted the allegations in the guardianship motion.

- (B) the guardianship adjudication hearing may go forward in their absence and may result in the establishment of a permanent guardianship based upon the record and evidence presented.
 - (4) Make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings.
 - (5) If the child is an Indian child, make findings pursuant to the standards and burdens of proof as required under ICWA.
 - (6) Make findings and enter other orders that may be appropriate or required by law.
- (e) **Form.** The court may provide the parent, guardian, or Indian custodian with a copy of Form 2, “Notice to Parent in a Guardianship Action.” The court also may request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.

Rule 62. Initial Guardianship Hearing

- (a) Generally.** At the initial guardianship hearing, the court determines whether service has been completed under Rule 61(c), whether notice of the hearing has been provided to those persons identified in Rule 61(e), and whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion for guardianship.
- (b) Time Limits.** Unless the court orders or permits otherwise under A.R.S. § 8-864, the initial guardianship hearing must be held within 30 days after the Rule 60 permanency hearing, or if there has not been a permanency hearing, within 30 days after the filing of a motion for permanent guardianship.
- (c) Procedure.** At the initial guardianship hearing the court must:
- (1)** Inquire if any party has reason to know that the child at issue is an Indian child.
 - (2)** Appoint an attorney pursuant to Rule 38(B), unless an attorney had previously been appointed.
 - (3)** Appoint an attorney for the child if a guardian ad litem has not been appointed.
 - (4)** Determine whether service of process has been completed or waived as to each party pursuant to Rule 61, and whether notice of the hearing has been provided to those persons identified in Rule 61.
 - (5)** Determine whether the report ordered by the court has been completed and provided to the parties.
 - (6)** Advise the parent, guardian, or Indian custodian of their rights as follows:
 - (A)** the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;
 - (B)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party;
 - (C)** the right to trial by the court on the guardianship motion; and
 - (D)** the right to use the process of the court to compel the attendance of witnesses.
 - (7)** Determine whether the parent, guardian, or Indian custodian admits, denies or does not contest the allegations contained in the motion for guardianship.
 - (A) *Admitted or Not Contested.*** If the parent, guardian, or Indian custodian admits or does not contest the allegations, the court may proceed with the

guardianship adjudication hearing and enter findings and orders pursuant to Rule 63.

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

(C) *Failure to Appear.* If the parent, guardian, or Indian custodian fails to appear at the initial guardianship hearing without good cause, the court may proceed with the guardianship adjudication under Rule 63, based on the record and evidence presented, if the petitioner or moving party has proven grounds upon which to establish a guardianship, and the court finds that the parent, guardian, or Indian custodian:~~The court may proceed with the guardianship adjudication under Rule 63 if the parent, guardian, or Indian custodian fails to appear at the initial guardianship hearing without good cause, and the court finds that the parent, guardian, or Indian custodian:~~

- (i)** had notice of the initial guardianship hearing;
- (ii)** was properly served pursuant to [Rule 61](#); and
- (iii)** had been admonished regarding the consequences of failing to appear at the initial guardianship hearing, including a warning that the hearing could go forward in their absence and that failing to appear may constitute a waiver of rights and an admission to the allegations contained in the guardianship motion.

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

- (1)** Enter findings as to service upon the parties and notification of those persons designated to receive notice, and the court's jurisdiction over the subject matter and persons before the court.
- (2)** Set a continued initial guardianship hearing as to any party who was not served and did not appear.
- (3)** Address the parent, guardian, or Indian custodian in open court and advise that:
 - (A)** failure to appear at the guardianship pre-trial conference, settlement conference, or guardianship adjudication hearing without good cause may

result in a finding that they waived legal rights and are deemed to have admitted the allegations in the guardianship motion.

- (B) the guardianship adjudication hearing may go forward in their absence and may result in the establishment of a permanent guardianship based upon the record and evidence presented.
 - (4) Make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings.
 - (5) If ~~ICWA applies~~ the child is an Indian child, make findings pursuant to the standards and burdens of proof as required under ICWA.
 - (6) Make findings and enter other orders that may be appropriate or required by law.
- (e) **Form.** The court may provide the parent, guardian, or Indian custodian with a copy of Form 2, “Notice to Parent in a Guardianship Action.” The court also may request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.

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

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

(b) Motion for Termination of Parental Rights. If the court has determined in a pending action that a child is dependent and has also determined that termination of parental rights is in that child's best interests, the court may order DCS, the child's attorney or guardian ad litem, or another party, to file a motion for termination of parental rights within 10 days after the permanency hearing. The motion must allege the grounds for termination as provided by [A.R.S. § 8-533](#). The motion also must state whether there is reason to know the child is an Indian child.

(c) Notice of Hearing.

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

(2) *Failure to Appear.* The notice of hearing must advise the parent, guardian, or Indian custodian that their failure to appear without good cause may result in a finding that they waived legal rights and are deemed to have admitted the allegations in the petition or motion for termination of parental rights. The notice also must advise the parent, guardian, or Indian custodian that the hearing may go forward in their absence and may result in the termination of their parental rights based upon the record and evidence presented.

(d) Service.

