Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, April 3, 2020
10:00 a.m. to 4:00 p.m.
Virtual Meeting
Telephone: **602.452.3533** — Access Code: **995 885 465**

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the February 28, 2020 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and discussion of rules** **Workgroup 1: Rule 103(a)&(b) (revisited), including a discussion of IAC claims** **Workgroup 2: Rule 27** **Workgroup 3: Rules 39, 40.2 and 40.4 (revisited), Rules 42, 43, 44, 47.2, and 47.3** **Workgroup 4: Rules 65 and 66**	 *Ms. Beckmann* *Ms. Phillis* *Judge Quigley, Judge Young, Mr. Truman, Ms. Jorquez* *Professor Atwood and Ms. Coughlin*
Item no. 4	**Roadmap** **Next meetings: Dates will be confirmed**	*Justice Berch*
Item no. 5	**Call to the Public** **Adjourn**	*Justice Berch*

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

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

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

Juvenile Rules Task Force

State Courts Building, Phoenix

Meeting Minutes: February 28, 2020

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

Absent: Christina Phillis, Denise Smith, Kent Volkmer

Guests: Nina Preston, Chanetta Curtis, Shari Andersen-Head, Rachel Roche, Randi Alexander, Jessica Fotinos, Carey Turner

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the fifth Task Force meeting to order at 10:00 a.m. She noted the members' excellent attendance, not only at Task Force meetings, but also at 21 workgroup meetings that have been held to-date. The Chair then reviewed materials in today's meeting packet. In addition to the agenda, draft minutes, and draft rules, the packet includes (1) a memo from Ms. Beckmann concerning appealable orders under Rule 103; (2) a recent Division One opinion, *Jessicah C. v. DCS*, also concerning appealable orders; (3) Supreme Court Administrative Order No. 2020-31 regarding juvenile referral forms; and (4) the members' approved draft of Rule 22.

The Chair then referred members to draft minutes of the January 24, 2020 Task Force meeting. Members had no corrections to the draft.

Motion: A member moved to approve the January 24, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 005**

2. Rule 22 ("referral; diversion"). A.O. 2020-31, filed on February 12, 2020, adopted juvenile referral forms. The Chair asked members whether they should make any changes to their draft of Rule 22, which they approved at the January 24 Task Force meeting, in response to the adoption of these forms. Some members believed that Rule 22 should include a cross-reference to the adopted forms, but this was not a unanimous view. The Chair envisioned that a future editorial group, with the members' authorization, would review the draft set of rules prior to the Task Force filing its rule petition, and that this group would make necessary and appropriate edits to the draft

rules. She suggested deferring the inclusion of a cross-reference in Rule 22 to that editorial group, which would determine if it should be added and if so, in which section of the rule the reference should be located. Members agreed with that plan.

3. <u>Report from Workgroup 3.</u> The Chair began today's rules review with presentations from Workgroup 3.

Rule 40 ("appointment of a guardian ad litem"). Judge Quigley presented this rule, which Workgroup 3 had previously presented to the Task Force. The workgroup's most recent revisions removed references to the CASA because the CASA is covered by Rule 5. Members approved the revised draft. They will determine later whether Rule 5 should be relocated in Part III of the Juvenile Rules.

Rule 40.3 ("duties and responsibilities of a guardian ad litem for a parent"). Mr. Gilmore presented this new rule and acknowledged Mr. Owsley's assistance in preparing the draft. Mr. Gilmore reminded members that during a discussion of Rule 40.2 ("duties and responsibilities of attorneys and guardians ad litem who represent parents, guardians, and Indian custodians") at the January 24 Task Force meeting, members agreed "that it would be appropriate to separate the respective responsibilities of attorneys and GALs that are detailed in this rule." (See those meeting minutes at page 10.) The result is this new rule, which specifically applies to the appointment and the duties of a GAL for a parent.

Section (a) ("appointment") of this new rule requires the court to define the purpose and scope of the GAL's appointment, the GAL's role in contested proceedings, and the court's expectation of the GAL's role in the case. Mr. Gilmore noted that the workgroup added this last clause because judges have varied expectations about the GAL's role. Section (b) ("confer with the client") notes the absence of an attorney-client privilege in the GAL's relationship with the client. He added that the workgroup preferred the term "client" rather than "parent" because "client" includes a parent and a guardian. After discussion, members agreed that section (a) should initially refer to a "parent, guardian, or Indian custodian," and that subsequent references could say "client." Section (c) ("investigate the case") describes the primary duties of the GAL. Members agreed to change a provision in section (c) that said, "the GAL assists in determining appropriate services for the client" to "may assist" because that function might not be pertinent in some cases. Section (d) ("attend hearings") requires the GAL to report to the court on what is in the client's best interests. It allows the GAL with the court's permission to call and cross-examine witnesses. Section (d) also instructs that "the GAL's position must not be substituted for the client's position as advocated by the client's attorney." Members approved Rule 40.3 with the noted modifications.

Rule 40.4 ("education requirements for a court-appointed attorney or guardian ad litem"). Mr. Truman presented Rule 40.4. The versions of Rules 40.1 and 40.2 presented at the January 24 meeting each included lengthy continuing education requirements. Members agreed that "to avoid duplication, those provisions will be removed from these

rules and combined in a new rule [40.4]." (Minutes at page 10.) The workgroup's initial draft of this rule would have made its educational requirements applicable to court-appointed attorneys in delinquency proceedings, but members disfavored that change and it was deleted because there currently is no such requirement, and if there was one, the training subjects would be different from those identified in the draft rule.

Section (c) of the draft rule requires that attorneys and GALs have later training on topics "such as the following," and the rule then contains two long paragraphs that detail training topics. One paragraph includes topics for those representing children, and the other has topics for those representing parents and guardians. The first paragraph, subpart (d)(1), includes as a topic "the traumatic effects of parental domestic violence on a child." Some members wanted the "traumatic effects" topic to have a broader scope, such as the effect of dependency proceedings on a child, or the impact of an out-of-home placement. After discussing several alternative ways to phrase this topic, including "the effects of out-of-home care on the health and welfare of a child," members agreed on "trauma-informed practice." Section (b) ("generally") includes a reference to laws concerning education and advocacy for children in schools, and a member asked to broaden this phrasing to include, for example, issues concerning dependent children who change schools and education for disabled dependent children. Members were mindful that the focus should be on abuse and neglect, and they cautioned against a long list of training subjects, which would inevitably omit some topics. They recommended concluding the paragraphs with language such as "other issues affecting children." Ultimately, members agreed that the topics in subparts (d)(1) and (d)(2) are largely duplicative, and the subjects in both subparts are generally applicable to anyone representing either children or parents. They accordingly returned the rule to Mr. Truman and the workgroup to consolidate these subparts.

Members agreed that lawyers in the Attorney General's office would not be subject to these requirements, because they are not court-appointed, they represent an agency rather than individuals, and that office provides in-house training. Members made grammatical corrections to the draft rule, and they agreed that as drafted, section (e) appropriately requires attorneys and GALs to provide their proofs of completion to the presiding judge or the judge's designee, rather than to file the proofs with the clerk.

4. **Report from Workgroup 4.** Professor Atwood presented Rule 64 and a portion of Rule 65, and she revisited Rule 62.

Rule 64 ("motion, petition, notice of hearing, and service of process and orders"). Rule 64 is the first of three consecutive rules on termination of parental rights. Current Rule 64 allows a termination proceeding to be initiated by motion under section (A) (if there was a previous determination of dependency) or otherwise by petition under section (B) (although a petition can be filed even after a dependency determination). The workgroup attempted to clarify these distinctions and reversed the current sequence so that the provision on petitions appears before the one on motions. Although one

proceeding may have a JS case number and the other may have a JD number, they proceed similarly. Professor Atwood reviewed other sections of the draft rule. In Rule 64, the workgroup used some of the phrasing from its guardianship rules; for example, these rules have similar language concerning a failure to appear, or for service if the child is an Indian child.

Draft section (b), which concerns a motion for termination, requires judicial determinations that a child is dependent, and that termination of parent rights "is" in the child's best interests. Because a best interests determination is an element of a termination adjudication, and to avoid the dilemma of making that determination before the adjudication, members agreed to change the word "is" to "may be in the child's best interests." To address a related issue arising under A.R.S. § 8-862, members requested Workgroup 3 to add a provision in Rule 60 specifying that every review hearing after the permanency hearing will be considered a permanency hearing. Subpart (c)(2) concerns the initial hearing notice and a requirement that the notice advise of the consequence of failing to appear without good cause. Members agreed that this provision should include references to specific hearings, and they added "at the initial hearing, pretrial conference, status conference, or a termination adjudication hearing." Members agreed that the consequences of failing to appear apply regardless of whether the termination proceeding was initiated by motion or by petition. Section (d) concerning service was reorganized to be more logical and to refer to the pertinent service requirements of the Civil Rules. If the child is an Indian child, the rule should allow service by certified rather than registered mail, which would be consistent with ICWA; but members deferred making this change because it would contradict an Arizona statute.

Members approved Rule 64 with these modifications.

Rule 65 ("initial termination hearing"). Professor Atwood noted that draft Rule 65, consistently with draft Rule 64, refers to the petition process before the motion process. In section (c) ("procedure"), subpart (2), members discussed an issue raised by the workgroup: can the court appoint counsel for a private petitioner? Members concluded it could not for two reasons. First, the statute governing appointment of counsel does not provide for this; also, unlike a parent in a termination proceeding, the petitioner is not at risk for losing parenting rights, which have a constitutional dimension. In subpart (c)(3), members concurred on language that would permit the court to appoint an attorney or a GAL for a child, or both, if none had been previously appointed.

Professor Atwood explained that the workgroup revised subpart (c)(6) (which concerns admitting, denying, or failing to appear) in the same manner as similar provisions in other restyled rules However, Professor Atwood noted that the restyled versions might have omitted essential language in the current rules (i.e., "based on the record and evidence presented"), and this language therefore was added to the draft of subpart (c)(6)(C). Members also discussed whether, if the parent fails to appear at the initial termination hearing, the court proceeds to take evidence at the initial hearing or at

a later adjudication hearing. A judge member observed that conducting the adjudication concurrently with the initial hearing under this circumstance is not a favored practice. Even if the parent failed to appear, the parent's attorney has a right to examine witnesses, and counsel might not be prepared to do so if testimony is taken at the initial hearing. Additionally, the absent parent might have a good reason for failing to appear, which could moot the need for an accelerated or so-called "drive-by" adjudication. *See Tricia A. vs DCS*. However, to avoid confusion about the court process following a failure to appear, and considering *Tricia A.*, members agreed to remove a proposed reference to Rule 66 in draft Rule 65(c)(6). One member also proposed retaining the current comment to Rule 65; members will determine that later. Members agreed to delete a proposed subpart (c)(8), which would have required the court at the initial termination hearing to set a deadline for amendments to a termination petition, because setting a rigid deadline might impair a late amendment that is in the child's best interests. The workgroup will present the remainder of Rule 65 at a future meeting.

Rule 62 ("initial guardianship hearing"). Although members had previously approved Rule 62, the workgroup added language to Rule 62(c)(7)(C) like the language it added to Rule 65(c)(6)(C), as mentioned in the preceding paragraph. And like a change to Rule 65(c)(6)(C) described above, the workgroup deleted a reference in Rule 62(c)(7)(C) to Rule 63. Professor Atwood recognized that other edits to Rule 62(c)(7)(C) might be necessary to add further clarity, particularly concerning the words "has proven," which the editorial group should consider later.

5. **Report from Workgroup 2.** Ms. Beringhaus presented Rules 16, 18, and 21 on behalf of the workgroup, and Mr. Meaux presented Rule 19

Rule 16 ("discovery"). Ms. Beringhaus noted that Rule 16 was substantially re-organized, and it is now easier to read and more closely tracks corresponding Criminal Rule 15 ("disclosure"). Unlike the current juvenile rule, which begins with a section on "general standards," the restyled rule begins with section (a) on "disclosure by the State," which aligns with the disclosure provisions in Criminal Rule 15. A provision in restyled Rule 15(a) requires the State to disclose statements of the juvenile "and of any co-defendant—juvenile or adult," which is new. The workgroup changed another provision in section (a) that requires disclosure of experts to conform to a corresponding provision in Criminal Rule 15. In Rule 16(b) ("disclosure by juvenile"), the workgroup added a provision in subpart (1) ("physical evidence") that requires a court order if, for example, the juvenile must appear in a line-up or provide hair or fluid samples. That new provision follows the current practice in Maricopa County. Requirements for the juvenile's disclosure of experts mirrors the requirements for the State's disclosure of experts. Ms. Beringhaus reviewed the other sections of Rule 16, including section (f) ("sanctions"). Section (f) is somewhat different from the corresponding provision in Criminal Rule 15, and in addition to specified sanctions, it permits the court to impose "any other appropriate sanction." Members approved the workgroup's draft of Rule 16.

Rule 18 ("speedy justice"). Ms. Beringhaus explained that the current rule differentiates the duties of the prosecutor and the duties of defense counsel. The draft rule eliminates this distinction so that both attorneys have responsibility for advising the court of the "impending expiration of time limits in the juvenile's case." Members approved the draft as presented.

Rule 19 ("records and proceedings"). As the titles of the draft and the current rule suggest, the rule applies to access to records as well as access to proceedings. In section (a) ("juvenile court delinquency files") the court's records (also referred to as "files") are either in a "legal file" or a "social file." Mr. Meaux explained how the workgroup reorganized the provisions to delineate in a parallel manner when the public does, or does not, have access to these files, who maintains the files (the clerk versus a probation officer), and the contents of the files. Mr. Meaux noted that A.R.S. § 8-208 might require legislative changes to conform to the restyled rule. In section (b) ("proceedings"), the workgroup used the word "proceedings" consistently in its draft, rather than intermittently using the word "hearing," which appears in the current rule.

Members discussed distinctions between files that are "closed," "sealed," and "confidential." Mr. Meaux explained that in practice, juvenile court files are not sealed, but certain documents are segregated and are considered confidential. The term "closed" is ambiguous; does it mean "sealed" or "archived?" Members agreed to use the term "confidential" rather than "closed," and this revision may require additional edits in section (a). The Chair also asked the workgroup to consider the terminology in, and relationship between, subparts (1)(A) and (1)(D). Workgroup members might also consider using parallel language in the "closed" provisions of sections (a) and (b). Also, in section (a), staff inquired whether the word "clear" was necessary in the phrase "clear public interest in confidentiality." A member explained that it was necessary because it emphasizes the First Amendment interest in open court files. In subpart (b)(1)(A), members agreed to add the word "reasonable," so it now says, "must give the parties reasonable notice of the request."

Members also discussed section (c) ("release of juvenile court files"). Judge Kreamer recommended that the section provide more specificity and guidance for judicial officers. For example, when the court receives a records request, should it go to the presiding judge, the judge assigned to the case, or to any judicial officer? The rule should also identify categories of requests. Judge Kreamer will take into consideration Pima County's practices in this area and he will prepare draft revisions to section (c) for the members' consideration at a future meeting.

Rule 21 ("victims' rights"). The restyled rule has two sections: (a) ("applicable offenses" and (b) ("enforcement"). Ms. Beringhaus noted that although the applicable offenses in restyled section (a) are described differently than they are currently, the restyled and current versions are substantively equivalent. The rights in section (b) are not individually enumerated; rather, the rule refers to the Victims' Bill of Rights and

A.R.S. §§ 8-381 et seq. Members agreed to add after the VBR a specific reference to the Arizona Constitution, Article 2, Section 2.1. With that change, members approved Rule 21.

6. <u>Report from Workgroup 1.</u> Workgroup 1 made the final presentation.

Rule 7 ("form of filed documents"). Ms. McQuality presented Rule 7. Draft Rule 7 is modeled on Civil Rule 5.1 and replaces the format provisions of current Juvenile Rule 1(D). The draft includes a provision on electronic filing, even though there is no e-filing in juvenile court today, in anticipation of its availability in the future. Although the first sentence of section (a) ("the filing of documents with the court is accomplished by filing them with the clerk") is self-evident, it is identical to the respective Civil Rule provision, so members retained it. Section (a) also contemplates the circumstance of filing a document with a judge. In section (b)(1)(C), members removed a requirement that the clerk notify a party of a rejected filing by e-mail to allow the clerk to provide that notification by other means. The draft rule, like the corresponding Civil Rule, requires 13-point font, and after discussion, members left this requirement unchanged. Ms. McQuality reviewed other sections of the draft rule, and after further discussion, members approved the draft.

Rule 103 (now, "general provisions regarding appeals," and as proposed, "right to appeal"). Ms. Beckmann presented only sections (a) ("who may appeal") and (b) ("final orders") of the current rule, which would become a new freestanding Rule 103 with the title "right to appeal." The remaining sections (C) through (G) of current Rule 103 would become a new Rule 103.1 titled "general provisions." In addition to her oral presentation, the meeting materials included Ms. Beckmann's February 20, 2020 memo, which contained numerous citations to statutes and case law concerning appealable orders. In summary, unlike other statutes and procedural rules for civil and criminal appeals, neither A.R.S. § 8-235 nor current Rule 103 specifies the types of orders from which a party may appeal. Instead, a body of case law has developed that identifies who is an "aggrieved party" and which orders are final and appealable. Ms. Beckmann explained that the workgroup's draft attempts to incorporate this body of law into the provisions of new Rule 103.

Section (a) ("who may appeal") limits appeals to aggrieved parties and defines that term based on case law. Section (b) ("final orders") contains three requisites for an appealable order: it must be in writing, signed by a judge, and filed with the clerk. Section (b) also provides that a final order "includes the following," which is followed by two subparts, one pertaining to delinquency and incorrigibility proceedings, and the other to all other juvenile proceedings. A disposition order is included in the list of appealable delinquency orders, and another provision in the first subpart addresses the appealability of a restitution order that is entered after the date of the disposition order. The workgroup's initial draft required that the appellate court "must" consolidate appeals from these separate orders, but after discussion, members modified this provision to say

that the appeals "if practicable…should be consolidated." Members discussed but declined to put a time limit on the entry of a restitution order.

Ms. Beckmann then turned to subpart (2), which concerns appealable orders in other juvenile proceedings. Subpart (2)(A) instructed that an order granting a dependency petition and declaring a child dependent was an appealable order. Members thereafter added to this provision a portion of another subpart that allowed an appeal from an order denying or dismissing a dependency petition. Subpart 2(B) provided that a disposition order entered after a dependency adjudication was appealable. Subpart 2(C), which provided in part that an order was appealable if the court reaffirmed a prior finding that a child was dependent, prompted some discussion about whether every order changing placement should be appealable. This could be problematic because some placements are only temporary. The workgroup will study this issue further. A judge member expressed concern with a provision allowing the appealability of orders entered after periodic dependency reviews because it might lead to repetitive appeals, but Ms. Beckmann noted that the Court of Appeals now treats those order as appealable. One member proposed that such an order be appealable only when it changes the status quo, but Ms. Beckmann again responded that appellate courts treat the judicial finding of continuing dependency as appealable. Another member was concerned with increasing volumes of dependency appeals and suggested distinguishing orders that are appealable of right from those that are amenable to discretionary special action review, but that suggestion had no support. As a practical matter, will a party appeal from an order that maintains the status quo? The Chair asked that the Task Force's rule petition include a discussion of this issue for the Court's consideration.

Ms. Beckmann reviewed other provisions of draft Rule 103. She specifically noted subpart (2)(F), which permits appeals from "an order entered in a dependency proceeding removing a child who has been adjudicated dependent from the parent's physical custody." (*See Jessicah C. vs DCS*.) Members removed from the foregoing subpart the phrase "that affects a party's substantial rights" because that is subsumed under the description of an aggrieved party in section (a). The final subpart, (2)(M), allows an appeal from "any other order determined to be final under Arizona case law," which, along with the words "includes the following" at the beginning of section (b) would permit appeals from other, less common final orders. A member proposed adding to subpart (b)(2) appeals from orders entered under Rule 59 ("return of the child"), although Ms. Beckmann noted case law instructing that those orders are not appealable. This led to a discussion about whether the Task Force could recommend adoption of a rule that deviated from case law. The Chair observed that it was possible, but any such recommendation in the rule petition should be supported by a good reason.

Rule 103 was returned to the workgroup for further consideration.