(1) *Generally.*

(A) *Who Must be Served.* The petitioner under section (a) must serve the parents of the child, the child's guardian, the person with legal custody of the child, any individual who is in loco parentis to the child, and the guardian ad litem of any party. The moving party under section (b) must serve the motion as provided by Rule 46.

(B) *Manner of Service.* A petitioner under section (a) must serve the petition to terminate and notice of hearing pursuant to Civil Rules 4, 4.1, and 4.2. A moving party under section (b) must serve the motion to terminate and notice of hearing pursuant to Civil Rule 5(c).

(C) *Time for Service.* The petition or motion for termination and notice of hearing must be served by the moving party upon the parties and any other person as provided by law at least 10 days before the initial termination hearing.

(2) *Service Involving an Indian Child.* If the petition or motion alleges or the court has reason to know the child is an Indian child, in addition to service as required by this rule, the petitioner or moving party must also give notification to the parent, Indian custodian, and tribe by registered mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the petitioner or moving party must give notice by registered mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

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

(e) *Orders.* The court may enter orders pending the hearing that are in the child's best interests.

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

~~(a) **Motion for Termination of Parental Rights.** If the court has previously determined that a child is dependent and has also determined that termination of parental rights is in that child's best interests, the court may order the DCS, or the child's attorney or guardian ad litem, to file a motion for termination of parental rights within 10 days of the permanency hearing. The motion must allege the grounds for termination of parental rights as provided by law [Staff Note: Should "as provided by law" be changed to "as provided by A.R.S. § 8-533?"]. The also must state whether there is reason to know the child under ICWA.~~

(a) Petition for Termination of Parental Rights. ~~If the court has not previously determined that a child at issue is a dependent child, or is a dependent child who was the subject of a dependency petition filed prior to July 1, 1998, then a~~ Any person or agency who has a legitimate interest in the welfare of a child ~~may file a petition for termination of parental rights pursuant to A.R.S. § 8-534~~533. The petition must allege the grounds for termination and meet the requirements of A.R.S. § 8-534. The petition also ~~must state whether there is reason to know the child is an Indian child as defined by ICWA. Nothing in this rule shall preclude the filing of a petition in those cases where the child was the subject of a dependency petition filed after July 1, 1998.~~ [Staff Note: The preceding sentence and a clause in the first sentence about petitions filed before 7/1/1998 are shown with strikethrough because it appears they are no longer necessary. Persons or agencies who may file a termination petition are identified in A.R.S. § 8-533(A).]

(b) Motion for Termination of Parental Rights. If the court has previously determined in a pending action that a child is dependent and has also determined that termination of parental rights is in that child's best interests, the court may order the DCS, or the child's attorney or guardian ad litem, or another party, to file a motion for termination of parental rights within 10 days after the permanency hearing. The motion must allege the grounds for termination as provided by law by A.R.S. § 8-533. [Staff Note: Should "as provided by law" be changed to "as provided by A.R.S. § 8-533?"]. The petition motion also must state whether there is reason to know the child under ICWA is an Indian child.

~~(b)~~

~~(c) **Motion for Termination of Parental Rights.** If the court has previously determined that a child is dependent and has also determined that termination of parental rights is in that child's best interests, the court may order the DCS, or the child's attorney or guardian ad litem, to file a motion for termination of parental rights within 10 days of~~

~~the permanency hearing. The motion must allege the grounds for termination of parental rights as provided by law [Staff Note: Should “as provided by law” be changed to “as provided by A.R.S. § 8-533?”]. The petition also must state whether there is reason to know the child under ICWA.~~

(c) Notice of Hearing.

~~**(1) Generally.** A notice of hearing must accompany the motion or petition to terminate parental rights. The A notice must of hearing must advise the parent, guardian, or Indian custodian of the location, date, and time of the initial termination hearing. In addition to the information required by law [Staff Note: Is this a reference to 8-535?], the notice of hearing must advise the parent, guardian, or Indian custodian that their failure to appear at the initial hearing, pretrial conference, status conference, or termination adjudication hearing without good cause may result in a finding that they have waived legal rights and are deemed to have admitted the allegations in the motion or petition for termination. The notice must advise the parent, guardian, or Indian custodian that the hearings may go forward in their absence and may result in the termination of parental rights based upon the record and evidence presented at the hearing.~~

~~**(2) Failure to Appear.** The notice of hearing must advise the parent, guardian, or Indian custodian that their failure to appear without good cause may result in a finding that the they waived legal rights and are deemed to have admitted the allegations in the petition or motion for termination of parental rights. The notice also must advise the parent, guardian, or Indian custodian that the hearing may go forward in their absence and may result in the termination of their parental rights based upon the record and evidence presented.~~

~~**(d)**~~

~~**(d) Service.** [Staff Note: Neither the current rule or 8-535 specify who must give notice; presumably it’s the movant or petitioner, but the rule should clarify this. The rule should also include, as the statute does, a requirement to serve the parents of the child, the child’s guardian, the person with legal custody of the child, any individual who is in loco parentis to the child, and the guardian ad litem of any party. Subparts 2 and 3 refer to the rule and statute, but both use the generic phrase, “as provided by law.”] **Service.**~~

~~**(1) Generally.**~~

~~**(A) Who Must be Served.** The petitioner under section (a) must serve the parents of the child, the child’s guardian, the person with legal custody of the child,~~

any individual who is in loco parentis to the child, and the guardian ad litem of any party. The moving party under section (b) must serve the motion as provided by Rule 46.