7. <u>Roadmap; call to the public; adjourn.</u> The next Task Force meeting is set for April 3, 2020. The Chair noted that the Task Force has not yet reviewed even half of

the current rules, and it has added several new rules. To achieve the goals reiterated in the roadmap section of the January 24 meeting minutes, the Chair encouraged workgroups to try to complete three rules, and more if possible, at each of their upcoming meetings.

Jessica Fotinos responded to a call to the public.

The meeting adjourned at 2:48 p.m.

Senate Engrossed

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SENATE BILL 1425

AN ACT

AMENDING SECTIONS 8-522 AND 8-523, ARIZONA REVISED STATUTES; RELATING TO CHILD WELFARE AND PLACEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 8-522, Arizona Revised Statutes, is amended to read:

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.

B. The supreme court shall certify special advocates pursuant to rules adopted by the court. Court rules for certification shall include compliance with qualification standards prescribed by the court.

C. The appointment of the special advocate continues until the court relieves the advocate of the advocate's responsibilities or until the court dismisses the action before it.

D. A special advocate serves without compensation but is entitled to reimbursement of expenses pursuant to guidelines prescribed by the supreme court by rule.

E. A special advocate shall:

1. Meet with the child.

2. Advocate for the child's safety as the first priority.

3. Gather and provide independent, factual information to aid the court in making its decision regarding what is in the child's best interest and in determining if reasonable efforts have been made to prevent removal of the child from the child's home or to reunite the child with the child's family.

4. Provide advocacy to ensure that appropriate case planning and services are provided for the child.

5. Perform other duties prescribed by the supreme court by rule.

F. A special advocate shall have access to all documents and information regarding the child and the child's family without obtaining prior approval of the child, the child's family or the court. All records and information the special advocate acquires, reviews or produces may only be disclosed as provided for in section 41-1959.

G. The special advocate shall receive notice of all hearings, staffings, investigations and other matters concerning the child. The special advocate shall have a right to participate in the formulation of any agreement, stipulation or case plan entered into regarding the child.

H. EXCEPT IN CASES OF GROSS NEGLIGENCE, WILFUL MISCONDUCT OR INTENTIONAL WRONGDOING, a special advocate is immune from civil or criminal liability for the advocate's acts or omissions in connection with

the authorized responsibilities the special advocate performs WITH REASONABLE CARE AND in good faith.

Sec. 2. Section 8-523, Arizona Revised Statutes, is amended to read:

8-523. Special advocate program

A. The court appointed special advocate program is established in the administrative office of the supreme court. The program shall establish local special advocate programs in each county. The supreme court shall adopt rules prescribing the establishment of local programs and the minimum performance standards of these programs.

B. The supreme court shall employ administrative and other personnel it determines are necessary to properly administer the program and to monitor local program performance.

C. EXCEPT IN CASES OF GROSS NEGLIGENCE, WILFUL MISCONDUCT OR INTENTIONAL WRONGDOING, special advocate program personnel are not civilly or criminally liable for good faith actions they ~~take~~ PERFORM WITH REASONABLE CARE in connection with their responsibilities.

ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fourth Legislature
Second Regular Session

Senate: JUD DPA 5-0-2-0 | 3rd Read 30-0-0-0

SB 1425: dependency; special advocate; liability
Sponsor: Senator Farnsworth D, LD 16
Committee on Judiciary

Overview

States special advocates and special advocate program personnel can be held liable in civil and criminal cases for gross negligence, wilful misconduct and intentional wrongdoing.

History

Current statute allows a presiding judge of the juvenile court in each county to appoint an adult as a special advocate to be the guardian ad litem for a child in a dependency action. The special advocates are certified by the Arizona Supreme Court and are required to serve until the court relieves them of their responsibilities or dismisses the dependency action (A.R.S. § 8-522). The Administrative Office of the Arizona Supreme Court administers the special advocate program that runs local programs in each county to certify special advocates. The Arizona Supreme Court also establishes rules on the minimum performance standards of the local programs. The special advocate program personnel, who administer the program and monitor local program performance, are not civilly or criminally liable for good faith actions in connection with their responsibilities (A.R.S. § 8-523).

A special advocate is required to: 1) meet with the child; 2) advocate for the child's safety; 3) gather and provide factual information to aid the court in the determining what is in the best interest of the child; and 4) advocate to ensure that the child receives appropriate case planning and services. The special advocate must have access to all documents regarding the child and the child's family without the need to obtain prior approval from the child, child's family or the court. The special advocate is not civilly or criminally liable for their good faith actions or omissions in connection with their responsibilities (A.R.S. § 8-522).

Provisions

1. States if the special advocates and special advocate program personnel perform their authorized responsibilities with *reasonable care* and in good faith, they are immune from civil or criminal liability *except in cases of gross negligence, wilful misconduct and intentional wrongdoing*. (Sec. 1, 2)

1. RODNEY L., DEANA L., Appellants, v. DEPARTMENT OF CHILD SAFETY, J.L., Appellees.

Court of Appeals of Arizona, Division 1. February 27, 2020 Not Reported in Pac. Rptr. 2020 WL 950285

¶1 Rodney L. (“Father”) and Deana L. (“Mother”) appeal the superior court’s order terminating their parental rights to their son, J.L. Father argues the Department of Child Safety (“DCS”) provided insufficient evidence to support the statutory ground of fifteen months time in care, that his...

..leave open the question of whether we have expressly adopted **ineffective** **assistance** of counsel claims in the context of dependency or severance...

..particular standard for what those claims would require. See, e.g. **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320...

2. Serah E. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. November 26, 2019 Not Reported in Pac. Rptr. 2019 WL 6320425

¶1 Serah E. (“Mother”) appeals the juvenile court’s order terminating her parental rights to I.P. and A.P. on the grounds of chronic substance abuse under A.R.S. § 8–533(B)(3) and time in an out-of-home placement under A.R.S. § 8–533(B)(8)(c). For the following reasons, we affirm. ¶2 We view the facts in...

..of Counsel ¶29 Finally, Mother argues that her counsel provided **ineffective** **assistance** by failing to raise the arguments raised on appeal in...

..errors, the result of the proceeding would have been different.” **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320, 323 ¶ 8 (App. 2007) (**ineffective** **assistance** claim must establish both deficient performance and prejudice). CONCLUSION ¶30...

3. Theresia F. v. Department of Child Safety

Court of Appeals of Arizona, Division 2. November 21, 2019 Not Reported in Pac. Rptr. 2019 WL 6247896

¶1 Appellant Theresia F. challenges the juvenile court’s order of June 24, 2019, terminating her parental rights to two of her children, L.G. and P.G., on grounds of neglect, Theresia’s chronic drug use, and her inability to remedy the circumstances causing the children to remain in a court-ordered, out-of-home placement for longer than nine...

..right to effective assistance of counsel.” Assuming without deciding that **ineffective** **assistance** of counsel provides a basis for reversible error in a...

..must show “that counsel’s representation fell below prevailing professional norms.” **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320, ¶¶...

4. Royce C. v. Department of Child Safety

Court of Appeals of Arizona, Division 2. July 25, 2019 Not Reported in Pac. Rptr. 2019 WL 3335133

¶1 Royce C. appeals from the juvenile court's order terminating her parental rights to her child, B.S., born May 2013 on the grounds of chronic substance abuse and time in care. See A.R.S. § 8-533(B)(3), (8)(c). In her pro se brief, she argues the court made its ruling based on incomplete or inaccurate evidence, her counsel was not...

..had counsel acted as Royce believes she should have. See **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, ¶...

..18 (App. 2007) (reversal of severance order not justified by **ineffective** **assistance** of counsel "unless, at a minimum" parent establishes counsel's alleged...

5. Hayley W. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. June 06, 2019 Not Reported in Pac. Rptr. 2019 WL 2389299

¶1 Hayley W. (Mother) and Gary W. (Father) appeal the termination of their parental rights to C.W. (Child), an Indian child. Mother argues Child's guardian ad litem (GAL) failed to prove severance was warranted under Arizona Revised Statutes (A.R.S.) § 8-533 and the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901 to 1963, by...

..process because his counsel was ineffective. Assuming without deciding that **ineffective** **assistance** of counsel provides a basis for reversible error in a...

..must show "that counsel's representation fell below prevailing professional norms." **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, 322...

6. Felicia M. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. February 19, 2019 Not Reported in Pac. Rptr. 2019 WL 664887

¶1 Felicia M. ("Mother") appeals the juvenile court's order terminating her parental rights to M.F., born in 2013, and I.F., born in 2014 (collectively, "the children"). Mother argues the juvenile court deprived her of due process when it conducted a termination hearing in her absence and she was not provided effective...

..Arizona courts have not explicitly decided whether a claim of **ineffective** **assistance** of counsel may justify relief in a termination proceeding. See **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, 323...

..her counsel was ineffective. ¶18 In reviewing a claim of **ineffective** **assistance** of counsel, the "ultimate focus of inquiry must be on...

7. Joel S. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. January 10, 2019 Not Reported in Pac. Rptr. 2019 WL 156722

¶1 Jasmine F. ("Mother") and Joel S. ("Father") appeal the superior court's order terminating their parental rights to A.G. Because reasonable evidence supports the court's termination order, we affirm. ¶2 Mother and Father are the biological parents of A.G., born in May 2014. The couple married in June 2016...

..Ineffective Assistance of Counsel ¶22 Mother argues her counsel provided **ineffective** **assistance** by failing to object to the superior court's findings of...

..reached a different result if her counsel had objected. See **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, 325...

8. Kamorra R. v. Mark G.

Court of Appeals of Arizona, Division 2. December 24, 2018 Not Reported in Pac. Rptr. 2018 WL 6735185

¶1 Kamorra R. seeks review of the juvenile court's order terminating her parental rights to her daughter, C.R., born October 2008, in a private severance proceeding initiated by C.R.'s paternal aunt and uncle, Melissa G. and Mark G. She argues that she did not have "proper notice" of the initial severance hearing and that...

..finally decided the issue, this court has suggested that the **ineffective** **assistance** of counsel in termination proceedings could constitute reversible error. See **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, ¶¶...

..1984) ¶9 A criminal defendant raising a claim of **ineffective** **assistance** must demonstrate "both that counsel's representation fell below prevailing professional...

9. Shirley R. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. September 13, 2018 Not Reported in Pac. Rptr. 2018 WL 4374679

¶1 Shirley R. ("Mother") challenges the superior court's order terminating her parental rights to J.M., P.M., and C.M. For the following reasons, we affirm. ¶2 Mother is the biological mother of J.M., born May 2013; P.M., born July 2014; and C.M., born August 2015 (collectively, the "Children"). Tommy...

..260, ¶¶14-15 (App. 2003) Assuming without deciding that **ineffective** **assistance** of counsel may constitute an independent ground for appealing a...

..errors, the result of the proceeding would have been different." **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, 323...

10. Rodney S. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. June 07, 2018 Not Reported in Pac. Rptr. 2018 WL 2727936

¶1 Rodney S. (“Father”) appeals the juvenile court’s order denying his motion to set aside the court’s finding that he lacked good cause for failing to appear at his severance hearing. Additionally, Father appeals the court’s termination of his parental rights to M.H. on grounds of **ineffective** **assistance** of counsel. For the...

..Arizona courts have not explicitly decided whether a claim of **ineffective** **assistance** of counsel may justify relief from a final termination order. See **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320, 322...
..¶¶8–12 (App. 2007) Assuming, as we did in **John** **M**. , that Arizona recognizes such a claim, Father must show both...

11. Crystal F. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. May 08, 2018 Not Reported in P.3d 2018 WL 2107491

¶1 Crystal F. (“Mother”) appeals the superior court’s order terminating her parental rights. For the following reasons, we affirm. ¶2 Mother is the biological parent of L.S., born October 29, 2015. ¶3 In August 2016, the Department of Child Safety (“DCS”) took L.S. into custody after...

..Arizona courts have not explicitly decided whether a claim of **ineffective** **assistance** of counsel may justify relief in a termination proceeding. See **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320, 322...
..Arizona law would permit relief based on a claim of **ineffective** **assistance** of counsel. Id. at 325, ¶17 ¶23 Mother...

12. Melissa M. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. March 20, 2018 Not Reported in P.3d 2018 WL 1386174

¶1 Melissa M. (“Mother”) appeals the superior court’s September 1, 2017 order terminating her parental rights to her child, J.A. ¶2 Mother is the biological mother of J.A., born in September 2014. Mother tested positively for methamphetamine in April 2014 while four months pregnant with J.A., and the Department...

..objection to Dr. Bluth’s psychological evaluation denied her of effective **assistance** of counsel. **Ineffective** **assistance** of counsel does not support reversal of a termination of...
..can also show prejudice flowing from such lacking performance. See **John** **M**. v. Ariz. Dep’t of Econ. Sec., 217 Ariz. 320, 325...

13. Tammy M. v. Department of Child Safety

Court of Appeals of Arizona, Division 2. January 31, 2018 Not Reported in P.3d 2018 WL 637310

¶1 Tammy M. appeals from the juvenile court's September 2017 order terminating her parental rights to O.E., born in December 2014, on the grounds of chronic substance abuse and length of time in court-ordered care (fifteen months). See A.R.S. §8–533(B)(3), (B)(8)(c). On appeal, Tammy asserts the attorney who...

..to the ground of Tammy's chronic substance abuse. 7 See **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, ¶¶17–18 (App. 2007) (parent claiming **ineffective** **assistance** of counsel in severance proceeding must establish both incompetence by...

..one ground). Thus, we do not address Tammy's claims of **ineffective** **assistance** of counsel related to the substance abuse ground, which constitute...

14. Leticia A. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. December 26, 2017 Not Reported in P.3d 2017 WL 6567897

¶1 Mother Leticia A. appeals the superior court's order finding R.G. dependent as to her. Because Mother has shown no reversible error, the order is affirmed. ¶2 Leticia A. is the mother of R.G., born in May 2010. In the first part of 2016, the Department of Child Safety (DCS) learned Mother had been diagnosed with...

..she relies upon, however, did "not determine whether Arizona recognizes **ineffective** **assistance** of counsel as a separate ground for relief" for an order terminating parental rights. **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, 325...

15. Angelica G. v. Department of Child Safety

Court of Appeals of Arizona, Division 2. December 12, 2017 Not Reported in P.3d 2017 WL 6336880

¶1 Appellant Angelica G. challenges the juvenile court's order of August 9, 2017, terminating her parental rights to her son, J.B., born in February 2015, after granting a default judgment against her and finding the Department of Child Safety (DCS) had established the statutory grounds for severance, including chronic drug abuse and...

..the scheduled time. ¶12 Finally, Angelica contends she received **ineffective** **assistance** based on counsel's failure to correct the juvenile court's misunderstanding...

..thus she has not established counsel's performance was deficient. See **John** **M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, ¶...

16. Ashley W. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. October 24, 2017 Not Reported in P.3d 2017 WL 4782196

¶1 Ashley W. (“Mother”) appeals the superior court’s order terminating her parental rights to her four children. For the following reasons, we affirm. ¶2 In October 2015, the Department of Child Safety (“DCS”) filed a dependency petition, alleging Mother was unable to provide stable and safe housing...

..the termination proceeding. ¶7 In reviewing a claim of **ineffective** **assistance** of counsel, the “ultimate focus of inquiry must be on...

..fundamental fairness of the proceeding whose result is being challenged.” **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320, 324...

17. Griselda C.–B. v. Department of Child Safety

Court of Appeals of Arizona, Division 2. March 16, 2017 Not Reported in Pac. Rptr. 2017 WL 1033669

¶1 Griselda C.–B. appeals from the juvenile court’s order terminating her parental rights to her daughters H., born October 2005, and L., born September 2007, on the grounds of abuse. She argues there was insufficient evidence: (1) that she had abused A., a foster child in her care; (2) of a nexus between that abuse...

..55, 58 (App. 2003) And this court has suggested that **ineffective** **assistance** of counsel in termination proceedings could constitute reversible error. See **John** **M**. v. Arizona Dep’t of Econ. Sec. , 217 Ariz. 320, ¶¶..

..1984) ¶20 A criminal defendant raising a claim of **ineffective** **assistance** must demonstrate “both that counsel’s representation fell below prevailing professional...

18. Jose P. v. Department of Child Safety, A.L.

Court of Appeals of Arizona, Division 1. December 13, 2016 Not Reported in P.3d 2016 WL 7217565

¶1 Jose P. (Father) appeals the trial court’s severance of his parental rights to his daughter, A.L. For the following reasons, we affirm. ¶2 Father and Mariel L. (Mother) were the natural parents of A.L., born in August 2005. Father and Mother were in a car accident in June 2011, wherein Mother was killed. Father sustained...

..562, 567, ¶22 (2006) In reviewing a claim of **ineffective** **assistance** of counsel, the “ultimate focus of inquiry must be on...

..fundamental fairness of the proceeding whose result is being challenged.” **John** **M**. v. Ariz. Dep’t of Econ. Sec. , 217 Ariz. 320, 324...

19. Connie v. v. Adam v.

Court of Appeals of Arizona, Division 2. September 08, 2016 Not Reported in P.3d 2016 WL 4698932

¶1 Connie V. appeals from the juvenile court's order terminating her parental rights to her children, A.J. born January 2005, A.P. born August 2008, and Z.A. born March 2010, on neglect and abuse grounds. See A.R.S. §8-533(B)(2). In the sole argument she raises on appeal, Connie asserts she received **ineffective assistance** of...

..a motion to waive the home study. The law governing **ineffective assistance** claims in proceedings to terminate parental rights is not fully...

..fair and the results of those proceedings are reliable. See **John M**. v. Ariz. Dep't of Econ. Sec. , 217 Ariz. 320, ¶¶...

20. Shawn N. v. Department of Child Safety

Court of Appeals of Arizona, Division 1. July 14, 2016 Not Reported in P.3d 2016 WL 3884916

¶1 Shawn N. ("Father") appeals the juvenile court's order terminating his parental rights to his three children, born March 2006, July 2007, and May 2011. For the following reasons, we affirm. ¶2 In April 2013, the Department of Child Safety ("Department") took custody of the children, but they were...

..for termination. ¶17 Father next argues that he received **ineffective assistance** of counsel when his trial attorney failed to object to...

..Arizona courts have not explicitly decided whether a claim of **ineffective assistance** of counsel may justify relief in a termination proceeding. See **John M**. v. Ariz. Dep't of Econ. Sec., 217 Ariz. 320, 322...

217 Ariz. 320
Court of Appeals of Arizona,
Division 2, Department B.

JOHN M., Appellant,
v.
ARIZONA DEPARTMENT OF ECONOMIC SECURITY and Shannon M., Appellees.

No. 2 CA–JV 2007–0029.
|
Nov. 7, 2007.
|
Redesignated as Opinion and Publication Ordered Dec. 19, 2007.

Synopsis
Background: Department of Economic Security filed motion to terminate father's parental rights. The Superior Court, Pinal County, Cause No. JD200600031, Joseph R. Georgini, J., granted motion. Father appealed.

Holdings: The Court of Appeals, Vásquez, J., held that:

[1] as an issue of first impression, no reversal of a termination of parental rights order is justified by inadequacy of counsel unless, at a minimum, a parent can demonstrate that counsel's alleged errors were sufficient to undermine confidence in the outcome of the proceeding and give rise to a reasonable probability that, but for counsel's errors, the result would have been different, and

[2] father failed to show any prejudice resulting from his counsel's performance in termination of parental rights proceeding, and thus father was not denied effective assistance.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (3)

[1] **Infants** Scope, Standards, and Questions on Review

The ultimate focus of appellate court inquiry in parental rights termination case must be on the fundamental fairness of the proceeding whose result is being challenged.

14 Cases that cite this headnote

[2] **Infants** Presumptions, inferences, and burden of proof
Infants Counsel; arguments, conduct, and effectiveness

No reversal of a termination of parental rights order is justified by inadequacy of counsel unless, at a minimum, a parent can demonstrate that counsel's alleged errors were sufficient to undermine confidence in the outcome of the proceeding and give rise to a reasonable probability that, but for counsel's errors, the result would have been different. U.S.C.A. Const.Amend. 6.

57 Cases that cite this headnote

[3] **Infants** Effectiveness of Counsel

Father failed to show any prejudice resulting from his counsel's performance in termination of parental rights proceeding, and thus father was not denied effective assistance. U.S.C.A. Const.Amend. 6.