(B) Manner of Service. A petitioner under section (a) must serve the petition to terminate and notice of hearing pursuant to Civil Rules 4, 4.1, and 4.2. A moving party under section (b) must serve the motion to terminate and notice of hearing pursuant to Civil Rule 5(c).

(C) Time for Service. The petition or motion for termination and notice of hearing must be served by the moving party upon the parties and any other person as provided by law at least 10 days before the initial termination hearing.

(2) Service Involving an Indian Child. If the petition or motion alleges or the court has reason to know the child is an Indian child, in addition to service as required by this rule, the petitioner or moving party must also give notification to the parent, Indian custodian, and tribe by registered mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the petitioner or moving party must give notice by registered mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene. ~~If the motion or petition alleges, or the court has reason to believe know [Staff Note: This is not a typo, the current rule says “believe know”] the child at issue is an Indian child as defined by ICWA the Indian Child Welfare Act [Staff Note: This also is not a typo, the current rule uses both the abbreviation and the full name], , notification also must be given to the parent, Indian custodian, and the child’s tribe or tribes. Notice must be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice must be given to the Secretary of the Interior by registered or certified mail, and the Secretary of the Interior will have 15 days after receipt [Staff Note: the only way to determine receipt by the Secretary is to mail with a request for a return receipt] to provide the required notice to the parent or Indian custodian and the tribe.~~

(3) Hearing Involving an Indian Child. The court may not hold a hearing until at least 10 days after receipt of notice by the child’s parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for

the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the initial guardianship hearing.

~~The notice must advise the parent or Indian custodian and the tribe of their right to intervene. The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian, and the tribe or the Secretary. The court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.~~

~~(1) *Waiver.* The parent, Indian custodian or the child's tribe may waive the 10-day notice requirement for purposes of proceeding with the initial termination hearing within the time limit provided by state law. [Staff Note: The rule should specify the time limit provided by state law.]~~

~~(2) *Motion.* The motion for termination and notice of hearing shall be served by the moving party upon the parties and any other person as provided by law, pursuant to Civil Rule 5(c) at least ten days prior to the initial termination hearing.~~

~~(3) *Petition.* The petition for termination of parental rights and notice of hearing shall be served by the petitioner upon the parties and any other person as provided by law, pursuant to A.R.S. 8-535, in the manner provided for in Civil Rules 4.1 or 4.2.~~

(e) Orders. The court may enter orders pending the hearing that are in the child's best interests.

Rule 65. Initial Termination Hearing

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

(b) Time Limits.

- (1) *On Petition.*** If a termination of parental rights is requested by petition, the initial termination hearing must be held no sooner than 10 days following the completion of service, as provided by A.R.S. § 8-535(B).
- (2) *On Motion.*** If a termination of parental rights is requested by motion, the initial termination hearing must be held within 30 days after the permanency hearing, as provided by A.R.S. § 8-862(D)(2). [**Workgroup Note:** Should we add, “but no sooner than 10 days after completion of service?” X-ref comment from Judge Mullins.]

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

- (1)** Inquire if any party has reason to know that the child is an Indian child .
- (2)** Appoint counsel pursuant to Rule 38(b), unless counsel has previously been appointed. [**Workgroup Note:** Can the court appoint counsel for a private petitioner? E.g., a private “grandma” as the petitioner, who is self-represented while each of the parents has counsel.]
- (3)** Appoint counsel for the child if a guardian ad litem has not been appointed.
- (4)** Determine whether service of process has been completed pursuant to Rule 64 or waived as to each party.
- (5)** Advise the parent, guardian, or Indian custodian of their rights as follows:
 - (A)** the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;
 - (B)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party;
 - (C)** the right to trial by the court on the guardianship motion; and
 - (D)** the right to use the process of the court to compel the attendance of witnesses.

- (6) Determine whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion or petition to terminate parental rights.
- (A) *Admits or Does Not Contest.* If the parent, guardian, or Indian custodian admits or does not contest the allegations, the court may proceed with the termination adjudication hearing and enter findings and orders under Rule 66.
- (B) *Denies.* If a petition for termination was filed, the court may schedule mediation, or it may set a pretrial conference or status conference. If a motion for termination of parental rights was filed and the parent, guardian, or Indian custodian denies the allegations, the court must set the matter for an adjudication hearing within 90 days after the permanency hearing. The court may schedule a settlement conference, a pretrial conference or mediation, if appropriate.
- (C) *Failure to Appear.* If the parent, guardian, or Indian custodian fails to appear at the initial termination hearing without good cause, the court may proceed with the termination adjudication under Rule 66, based on the record and evidence presented if the petitioner or moving party has proven grounds upon which to terminate parental rights, and the court finds that the parent, guardian, or Indian custodian:
- (i) had notice of the initial termination hearing;
 - (ii) was properly served pursuant to [Rule 64](#); and
 - (iii) had been admonished regarding the consequences of failing to appear at the initial termination hearing, including a warning that the hearing could go forward in their absence and that failing to appear may constitute a waiver of rights and an admission to the allegations contained in the termination petition or motion.
- (7) Determine how a verbatim record of the termination adjudication hearing will be made. [**Staff Note:** See previous staff notes concerning the making of a record.]
- (8) Set a deadline for requesting amendments to the grounds for termination.