44 Cases that cite this headnote

Attorneys and Law Firms

****1022** Richard Scherb, Florence, Attorney for Appellant.

Terry Goddard, Arizona Attorney General By William V. Hornung, Tucson, Attorneys for Appellee Arizona Department of Economic Security.

***321** *OPINION*

VÁSQUEZ, Judge.

¶ 1 John M. appeals from the juvenile court's April 30, 2007, order, entered after a contested severance hearing, terminating his parental rights to his daughter, Shannon, born in October 2004, on the grounds that he had neglected or wilfully abused a child, A.R.S. § 8–533(B)(2), and had substantially neglected or wilfully refused to remedy the circumstances that had caused Shannon to be in an out-of-home placement for nine months or longer, A.R.S. § 8–533(B)(8)(a). On appeal, John maintains the termination order should be reversed on the ground of ineffective assistance of counsel. He contends his attorney's conduct denied him a meaningful opportunity to be heard, and therefore violated his right to due process, and that he is entitled to a new severance hearing.

Background

¶ 2 John does not challenge the sufficiency of the evidence presented at the severance hearing that supported the following course of events. John is Shannon's biological father, and Shannon's mother, Tiffany, is John's stepdaughter. Tiffany was fourteen years old when Shannon was born. After the Pinal County Sheriffs Department received and investigated a report about underage drinking at John's home during the last weekend in February 2006, John and his wife, Kitty M., Tiffany's mother, were arrested for public indecency, indecent exposure, and luring, exploiting, and furnishing harmful material to minors. The Arizona Department of Economic Security (ADES) removed Tiffany and Shannon from the home on February 27, 2006, and they have remained out of the home since then. They are currently placed with foster parents who wish to adopt them.

¶ 3 Before and after John's arrest, Tiffany and other children told detectives and employees of Child Protective Services that in late February 2006 and on other occasions they had been served alcohol at John's home; they had engaged in games of "truth or dare" with John and had exposed themselves while John photographed them; John and Kitty had "dance[d] naked" in front of them; and John had masturbated while the children watched. According to Tiffany, sixteen-month-old Shannon had been present when these events occurred. Tiffany also reported that she had been having sexual relations with John since she was eleven or twelve.

****1023 *322** ¶ 4 The state filed a dependency petition and petition to establish paternity in March 2006, and in June, John submitted to the dependency petition without contest, contending he was "willing but unable" to properly parent Shannon.[1] At the permanency hearing, the juvenile court ordered that Shannon's case plan, as to John, would be severance of parental rights and adoption. ADES filed a motion to terminate John's parental rights to Shannon in December 2006, alleging he had neglected or wilfully abused her. A contested hearing on the motion commenced in April 2007.

¶ 5 When the severance hearing began, John was awaiting trial on fifty felony charges, including sexual conduct with a minor, sexual indecency, sexual exploitation of a minor, luring, providing harmful materials to a minor, and weapons offenses. Consistent with the advice of his counsel, John did not testify at the severance hearing. At the beginning of the hearing, John's attorney advised the juvenile court that he had "discussed ... a number of different issues" with his client. He said he would be objecting to exhibits attached to reports that had "not been substantiated," such as certain test results; he noted John's continuing objection to the court's refusal to disclose information about Shannon's placement; and he moved to continue the hearing until after the pending criminal charges were resolved, informing the court that John might also want new counsel appointed. After the juvenile court denied the motion to continue, John stated, "That's it," demanded that sheriff's officers "take [him] back," and left the courtroom. After the court ordered John to return to the courtroom and admonished him to remain, John asked that his attorney be removed from his case, contending that

> [Counsel] hasn't done anything. I sit here with a stack of discovery in front of me I have not had a chance to read through at all. He's never sent me one piece of discovery since he's been my attorney;

> therefore, I come in blind into this—this hearing, and yet everything that I ask for is denied, denied, denied.

¶ 6 After the court denied his request for new counsel, John asked the court to continue the hearing so he could personally review documents, telling the court, "I don't know what to say, Your Honor, because I haven't read the discovery. I don't know what's being said about me and I don't know what's not being said about me." The court denied the request and expressed its doubts about John's protests, noting:

> I'm sure you have some idea as to what the matters of this petition and motion are. You've been present at prior proceedings. You're aware of the dependency that was filed. I believe you have some idea as to why you're here.

¶ 7 At the end of the hearing, John's attorney orally moved to dismiss the proceeding on the ground that ADES had failed to show the acts had occurred in Pinal County. He also argued that Shannon had been thriving when she was removed from John's home; that no evidence suggested she had been physically abused; and that statements made by Tiffany and the other minors, while possibly sufficient to support a probable cause determination in John's criminal case, did not provide clear and convincing evidence to support termination of parental rights under § 8–533. The juvenile court denied John's motion to dismiss and found ADES had sustained its burden of proving the grounds for terminating his parental rights that were alleged in its motion, as amended.[2]

Discussion

¶ 8 On appeal, John does not identify specific trial errors made by counsel but argues only that he was "denied an adequate opportunity to be meaningfully heard because he was not consulted or prepared for the hearing by his appointed counsel." John recognizes that when reviewing ineffective assistance claims in criminal cases, Arizona courts ***323 **1024** employ the standard announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and that under that test, a party must show both that counsel's representation fell below prevailing professional norms and that a reasonable probability exists that, but for counsel's errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 690, 694, 104 S.Ct. at 2066, 2068. He maintains, however, that *Strickland*'s "Sixth Amendment test" is inappropriate for claims of ineffective assistance of counsel in termination proceedings because they are civil in nature and involve a parent's interest in the care and custody of his or her child, not the personal liberty interest at stake in a criminal trial. In support of his argument, John relies heavily on *Donald W., Sr. v. Arizona Department of Economic Security*, 215 Ariz. 199, 159 P.3d 65 (App.2007), but the supreme court has since vacated relevant portions of the decision and redesignated the remaining portions as a memorandum decision. 215 Ariz. 199, 159 P.3d 65 (October 19, 2007). Consequently, we do not consider that decision. *See* Ariz. R. Civ.App. P. 28(c) (memorandum decision not regarded as precedent); Ariz. R.P. Juv. Ct. 88(G) (adopting Rule 28, Ariz. R. Civ.App. P.); *see also* *Walden Books Co. v. Dep't of Revenue*, 198 Ariz. 584, ¶¶ 20–23, 12 P.3d 809, 814 (App.2000) (discussion of rule).

¶ 9 In lieu of the *Strickland* standard, John proposes we consider whether a parent claiming ineffective assistance of counsel has been denied due process, which he frames as "an adequate opportunity to be heard in a meaningful manner," as the result of counsel's conduct. John contends counsel failed to communicate with him about the termination hearing and failed to provide him with copies of documents disclosed by ADES and that these alleged failures require reversal of the juvenile court's termination order. He does not attempt to show that his attorney's alleged inadequacies were material to the result of his termination hearing, and therefore prejudicial, but argues only, "[w]hen counsel is ineffective, the entire adversarial process is undermined."

¶ 10 In its answering brief, ADES urges us to reject *Donald W.;* that is no longer an issue. ADES contends, in any event, that John's argument that a termination proceeding does not implicate the Sixth Amendment is a "distinction without a difference" that does not justify rejection of *Strickland*'s "reasoned, efficacious, and long-standing" test for evaluating an effective assistance of counsel claim. ADES urges us to apply the

Strickland standard and, because John has failed to show how any alleged errors by counsel prejudiced his defense, affirm the juvenile court's termination order.

¶ 11 In *Arizona State Department of Public Welfare v. Barlow*, 80 Ariz. 249, 253, 296 P.2d 298, 300 (1956), our supreme court held the denial of a parent's request to be represented by retained counsel in a dependency hearing violated due process, and Division One of this court has relied on *Barlow* to conclude that appointment of counsel in a severance proceeding is not merely required by statute, but a matter "of constitutional dimension." *Daniel Y. v. Ariz. Dep't of Econ. Sec.*, 206 Ariz. 257, ¶¶ 12, 14, 77 P.3d 55, 58 (App.2003). Since *Barlow* was decided, however, the Supreme Court has held that the Due Process Clause of the United States Constitution does not require appointment of counsel for every indigent parent facing termination of his parental rights. *Lassiter v. Dep't of Soc. Servs. of Durham County, N.C.*, 452 U.S. 18, 31–32, 101 S.Ct. 2153, 2161–62, 68 L.Ed.2d 640 (1981). Regardless of the origin of a parent's right to appointed counsel in Arizona, neither *Barlow* nor *Lassiter* addressed the question raised here: Does ineffective assistance of counsel justify reversal of a juvenile court's order terminating parental rights and, if so, under what circumstances?

¶ 12 Few Arizona cases have considered this question at all, and none has squarely addressed it. *Cf Santa Cruz County Juv. Dep. Action Nos. JD–89–006 and JD–89–007*, 167 Ariz. 98, 101, 804 P.2d 827, 830 (App.1990) (assuming without deciding that ineffective assistance of counsel "is properly raised in the context of a dependency proceeding"). We have previously affirmed a juvenile court's termination of parental rights where a parent failed to establish that her counsel's performance was both incompetent and prejudicial. *See In re Pima County* ***324 **1025** *Severance Action No. S–2397*, 161 Ariz. 574, 578, 780 P.2d 407, 411 (App.1989) (counsel's failure to call certain witnesses appeared to be "sound tactical decision"; no evidence to suggest prejudice). And, where a father appealed on the ground that he had been " improperly notified of the wrong [severance] hearing dates" and therefore denied due process, Division One of this court remanded the case to the juvenile court so that it could determine if the father "was not properly notified of the hearings or ... was not given effective assistance of counsel." *In re Maricopa County Juv. Action No. JS–4942*, 142 Ariz. 240, 241–42, 689 P.2d 183, 184–85 (App.1984). But no Arizona court has reversed a termination order, on the sole ground of ineffective assistance of counsel, based on the record on appeal. *But see In re Gila County Juv. Action No. J–3824*, 130 Ariz. 530, 532–33, 536, 637 P.2d 740, 742–43, 746 (1981), *overruled on other grounds*, *In re Pima County Juv. Action No. S–919*, 132 Ariz. 377, 646 P.2d 262 (1982) (reversal warranted by juvenile court's failure to appoint guardian ad litem for mother as required by statute; appointment of counsel did not constitute substantial compliance with statute where counsel was ineffectual).