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- (d) **Findings and Orders.** All findings and orders shall be in a signed order or contained in a minute entry. At the conclusion of the hearing, the court must:
- (1) Enter findings concerning notification and service and the court's jurisdiction over the subject matter and persons before the court.

- (2) Set a continued initial termination hearing as to any party who was not served and did not appear.
- (3) Address and advise the parent, guardian, or Indian custodian in open court that their failure to appear at the pretrial conference, status conference, or termination a parent, guardian, or Indian custodian has waived their legal rights and are deemed to have admitted the allegations in the motion or petition for termination. The court must advise the parent, guardian, or Indian custodian that the termination adjudication hearing may go forward in their absence and may result in the termination of parental rights based upon the record and evidence presented at that hearing. The court must make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings. The court may provide the parent, guardian, or Indian custodian with a copy of Form 3, request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.
- (4) If ICWA applies, the court must make findings pursuant to the standards and burdens of proof as required under ICWA, including whether placement of the Indian child is in accordance with ICWA and or whether there is good cause to deviate from the preferences.
- (5) Make findings and enter any other orders that are appropriate or required by law.

COMMITTEE COMMENT

It is the recommendation of the committee that, in addition to the admonition set forth in this rule, the court should consider providing the parent, guardian, or Indian custodian with a written copy of the admonition in order to protect the due process rights of the parent, guardian, or Indian custodian. See FORM III.

Rule 65. Initial Termination Hearing

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

(b) Time Limits.

- (1) **On Petition.** If a termination of parental rights is requested by petition, the initial termination hearing must be held no sooner than 10 days following the completion of service, as provided by A.R.S. § 8-535(B).
- (2) **On Motion.** If a termination of parental rights is requested by motion, the initial termination hearing must be held within 30 days after the permanency hearing, as provided by A.R.S. § 8-862(D)(2). [Workgroup Note: Should we add, “but no sooner than 10 days after completion of service?” X-ref comment from Judge Mullins.]

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

- (1) Inquire if any party has reason to know that the child ~~at issue~~ is an Indian child as defined by ICWA.
- (2) Appoint counsel pursuant to Rule 38(~~Bb~~), unless counsel ~~has previously~~ has previously been appointed. [Workgroup Note: Can the court appoint counsel for a private petitioner? E.g., a private “grandma” as the petitioner, who is self-represented while each of the parents has counsel.]
- (3) Appoint counsel for the child if a guardian ad litem has not been appointed.
- (4) Determine whether service of process has been completed pursuant to Rule 64 or waived as to each party.
- ~~(5)~~ Advise the parent, guardian, or Indian custodian of their rights as follows:
 - ~~(A)~~ (5) Advise the parent, guardian, or Indian custodian of their rights as follows:
 - ~~(A)~~ (A) The right to counsel, including court-appointed counsel if the parent, guardian, or Indian custodian is indigent; and
 - ~~(B)~~ (B) The right to cross-examine witnesses who are called to testify against the parent, guardian, or Indian custodian.
 - ~~(C)~~ (A) the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;

~~(D)~~**(B)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party;

~~(E)~~**(C)** the right to trial by the court on the guardianship motion; and

~~(F)~~**(D)** the right to use the process of the court to compel the attendance of witnesses.

~~(7)~~**(6)** Determine whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations contained in the motion or petition to terminate parental rights.

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

(B) *Denies.* If a petition for termination was filed, the court may schedule mediation, or it may set a pretrial conference or status conference. - If a motion for termination of parental rights was filed and the parent, guardian, or Indian custodian denies the allegations, the court must set the matter for an adjudication hearing within 90 days ~~of~~ after the permanency hearing. The court may schedule a settlement conference, a pretrial conference or mediation, if appropriate. ~~If a petition for termination was filed, the court may schedule mediation, or it may set a pretrial conference or status conference.~~ ~~[Staff Note: What is the distinction between a motion and a petition with regarding to setting future court events, i.e., why are they not co-extensive?]~~

~~**(C) *Fails to Appear.***~~ If the parent, guardian, or Indian custodian fails to appear at the initial termination hearing without good cause and the court finds the parent, guardian, or Indian custodian had notice of the hearing, was properly served pursuant to Rule 64 and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in their absence and that failure to appear may constitute a waiver of their rights and an admission to the allegations contained in the termination motion or petition, the court may proceed with the adjudication of termination based upon the record and evidence presented at the adjudication hearing. The court must enter its findings and orders pursuant to Rule 66. *Failure to Appear.* If the parent, guardian, or Indian custodian fails to appear at the initial termination hearing without good cause, the court may proceed with the termination adjudication under Rule 66, based on the record and evidence presented if the petitioner or moving party has proven grounds upon which to terminate parental rights, and the court finds that the parent, guardian, or Indian custodian:

- (i) had notice of the initial termination hearing;
- (ii) was properly served pursuant to Rule 64; and
- (iii) had been admonished regarding the consequences of failing to appear at the initial termination hearing, including a warning that the hearing could go forward in their absence and that failing to appear may constitute a waiver of rights and an admission to the allegations contained in the termination petition or motion.