¶ 13 Other states have reached varying conclusions about whether ineffective assistance of counsel provides a ground for relief in an appeal of a termination order and, if so, the appropriate means of evaluating such a claim. *Compare, e.g.*, *S.B. v. Dep't of Children & Families*, 851 So.2d 689 (Fla.2003) (ineffective assistance claim recognized in appeal of termination order, where right to counsel grounded in state constitution, but not dependency order, where right to counsel only statutory); *In re Heather R.*, 269 Neb. 653, 694 N.W.2d 659, 664–65 (2005) (no ineffective assistance of counsel claim in civil juvenile proceeding; allegation of inadequate representation assessed as due process claim to fundamentally fair procedure); *In re N.D.O.*, 121 Nev. 379, 115 P.3d 223, 224–25 (2005) ("no ineffective-assistance-of-counsel claim will lie" where counsel not constitutionally required under *Lassiter; Strickland* standard), *with In re M.S.*, 115 S.W.3d 534, 544–45 (Tex.2003) (statutory right to counsel includes right to effective counsel; *Strickland* standard); *In re Geist*, 310 Or. 176, 796 P.2d 1193, 1200–01 (1990) (statutory right to counsel "may prove illusory" without remedy for ineffective assistance; "fundamental fairness" standard).

[1] ¶ 14 We agree with ADES that we need not disregard the Supreme Court's analysis in *Strickland* simply because it involved consideration of the Sixth Amendment. *Strickland* did not rely on the Sixth Amendment to the exclusion of due process concerns, but recognized "the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial ... guarantee[d] ... through the Due Process Clauses." *Strickland*, 466 U.S. at 684–85, 104 S.Ct. at 2063. Thus, in severance proceedings, as in criminal cases, the "ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696, 104 S.Ct. at 2069; *see also Lassiter*, 452 U.S. at 24–25, 101 S.Ct. at 2158 (due process resists precise definition but "expresses the requirement of 'fundamental fairness'

"); *State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154, 157 (1992) ("The touchstone of due process under both the Arizona and federal constitutions is fundamental fairness.").

¶ 15 We do not agree, however, that distinctions between criminal trials and termination proceedings are necessarily irrelevant to the standard to be applied. Unlike a criminal proceeding, which implicates the personal liberty interest of a criminal defendant, a termination proceeding involves more than a parent's fundamental liberty interest in the care, custody, and control of his child. *See* *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 34, 110 P.3d 1013, 1018 (2005). The child's interests in stability, safety, security, and a normal family home are also at stake, *see* *id.*, as well as the "prompt finality that protects" those interests. *In re Pima County Juv. Action No. S–114487*, 179 Ariz. 86, 97, 101, 876 P.2d 1121, 1132, 1136 (1994); *see also* *Lehman v. Lycoming County Children's Servs. Agency*, 458 U.S. 502, 513, 102 S.Ct. 3231, 3238, 73 L.Ed.2d 928 (1982) (denying federal habeas review of termination pursuant to state statute; "state's interest in finality is unusually strong"; uncertainty "detrimental to a child's sound development"); ****1026 *325** *Lassiter*, 452 U.S. at 32, 32 n. 7, 101 S.Ct. at 2162 n. 7 ("child-custody litigation must be concluded as rapidly as is consistent with fairness"; noting that "[child] cannot be legally adopted, nor can his status otherwise be finally clarified, until this litigation ends").

¶ 16 The Pennsylvania Superior Court has identified other meaningful distinctions between criminal trials and severance proceedings, including procedural safeguards available in both:

> While the standard of proof, clear and convincing evidence, is less in termination proceedings than beyond a reasonable doubt in criminal proceedings, it is still quite high. Additionally, because of the doctrine of Parens Patriae and the need to focus on the best interest of the child, the trial judge, who is the fact finder, is required to be an attentive and involved participant in the process. While he must depend upon the litigants to present the evidence to establish the particular elements or defenses in the termination case, he is not limited to their presentations, and as in any custody case, he may require more than they present and direct further investigation, evaluations or expert testimony to assure him that the interests of the child and the respective parties are properly represented. Under the aegis of the court, the role of the lawyer, while important, does not carry the deleterious impact of ineffectiveness that may occur in criminal proceedings.

In re Adoption of T.M.F., 392 Pa.Super. 598, 573 A.2d 1035, 1042 (1990) (ineffective assistance of counsel claim prompts review of severance record; if proceedings fundamentally fair, order supported by evidence, and "result would unlikely have been different" in absence of counsel's alleged inadequacy, no remand or rehearing is warranted).

¶ 17 For the purpose of this case, we need not determine whether Arizona recognizes ineffective assistance of counsel as a separate ground for relief in an appeal of a termination order or resolves an allegation of counsel's inadequacies as a due process claim. Moreover, assuming Arizona does recognize a separate claim for ineffective assistance of counsel and, by analogy to *Strickland*, requires a parent to establish both incompetence and prejudice, *see* *Pima County No. S–2397*, 161 Ariz. at 578, 780 P.2d at 411, we need not consider here what might be required for a showing of incompetence.

[2] ¶ 18 This case is more readily resolved by John's failure to show any prejudice resulting from his counsel's performance. *Cf.* *State v. Atwood*, 171 Ariz. 576, 600, 832 P.2d 593, 617 (1992) (in criminal case, "[i]f an ineffectiveness claim can be rejected for lack of prejudice, the court need not inquire into counsel's performance"). We agree with the majority of states in concluding that no reversal of a termination order is justified by inadequacy of counsel unless, at a minimum, a parent can demonstrate that counsel's alleged errors were sufficient to "undermine confidence in the outcome" of the severance proceeding and give rise to a reasonable probability that, but for counsel's errors, the result would have been different. *Strickland*, 466 U.S. at 692–94, 104 S.Ct. at 2067–68; *N.J. Div. of Youth and Family Servs. v. B.R.*, 192 N.J. 301, 929 A.2d 1034, 1038–39 (2007) (collecting cases adopting *Strickland* standard

for termination proceedings); *cf.* *Lassiter*, 452 U.S. at 32–33, 101 S.Ct. at 2162 (failure to appoint counsel not denial of due process where counsel could not have made any "determinative difference" in result of severance hearing); *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶ 27, 118 P.3d 37, 43 (App.2005) (failure to provide parent notice of right to jury trial in severance proceeding not fundamental error where parent presented no evidence that jury would have decided case differently).

[3] ¶ 19 John has provided no basis for us to conclude that the severance proceedings in this case were fundamentally unfair; that the result of the hearing is unreliable; or that, had counsel conducted himself differently, the juvenile court would have reached a different result. We therefore affirm the juvenile court's termination of John's parental rights.

CONCURRING: PETER J. ECKERSTROM, Presiding Judge and JOSEPH W. HOWARD, Judge.

All Citations

217 Ariz. 320, 173 P.3d 1021

Footnotes

1 Based on paternity tests, the court subsequently found John to be Shannon's biological father.

2 ADES amended its motion for termination of John's parental rights on March 8, 2007, and again during trial. As amended, the motion alleged that John had neglected or wilfully abused a child, *see* A.R.S. § 8–533(B)(2), and had substantially neglected or wilfully refused to remedy the circumstances that had caused Shannon to be in an out-of-home placement for nine months or longer, *see* § 8–533(B)(8)(a).

2016 WL 4124245
Only the Westlaw citation is currently available.
THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. NOT FOR PUBLICATION *See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f); Ariz. R. P. Juv. Ct. 103(G).
Court of Appeals of Arizona,
Division 2.

Tina R., Appellant,
v.
Department of Child Safety and W.R., Appellees.

No. 2 CA–JV 2014–0164
|
Filed August 3, 2016

Appeal from the Superior Court in Cochise County, No. JD201400001, The Honorable Terry Bannon, Judge. **AFFIRMED**

Attorneys and Law Firms

Joel A. Larson, Cochise County Legal Defender, By Benna R. Troup, Assistant Legal Defender, Bisbee, Counsel for Appellant.

Mark Brnovich, Arizona Attorney General, By Cathleen E. Fuller, Assistant Attorney General, Tucson, Counsel for Appellee Department of Child Safety.

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

MEMORANDUM DECISION

VÁSQUEZ, Presiding Judge:

***1** ¶ 1 Appellant Tina R. challenges the juvenile court's November 2014 order terminating her parental rights to her son, W.R., on the ground that W.R. had been in a court-ordered, out-of-home placement for six months or longer. *See* A.R.S. § 8–533(B)(8)(b). She maintains her rights were "improperly terminated because [she] was ineffectively represented by her attorney" and because the Department of Child Safety (DCS)[1] "did not make diligent efforts to provide reunification services." Finding no error, we affirm.

¶ 2 We view the evidence in the light most favorable to sustaining the juvenile court's ruling, *see Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), and "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings," *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). W.R. was born substance exposed in March 2013. DCS had received a number of reports relating to Tina's older child before W.R.'s birth. And during her pregnancy with W.R., Tina tested positive for marijuana, codeine, and morphine and reported having used methamphetamine during the pregnancy.

¶ 3 In September 2013, drug paraphernalia was found in Tina's home, in a place accessible to her older child. Tina also lived with a boyfriend who was arrested for felony drug offenses and who engaged in domestic violence with her, including threatening to set fire to a residence with Tina, W.R., and Tina's older child inside. In January 2014, W.R. was removed from the home.

¶ 4 In February 2014, the juvenile court adjudicated W.R. dependent after Tina pled "no contest" to the allegations in a dependency petition filed by DCS in January. The case initially proceeded with concurrent plans for reunification and severance, but in July 2014, after concluding Tina was not in compliance with the case plan, the court ordered the plan for W.R. to be changed to severance and ordered DCS to file a motion to terminate Tina's parental rights.

¶ 5 At the termination hearing, Tina's case manager testified that DCS had provided Tina with services including "Arizona Families First, drug testing, substance abuse, urinalysis testing, parenting classes, individual counseling, anger management, psychiatric evaluation, supervised visitation, transportation, child and family team meetings, [and a] case manager." The case manager stated Tina had "not completed the services to date." She explained, however, that Tina had "attempt[ed] to re-engage" shortly before the severance hearing, contacting the case manager on September 8, 2014, to request a new referral for services. But after completing her intake, Tina was still not in full compliance, participating only minimally in services and continuing to

test positive for drug use. She was ultimately "closed out of services" in October 2015.

***2** ¶ 6 Tina did not contest the motion, and her counsel stated at the hearing on the motion that Tina was "making a decision that she believes is in [W.R.'s] best interests to not contest the severance." The juvenile court determined DCS had established the ground for severance and granted its motion to terminate Tina's parental rights to W.R. This appeal followed.

¶ 7 On appeal, **Tina** argued she received **ineffective assistance** of counsel and her "parental rights were improperly terminated because DCS did not make diligent efforts to provide reunification services." This court stayed the appeal, noting that the record lacked evidence on which this court could adequately evaluate **Tina's** claim of **ineffective assistance** of counsel and directing the juvenile court to hold a hearing and consider the issue in the first instance. The court held hearings in September and November 2015 and issued a detailed under-advisement ruling in which it concluded counsel's performance had not been deficient, and that, in any event, it was "highly unlikely" that **Tina** could establish any prejudice resulting from counsel's performance.

¶ 8 The juvenile court concluded that **Tina** had not established a claim of **ineffective assistance**. It did not abuse its discretion in so concluding. *See* *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to establish **ineffective assistance** claimant must establish deficient performance and resulting prejudice). The court clearly identified the claims **Tina** raised and resolved them correctly in a thorough, well-reasoned minute entry. Because we do not reweigh the evidence presented at the hearing, and because the court identified and rejected **Tina's** claims "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling." *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶ 9 We therefore adopt the juvenile court's ruling on **Tina's** claims of **ineffective assistance** of counsel and affirm its order terminating her parental rights to W.R.

All Citations

Not Reported in P.3d, 2016 WL 4124245

Footnotes

[1] The Department of Child Safety is substituted for the Arizona Department of Economic Security (ADES) in this decision. *See* 2014 Ariz. Sess. Laws 2nd Spec. Sess., ch. 1, § 20. For simplicity, our references to DCS in this decision encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES.

2019 WL 6247896
Only the Westlaw citation is currently available.
THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f); Ariz. R. P. Juv. Ct. 103(G).
Court of Appeals of Arizona, Division 2.

THERESIA F., Appellant,
v.
DEPARTMENT OF CHILD SAFETY, L.G., and P.G., Appellees.

No. 2 CA-JV 2019-0088
|
Filed November 21, 2019

Appeal from the Superior Court in Gila County; No. S0400JD201800003; The Honorable Gary V. Scales, Judge; The Honorable Timothy M. Wright, Judge. **AFFIRMED**

Attorneys and Law Firms

Harriette P. Levitt, Tucson, Counsel for Appellant

Mark Brnovich, Arizona Attorney General, By Michelle R. Nimmo, Assistant Attorney General, Tucson, Counsel for Appellee Department of Child Safety

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

MEMORANDUM DECISION

BREARCLIFFE, Judge:

***1** ¶1 Appellant Theresia F. challenges the juvenile court's order of June 24, 2019, terminating her parental rights to two of her children, L.G. and P.G., on grounds of neglect, Theresia's chronic drug use, and her inability to remedy the circumstances causing the children to remain in a court-ordered, out-of-home placement for longer than nine months. *See* A.R.S. § 8-533(B)(2), (B)(3), (B)(8)(a). Theresia argues that she was denied the right to effective assistance of counsel, that the Department of Child Safety (DCS) failed to make reasonable efforts at reunification, and that the evidence was insufficient to establish that severance was in the children's best interests. Finding no error, we affirm.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008).

¶3 The children were removed from Theresia's home in January 2018 after law enforcement received a report that they had been "locked out of the house for hours." When officers arrived, the children were at a neighbor's house and reported Theresia and her boyfriend were fighting. When they went to the home, officers found marijuana and methamphetamine. DCS also received a report that L.G. had been "tied down and broccoli was being forced down his throat." L.G. also reported that Theresia's boyfriend had "punche[d] him."

¶4 Theresia had been involved in three previous dependency proceedings and has a history of drug use, domestic violence, and arrest. She was incarcerated out-of-state during the summer of 2018. The juvenile court ordered Theresia to complete a hair-follicle drug test, but she refused. Theresia "refuse[d] to work with most service providers" and was "combative and unwilling to cooperate" with DCS. The children were adjudicated dependent in May 2018. DCS also required ninety days of demonstrated sobriety before a psychological evaluation could be completed, allowing for further service referrals, but Theresia did not meet that requirement until March 2019, after DCS had filed a motion to terminate her parental rights.

¶5 A contested severance hearing was scheduled for June

6, 2019, with a second hearing date scheduled for a week later. In April, DCS filed a motion to suspend visitation based on Theresia's "hostile and aggressive" behavior with DCS and other personnel. This included an incident that led to the cancellation of a scheduled psychological evaluation. At a review hearing in May, Theresia was deemed voluntarily absent after she was "detained outside of the courthouse" due to a "disruption in the lobby." The juvenile court granted the motion to suspend visitation. It also granted Theresia's counsel's motion to withdraw and appointed new counsel.

***2** ¶6 Theresia thereafter moved to continue the severance hearing, and the juvenile court granted a one-week extension, continuing the matter to the second trial date that had originally been set. Theresia's newly appointed counsel also filed a motion to withdraw days before the hearing. The court denied the motion on the day of the severance hearing, but during the discussion of that and other matters at the start of the hearing, Theresia became disruptive and was removed from the courtroom and held in contempt. After the hearing, the court ordered Theresia's parental rights terminated.

¶7 On appeal, Theresia argues she was denied "the right to effective assistance of counsel." Assuming without deciding that **ineffective assistance** of counsel provides a basis for reversible error in a severance proceeding, the parent must show "that counsel's representation fell below prevailing professional norms." ***John M.*** *v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 320, ¶¶ 8, 17 (App. 2007) (citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and *In re Pima Cty. Severance Action No. S-2397*, 161 Ariz. 574, 578 (App. 1989)). Moreover:

> [N]o reversal of a termination order is justified by inadequacy of counsel unless, at a minimum, a parent can demonstrate that counsel's alleged errors were sufficient to "undermine confidence in the outcome" of the severance proceeding and give rise to a reasonable probability that, but for counsel's errors, the result would have been different.

Id. ¶ 18 (quoting *Strickland*, 466 U.S. at 695).

¶8 In this case, Theresia's primary argument that counsel was ineffective arises out of a one-week continuance granted after her trial counsel withdrew and new counsel was appointed. Theresia asserts that counsel "should not have been forced to proceed to trial" in such a short time and that, as a result of that short time, counsel did not "adequately address" her mental health issues and "behaviors." This argument, however, is not one of ineffective assistance of counsel, but rather a claim that the juvenile court improperly denied her motions for continuance and new counsel. But she has not supported any such argument with relevant law or explained how the court abused its discretion in denying the motions. *See* *In re Yavapai Cty. Juv. Action No. J-9365*, 157 Ariz. 497, 499 (App. 1988) (motion to continue "addressed to the sound discretion" of the juvenile court); *cf.* Ariz. R. P. Juv. Ct. 46(F) ("Any motion to continue shall be made in good faith and shall state with specificity the reasons for the continuance."); *State v. Lee*, 142 Ariz. 210, 220 (1984) (decision whether to permit counsel in criminal case to withdraw rests in trial court's discretion). We therefore decline to address this argument.

¶9 In a related argument, however, Theresia also argues counsel should have "ask[ed] for a recess in order to try to calm [her] down" and objected when she was ultimately removed from the courtroom. But Theresia has cited no authority to suggest counsel was ineffective because he "did not know how to adequately address" her "behaviors at the severance trial" or otherwise lacked the expertise to address her mental health issues. Nor has she established that counsel's failure to address that behavior in a way she deems adequate was a result of lack of "time to prepare the case." Indeed, as the state points out, "even the professional psychologist who had worked with [Theresia] multiple times" over the years required "the assistance of security personnel" during an incident at a scheduled psychological evaluation. In sum, on the record before us, we cannot say there is a reasonable probability that had counsel objected or otherwise attempted to intervene during Theresia's courtroom outbursts that the result of the proceeding would have been different. *See* *John M.*, 217 Ariz. 320, ¶ 18.

***3** ¶10 Theresia next contends DCS "failed to make reasonable efforts at reunification." She asserts that DCS acted improperly by "insist[ing] on a new psychological evaluation, preceded by proof of 90 days sobriety," and therefore denied her the "opportunity to get to see a doctor and get some medication." She argues there was no "legitimate basis" for DCS's requirement. But this requirement was not solely set by DCS—the psychologist also stated that an evaluation was not recommended until Theresia could "demonstrate 30-60 days of sustained sobriety." Thus, evidence before the juvenile court

supported DCS's requirement, and we cannot say the court abused its discretion in determining reasonable reunification efforts had been made. *See Denise R.*, 221 Ariz. 92, ¶ 10.

¶11 Furthermore, we have never required DCS to undertake measures that are futile. *See, e.g.*, *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 25 (App. 2011) (affirming termination even though DCS did not request a hearing to determine if services were futile); *In re Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994) (the department "fulfilled its statutory mandate" to make diligent efforts to provide reunification services, despite the parent's failure or refusal to participate in the programs or services offered).[1] The record before us supports the court's conclusion that the services provided were reasonable in view of Theresia's behavior. Theresia rejected parent aid services, did not participate in behavioral health services or drug testing, was incarcerated in another state for several months, and would not "cooperate with Visitation Guidelines."

¶12 Finally, Theresia asserts "[t]ermination was not in the best interests of the children." "[T]ermination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 13 (2018). In this case, the case manager testified the children were adoptable and would benefit from "permanency and a calm stable home." The children's guardian ad litem also noted the certainty of continued trauma and "potential danger" if they were returned to Theresia and supported severance because it would give them "the opportunity to heal and have permanency." Theresia's argument on this point amounts to a request for us to reweigh the evidence as to the children's interests; we will not do so. *See* *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶13 We affirm the juvenile court's order terminating Theresia's parental rights.

All Citations

Not Reported in Pac. Rptr., 2019 WL 6247896

Footnotes

[1] DCS argues "[t]he juvenile court was not required to find that DCS made reasonable and diligent efforts before finding that mother neglected a child." But we need not resolve this legal issue, because we conclude the court properly determined, before it terminated Theresia's parental rights, that DCS's efforts had been sufficient.