~~(c)~~ —

- (7) Determine how a verbatim record of the termination adjudication hearing will be made. [Staff Note: See previous staff notes concerning the making of a record.]
- (8) Set a deadline for requesting amendments to the grounds for termination.

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(d) Findings and Orders. All findings and orders shall be in a signed order or contained in a minute entry. At the conclusion of the hearing, the court must:

- (1) Enter findings concerning notification and service and the court's jurisdiction over the subject matter and persons before the court.
- (2) Set a continued initial termination hearing as to any party who was not served and did not appear.
- (3) Address and advise the parent, guardian, or Indian custodian in open court that their failure to appear at the pretrial conference, status conference, or termination a parent, guardian, or Indian custodian has waived their legal rights and are deemed to have admitted the allegations in the motion or petition for termination. The court must advise the parent, guardian, or Indian custodian that the termination adjudication hearing may go forward in their absence and may result in the termination of parental rights based upon the record and evidence presented at that hearing. The court must make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings. The court may provide the parent, guardian, or Indian custodian with a copy of Form 3, request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.
- (4) If ICWA applies, the court must make findings pursuant to the standards and burdens of proof as required under ICWA, including whether placement of the

Indian child is in accordance with ICWA and or whether there is good cause to deviate from the preferences.

- (5) Make findings and enter any other orders that are appropriate or required by law.

COMMITTEE COMMENT

It is the recommendation of the committee that, in addition to the admonition set forth in this rule, the court should consider providing the parent, guardian, or Indian custodian with a written copy of the admonition in order to protect the due process rights of the parent, guardian, or Indian custodian. See FORM III.

Rule 103. Right to Appeal. [Staff Note: X-reference A.R.S. § 8-235]

(a) Who May Appeal. Any aggrieved party may appeal to the court of appeals from a final order of the juvenile court. A party is aggrieved under this rule if the order from which the appeal or cross-appeal is taken denies the party a personal or property right or imposes a substantial burden on the party. [BCB: This comes out of case law, e.g., *Jewel C. v. Dep't of Child Safety*, 244 Ariz. 347, ¶ 3 (App. 2018), quoting prior case law.]

(b) Final Orders. A final order must be in writing, signed by a judge, and filed with the clerk, and include the following:

1. In delinquency and incorrigibility proceedings:
 - A. A disposition order for a juvenile adjudicated incorrigible or delinquent;
 - B. A restitution order entered after the date of the disposition order is a separately appealable final order, but if applicable, it must be consolidated with an appeal of the disposition order.
 - C. If the court finds the juvenile violated probation and enters a separate disposition order, the separate disposition order is a final order.
 - D. An order transferring a juvenile for prosecution as an adult.
2. In all other juvenile proceedings,
 - A. An order granting or denying a petition for dependency.
 - B. A disposition order entered after a juvenile has been adjudicated dependent.
 - C. An order [entered after a periodic dependency review under Rule 58] in which the court finds the juvenile continues to be a dependent child or dismisses the dependency action. [X-ref (E) below] [focus on what the order does rather than what it's called or when it's entered] [should there be an appeal right when the court maintains the status quo?] [see *Jessicah C.*, paragraphs 12 and 13] [should an order denying a Rule 59 motion be appealable?][should the rule identify orders that are not appealable? E.g., an order entered under Rule 59]
 - D. An order granting or denying a motion to intervene.
 - E. An order relieving DCS of its obligation to provide reunification services.

~~F. An order in a dependency proceeding that affects a party's substantial rights by removing a child from a parent's physical custody. [This is in response to div one case, Jessica C. 2020 WL 284010 (Jan. 21, 2010)]~~

G. An order terminating visitation.

H. An order terminating parental rights or denying the termination of parental rights.

I. An order granting or denying an adoption.

J. An order granting or denying a Title 8 guardianship.

K. An order granting or denying emancipation.

L. Any other order determined to be final by Arizona case law.

[The foregoing sections would be followed by a new rule titled “general provisions.”]

(c) Captions on Appellate Filings.

(1) In an appeal in a dependency, emancipation, adoption, delinquency, incorrigibility, or transfer matter. The notice of appeal must be captioned using the initials of the juvenile's first and last names and the type of proceeding. For example, “In re Delinquency of A.B.” or “In re Dependency of C.D.”

(2) In an appeal in a guardianship or termination of parental rights matter. The notice of appeal must be captioned in the names of the parties to the appeal, with the names of natural persons limited to the first name and last initial. If a child is known to be a party to the appeal, the child must be identified as a real party in interest unless the child files a notice of appeal, for example, “Ghijk L., Appellant, v. Department of Child Safety, Appellee; L.H., Real Party in Interest,” or “Michael K. and G.M., Appellants, v. Department of Child Safety, , Appellee.”

(d) Suspension of Orders.

(1) Generally. The filing of a notice of appeal does not suspend an order of the juvenile court and execution of the order is not stayed while the appeal is pending unless the appellate court suspends the order or stays the execution.[BCB: I recommend we reconsider this and determine whether it makes sense to give the juvenile court the first shot at staying the court's own order; if the stay request is denied, a stay may be sought in the appellate court, and if it's denied and a party wishes to challenge that, the part may file a special action]

(2) **Request for stay.** A party may file a motion in the appellate court requesting a stay of the order once a notice of appeal has been filed. The party must state in that motion whether other parties stipulate or object to staying the order while the appeal is pending.

(3) **Factors.** In deciding whether to suspend or stay a juvenile court order, the appellate court may consider the best interests of the child, the likelihood that the order will be reversed, and any other pertinent legal or equitable matters. If the juvenile court order requires restitution, monies paid for restitution will be held by the clerk of the juvenile court until the appellate court issues its mandate.[BCB: Among the reasons that it makes sense for the juvenile to decide this first is the fact that best interests of the child must be considered, and the appellate court has relatively no information on that, particularly at that point]

(e) **Priority of Juvenile Appeals.** The appellate court must give the appeal of a juvenile court order precedence over all other actions except extraordinary writs or special actions.

(f) **Suspension of Rules.** On its own or on a party’s motion, the appellate court for good cause may suspend, supplement, or vary the requirements of any provision of [Rules 103 through 108](#) and may substitute another appropriate order of proceeding. [BCB: Tried to make this as consistent with ARCAP 3 as possible, which I am adding to the listed of applicable ARCAPs. I still think it is worth having independently here.] However, the time specified in Rule 104(A) for the filing of a notice of appeal or notice of cross-appeal may not be shortened or extended, except as provided in ~~Rule 108(B)~~ that rule. [**Staff Note:** Staff relocated the “excusable neglect” provision from [Rule 108\(B\)](#) to [Rule 104\(a\)](#).]

(g) **Appointment of Counsel.**

(1) **Requirement.** When required by law, the juvenile court or the appellate court must appoint an attorney for a party to an appeal from a final juvenile court order. [adding the appellate court accommodates the practice in div two with respect to Pima County appointments]

(2) **Party with Appointed Counsel in the Juvenile Court.** The juvenile court or the appellate court may order the attorney who had been appointed in the juvenile court proceedings to continue representing that party on appeal, unless the juvenile court or appellate court finds that the party is currently able to employ counsel. Either court may also may appoint substitute counsel for a party to an appeal.

(3) *Party without Appointed Counsel in the Juvenile Court.* A party who did not have appointed counsel in the juvenile court may request appointed counsel on appeal by filing a request in the juvenile court no later than 5 days after the notice of appeal is filed. [Staff Note: Why is the time for making the request dependent on service of the notice; shouldn't it be the filing of the notice? And is 5 days too short? Should the time be extended?][BCB: I would not extend the time] If the juvenile court denies the party's request for appointed counsel, then the party may request the appellate court to appoint counsel after an appellate case number has been assigned.

(h) Bond. A bond is not required on an appeal from a juvenile court order.

(i) Continuing Juvenile Court Jurisdiction. While an appeal is pending, the juvenile court may proceed within its legal authority on a remaining or new issue to the extent (1) the appellate court has specifically authorized or directed the juvenile court to rule on the issue; (2) the juvenile court's ruling on the issue would be in furtherance of the appeal; (3) a statute or court rule confers continuing jurisdiction on the juvenile court; or (4) the juvenile court's ruling on the issue would not legally or practically prevent the appellate court from granting the relief requested on appeal [

(j) ARCAP. To the extent that they are not inconsistent with or expressly varied by these rules [Staff Note: Should any ARCAP rules be removed from this list?], the following ARCAP rules apply to appeals from final orders of the juvenile court:

Rule 2 (Definitions)

Rule 3 (Suspension of these Rules; Suspension of an Appeal)[BCB: I think this is a good rule to incorporate. Sub a is suspension of the rules to expedite or for good cause the rules can be suspended, and, importantly, ARCAP 3(b), permitting appellate court to suspend the appeal and reconstitute jurisdiction in the superior court to "allow the superior court to consider and determine specified matters."]

Rule 4 (Filing Documents with an Appellate Court; Format; Service)

Rule 4.1 (Paper Filing)

Rule 4.2 (Electronic Filing)

Rule 5 (Computing and Modifying Deadlines)

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Rule 11, (d), (e) and (h) (Narrative Statement, Agreed-Upon Statement, Multiple Appeals from the Same Judgment)[BCB: I'm wondering if we should include ARCAP 16 on amicus briefs and ARCAP 19 on petitions to transfer a case to the supreme court. [ARCAP 19 is incorporated in Rule 106 anyway] Although I have never seen one granted, you just don't know when that will come up.]

Rule 17 (Supplemental Citation of Legal Authority)

Rule 18 (Oral Argument in the Court of Appeals)

Rule 20 (Notice of Decisions and Orders)

Rule 24 (Appellate Court Mandates)

Rule 25 (Sanctions) Incorporation of ARCAP 25 must not be construed to permit the imposition of sanctions against an appellant, a cross-appellant, or their counsel who files a frivolous appeal from a final order in a delinquency or transfer matter. [**Staff Note:** Are there other ARCAP rules that should apply?]
Rule 26 (Voluntary Dismissal)

Rule 27 (Substitution of Parties)

Rule 28 (Decisions; Publication of Opinions) Although a motion for publication is treated as a motion for reconsideration under ARCAP 22, which does not apply to juvenile appeals because a motion for reconsideration of a decision by the appellate court is not permitted, a party may nevertheless file a motion for publication within 10 days of the filing of the decision and before a petition for review to the supreme court is filed. [BCB: Or perhaps we should not have the rule excluding juvenile cases from MRs?]

Rule 103. ~~General Provisions Concerning Appeals~~ Right to Appeal. [Staff Note: X-reference A.R.S. § 8-235]

(a) **Who May Appeal;** ~~Final Orders~~. Any aggrieved party may appeal to the ~~C~~ court of ~~A~~ appeals from a final order of the juvenile court. ~~A final order must be in writing, signed by a judge, and filed with the clerk. A party is aggrieved under this rule if the order from which the appeal or cross-appeal is taken denies the party a personal or property right or imposes a substantial burden on the party. [BCB: This comes out of case law, e.g., Jewel C. v. Dep't of Child Safety, 244 Ariz. 347, ¶ 3 (App. 2018), quoting prior case law.]~~

(b) **Final Orders.** ~~To qualify as a~~ A final order must be in writing, signed by a judge, and filed with the clerk, ~~and include the following:~~ Final orders include:

1. ~~D~~ In delinquency and incorrigibility proceedings:-
 - A. ~~A d~~ Disposition order for a juvenile adjudicated incorrigible or delinquent is a final order when restitution has been included or has not been requested;
 - B. A restitution order entered after the date of the disposition order is a separately appealable final order, but if applicable, it must be consolidated with an appeal of the disposition order. If restitution has been requested but the disposition order does not include it and the court retains jurisdiction to enter a restitution order, the restitution order is the final order. If the juvenile court does not enter the restitution order within 30 days from the entry of the disposition order, the disposition order becomes final. [BCB: This follows Alton D., 196 Ariz. 195 (2000), which notes that the court must set a firm deadline for these things because of the need to expedite juvenile cases is strong. The court suggested 30 days.]
 - C. An order entered in a probation revocation proceeding determining whether the juvenile violated probation is a final order. If the court finds the juvenile violated probation and enters a separate disposition order, the separate disposition order is thea final order in that proceeding.
 - ~~C~~.D. An order transferring a juvenile for prosecution as an adult.
2. ~~O~~ In all other juvenile proceedings. A final order includes the following:s,
 - ~~D~~.A. An order An order granting or denying a petition for adjudicating dependencya juvenile dependent.

~~E.B.~~ ~~A~~ A disposition order ~~order~~ entered after a juvenile has been adjudicated dependent.

C. An order [entered after a periodic dependency review under Rule 58] in which the court finds the juvenile continues to be a dependent child or dismisses the dependency action. [X-ref (E) below] [focus on what the order does rather than what it's called or when it's entered] [should there be an appeal right when the court maintains the status quo?] [see Jessica C., paragraphs 12 and 13] [should an order denying a Rule 59 motion be appealable?][should the rule identify orders that are not appealable? E.g., an order entered under Rule 59]

~~F.D.~~ An order granting or denying a motion to intervene.

~~G.E.~~ An order relieving DCS of its obligation to provide reunification services.

~~H.F.~~ An order in a dependency proceeding that ~~changes a child's placement and affects a party's substantial rights by removing a child from a parent's physical custody.~~ [This is in response to div one case, Jessica C. 2020 WL 284010 (Jan. 21, 2010)]

~~I.G.~~ An order terminating visitation.

~~J.H.~~ ⊖An order terminating parental rights or denying the termination of parental rights.

I. ⊖An order granting or denying an ~~order of~~ adoption.

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K. An order granting or denying emancipation.

L. Any other order determined to be final by Arizona case law.

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(2) In an appeal in ~~an adoption, dependency, a guardianship or, emancipation~~ **or termination of parental rights matter**. The notice of appeal must be captioned in the names of the parties to the appeal, with the names of natural persons limited to the first name and last initial. ~~If minor children a child is are known to be a party to the appeal, the child y must be identified as a real parties in interest unless the child y files a notice of appeal, for example, “, and with minor children identified by only initials, for example: “Ghijk L., Appellant, v. Department of Child Safety, Appellee; L.H., Real Party in Interest,” or “Michael K. and G.M., Appellants, v. Department of Child Safety, and M.N., Appellees.”~~

(d) Suspension of Orders.

(1) Generally. ~~The filing of a notice of appeal does not suspend an~~ order of the juvenile court ~~is not suspended~~ and execution of the order is not stayed while the appeal is pending, unless the appellate court suspends the order or stays the execution. [BCB: I recommend we reconsider this and determine whether it makes sense to give the juvenile court the first shot at staying the court’s own order; if the stay request is denied, a stay may be sought in the appellate court, and if it’s denied and a party wishes to challenge that, the part may file a special action]

(2) Request for stay. ~~—An appellate court order that does so must include suitable provisions for the care and custody of the child.— A party may file a motion in the appellate court requesting a stay of the order once a notice of appeal has been filed. The party must state in that motion whether other parties stipulate or object to staying the order while the appeal is pending.~~

(1)(3) Factors. In deciding whether to suspend or stay a juvenile court order, the appellate court may consider the best interests of the child, the likelihood that the order will be reversed, and any other pertinent legal or equitable matters. If the juvenile court order requires restitution, monies paid for restitution will be held by the clerk of the juvenile court ~~from which the appeal is taken~~ until the appeal becomes final appellate court issues its mandate. [BCB: Among the reasons that it makes sense for the juvenile to decide this first is the fact that best interests of the child must be considered, and the appellate court has relatively no information on that, particularly at that point]

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supplement, or vary the requirements of any provision of [Rules 103 through 108](#) and may substitute another appropriate order of proceeding. [\[BCB: Tried to make this as consistent with ARCAP 3 as possible, which I am adding to the listed of applicable ARCAs. I still think it is worth having independently here.\]](#) However, the time specified in Rule 104(A) for the filing of a notice of appeal or notice of cross-appeal may not be shortened or extended, except as provided in ~~Rule 108(B)~~ that rule. **[Staff Note:** Staff relocated the “excusable neglect” provision from [Rule 108\(B\)](#) to [Rule 104\(a\)](#).]

(g) Appointment of Counsel.

- (1) **Requirement.** When required by law, the ~~presiding judge of the~~ juvenile court or the appellate court must appoint an attorney for a party to an appeal from a final juvenile court order. [\[adding the appellate court accommodates the practice in div two with respect to Pima County appointments\]](#)
- (2) **Party with Appointed Counsel in the Juvenile Court.** [The juvenile court or the appellate court may order the attorney who had been](#) ~~A party who had~~ appointed ~~counsel during in~~ the juvenile court proceedings ~~may continue to continue representing that party with his or her appointed counsel~~ on appeal ~~without further authorization~~, unless the ~~presiding judge~~ [juvenile court or appellate court](#) finds that ~~the~~ party is currently able to employ counsel. ~~The~~ [Either court presiding judge](#) ~~may~~ also may appoint substitute counsel for a party to an appeal.
- (3) **Party without Appointed Counsel in the Juvenile Court.** A party who did not have appointed counsel in the juvenile court may request appointed counsel on appeal by filing a request in the juvenile court no later than 5 days after ~~service of~~ the notice of appeal is filed. **[Staff Note:** Why is the time for making the request dependent on service of the notice; shouldn't it be the filing of the notice? And is 5 days too short? Should the time be extended?][\[BCB: I would not extend the time\]](#) If the ~~presiding judge~~ [juvenile court](#) denies the party's request for appointed counsel, then the party may request the appellate court to appoint counsel after an appellate case number has been assigned.

(h) Bond. A bond is not required on an appeal from a juvenile court order.

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~~issue arises from a motion to dismiss the appeal filed by the appellant [Staff Note: Should this be the “appellee?”] and presented to the juvenile court for ruling before the clerk has forwarded the record to the appellate court. This rule does not authorize the juvenile court to extend the time for filing briefs, motions, transcripts, or other documents or items with the appellate court. [Staff Note: Notwithstanding, Rule 108 seems to do so.]~~

- (j) **ARCAP.** To the extent that they are not inconsistent with or expressly varied by these rules [Staff Note: Should any ARCAP rules be removed from this list?], the following ARCAP rules apply to appeals from final orders of the juvenile court:

Rule 2 (Definitions)

Rule 3 (Suspension of these Rules; Suspension of an Appeal)[BCB: I think this is a good rule to incorporate. Sub a is suspension of the rules to expedite or for good cause the rules can be suspended, and, importantly, ARCAP 3(b), permitting appellate court to suspend the appeal and revest jurisdiction in the superior court to “allow the superior court to consider and determine specified matters.”]

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Rule 25 (Sanctions) Incorporation of ARCAP 25 must not be construed to permit the imposition of sanctions against an appellant, a cross-appellant, or their counsel who files a frivolous appeal from a final order in a delinquency or transfer matter. [Staff Note: Are there other ARCAP rules that should apply?]

Rule 26 (Voluntary Dismissal)

Rule 27 (Substitution of Parties)

Rule 28 (Decisions; Publication of Opinions) Although a motion for publication is treated as a motion for reconsideration under ARCAP 22, which does not apply to juvenile appeals because a motion for reconsideration of a decision by the appellate court is not permitted, a party may nevertheless file a motion for publication within 10 days of the filing of the decision and before a petition for review to the supreme court is filed. [BCB: Or perhaps we should not have the rule excluding juvenile cases from MRs?]

~~However, ARCAP 25 must not be construed to permit the imposition of sanctions against an appellant, a cross-appellant, or their counsel who files a frivolous appeal from a final order in a delinquency or transfer matter. [Staff Note: Are there other ARCAP rules that should apply?]~~