Rule 27. Subpoenas

(a) Generally. The clerk or prosecutor may issue subpoenas to compel the attendance of witnesses. The subpoena must advise the witness of the location, date, and time of the hearing and that failure to appear will result in sanctions being entered against the witness, which may include being held in contempt. The subpoena must state that "requests for reasonable accommodation for persons with disabilities must be made to the court ~~by parties~~ at least 3 working days in advance of a scheduled court proceeding." The subpoena must advise a witness with limited English proficiency, in English and in Spanish, to request an interpreter from the court at least 10 working days in advance of the hearing.

(b) Service. Any person may serve a subpoena to compel the attendance of a witness at a delinquency proceeding. The witness must be personally served. If the court finds that it is impracticable to personally serve a witness, it may approve service by certified mail, restricted delivery, return receipt requested. The returned receipt or an affidavit of service is evidence of service.

(c) Contempt. Unless there is good cause for the non-appearance, if a person failed to appear in court after being served with a subpoena, the court may set a hearing on an order to show cause why the person should not be held in contempt and sanctioned. The order to show cause must be personally served as required under section (b).

Rule 27. Subpoenas

(a) ~~Subpoenas~~Generally. ~~Subpoenas~~ The clerk or prosecutor may issue subpoenas ~~and other process [**Staff Note**: What is the "other process?"]~~ to compel the attendance of witnesses ~~may be issued by the clerk or the prosecutor~~. The subpoena must advise the ~~named person~~ witness of the location, date, and time of the hearing and that failure to appear will result in sanctions being entered against the ~~person~~witness, which may include being held in contempt. The subpoena must state that "requests for reasonable accommodation for persons with disabilities must be made to the court ~~by parties~~ at least 3 working days in advance of a scheduled court proceeding." The subpoena must advise a witness with limited English proficiency, in English and in Spanish, to request an interpreter from the court at least 10 working days in advance of the hearing.

(b) Service. Any person may serve a subpoena to compel the attendance of a witness at a~~ny [**Staff Note:** Is this applicable to dependency hearings? If not, the next word should be "delinquency"]~~ delinquency ~~hearing~~ proceeding~~involving a juvenile~~. The witness must be personally served. If the court finds that it is impracticable to personally serve a witness, it may approve service by certified mail, restricted delivery, return receipt requested. ~~[**Staff Note:** See prior staff note in Rule 26 regarding service by registered mail.] Return of the~~ The returned receipt or an affidavit of service is evidence of service.

(c) Contempt. Unless there is good cause for the non-appearance, if a person failed to appear in court after being served with a subpoena, the court may set a hearing on an order to show cause why the person should not be held in contempt and sanctioned. The order to show cause must be personally served as required under section (~~B~~b). ~~[**Staff Note:** Shouldn't the rule specify that a witness who failed to appear be personally served with the order, and not served by mail? The parties could be served by mail or another simple manner.]~~

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

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

(b) Attorney's Duties.

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

(2) ~~***Filed Documents.*** A person who files a document must provide a copy of the document to the assigned judge, the parties through their attorney of record, and any self-represented parties.~~ [**Workgroup Note:** Delete this subpart in Part III, and request WG-1 to add to Rule 7 an analog to Civil Rule 5(c).]

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

(A) A dependency action is dismissed and the time for filing a notice of appeal has expired.

(B) The court enters an order terminating representation and, if applicable, any time for filing a notice of appeal has expired.

(C) Another attorney is substituted as attorney of record for a party.

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

(c) Withdrawal. An attorney of record may withdraw only by court order. The attorney's written or oral motion must be supported by the reasons for the requested withdrawal. A written motion must list the future hearing dates.

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

(2) ***No Client Consent: Oral Motion***. If a motion does not include the client's consent, and with permission of the court, the attorney may orally move to

withdraw. The attorney must provide the court with the reasons for the withdrawal and the client's last known address, which the court will endorse on the minute entry.

(3) ***No Client Consent: Written Motion.*** If the attorney does not move to withdraw under subparts (1) or (2), the attorney must move to withdraw in writing and serve the client with the motion, unless the client's location is unknown. The attorney also must provide a copy of the motion to the other parties' attorneys. The motion must include the attorney's certification that (A) the client has been notified in writing of the status of the case including dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions, or (B) the client cannot be located or for other reasons cannot be notified of the motion and the status of the case. A proposed order must accompany the motion.

(4) ***Attorney for a Child.*** An attorney representing a child may withdraw or substitute only by court order.

(d) Attorney Substitution.

(1) ***Generally.*** Except as provided in subpart (2), an attorney may substitute as attorney of record in a pending action only by court order. The attorney must submit a written motion which contains the client's written consent and a proposed order. The motion and proposed order may be presented to the court *ex parte.* The substituting attorney must promptly provide the signed order to the other parties' attorneys.

(2) ***Within the Same Firm or Office.*** If there is a change of attorney within the same law firm or governmental office, a notice of substitution must be filed. The notice must state the names of the attorneys who are the subjects of the substitution.

(e) Withdrawal or Substitution of Counsel When Matter Set for Trial. The court may not permit an attorney to withdraw or substitute after a matter has been set for trial, unless the motion provides:

(1) ***From a new or substituting attorney:*** the name and address of the attorney and a signed statement from that attorney acknowledging the trial date and avowing that the attorney will be prepared for trial;

(2) ***From a Self-Represented Party:*** when a client wishes to represent themself and the attorney is withdrawing, the client must put into writing or state on the record that the client has been advised of the trial date and has made suitable arrangements for self-representation and will be prepared for trial.

(3) Ethical ground for withdrawing, or

(4) good cause for the attorney's withdrawal.

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

(g) Responsibility to the Court.

(1) ***Attorneys and Self-Represented Litigants.*** Each attorney of record, guardian ad litem. and self-represented litigant is responsible for staying informed of the status of, and the deadlines in, pending actions in which that attorney or self-representative litigant has appeared.

(2) ***Attorneys.*** If an attorney changes his or her office or email address or telephone number, the attorney must notify the clerk in each of the counties in which that attorney has pending actions of the attorney's current office and email addresses and telephone number and must file a notice in each case in which the attorney has appeared containing that information.

(3) ***Self-Represented Litigants.*** Self-represented litigants must file a notice containing their mailing address, phone number, and any e-mail address, and provide copies of the notice to the other parties' attorneys. It is the responsibility of a self-represented litigant to file an updated notice of any change in contact information within 7 days of the change, and to promptly provide a copy of the updated notice to the parties' attorneys.

Rule 39 Attorney Appearance, Substitution and Withdrawal Duties of Attorney Counsel and Parties

(a) Attorney of Record; Withdrawal and Substitution of Attorney Counsel.

(1) *Attorney of Record; Duties of Attorney Counsl*.

(A) Appearance Required. An attorney may appear as attorney of record by oral appearance or by filing a document including a notice of appearance, a motion to intervene, or stipulation for of substitution of attorneythat identifies the attorney as the attorney of record for a party. No attorney may file anything in any action or act on behalf of a party in open court without appearing as attorney of record.

(B) Duties. Once an attorney has appeared as an attorney of record in an action, the attorney will be deemed responsible as the party's attorney of record in all matters involving the action until the action ends or the attorney withdraws as the party's attorney, is relieved by order of the court, or is substituted as the party's attorney by another attorney.

(2) *Withdrawal.*

(A) Application to Withdraw. An application to withdraw as attorney of record for a party must be in writing or made on the record in court, state the reasons for the withdrawal. Additionally:

(i) If the application bears the client's written approval, it must be accompanied by a proposed written order and may be presented to the court ex parte. The withdrawing attorney must give prompt notice of the entry of such order to all other parties.

(ii) If the written application does not bear the client's written approval, it must be made by motion and must be served on the client and all other parties. The motion must be accompanied by a certificate of the moving attorney that includes the client's last known contact address and phone number, and that the client has been notified in writing of the status of the action (including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions), or that the client cannot be located or cannot be notified of the motion's pendency and the case status.

(iii) If the application is made in open court, the attorney must provide the court with an order for withdrawal containing the party's last known address and phone number.

(B) Withdrawal After Trial Setting. No attorney will be permitted to withdraw as attorney of record after a trial date is set, unless:

(i) the application includes the signed statement of a new attorney stating that the attorney is aware of the trial date and will be prepared for trial, or the client's signed statement stating that the client is aware of the trial date and has made suitable arrangements to be prepared for trial; or

(ii) the attorney seeking withdrawal shows good cause for allowing the attorney to withdraw even though the action has been set for trial.

(C) Change of Attorney Counsel Within the Same Firm or Office. If there is a change of counsel attorney within the same law firm or governmental law office, an a notice of substitution shall be filed. or association is not required. Instead, the new attorney must file a notice of substitution or association. The notice must state the names of the attorneys who are the subjects of the substitution or association. and the current address and email address of the attorney substituting or associating.

(D D) Within seven days of withdrawal or a substitution, other than within the same firm or office, the former attorney shall transfer the file and all disclosure to the new lawyer or to the client, if self-represented, and include the client's contact information.

(F) Self-represented litigants are required to file with the clerk of the court, and provide a copy to all attorneys, their mailing address, phone number and e-mail. It is the litigant's responsibility to file an updated notice with the clerk of the court for any new contact information within seven days of the change.

(b) Responsibility to Court. Each attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared. If an attorney changes his or her office address, the attorney must notify the clerk and court administrator, in each of the counties in which that attorney has actions that are pending, of the attorney's current office address and telephone number. Moved to Rule 40.1 and 40.2

(c) Limited Scope Representation.

(1) *Scope*. In accordance with ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake a limited scope representation of a person involved in any court proceeding, including vulnerable adult exploitation actions.

(2) *Notice*. An attorney undertaking a limited scope representation may appear by filing and serving a Notice of Limited Scope Representation in a form substantially as prescribed in Rule 84, Form 8.

(3) *Service*. Service on an attorney who has undertaken a limited scope representation on behalf of a party will constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but will not extend the attorney's responsibility for

representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.

(4) *Withdrawal*. Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(A) With Consent. If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating:

(i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and

(ii) the last known address and telephone number of the party who will no longer be represented.

The attorney must serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's withdrawal from the action will be effective upon the filing and service of the Notice of Withdrawal with Consent.

(B) Without Consent. If the client does not sign a Notice of Withdrawal with Consent, the attorney must file a motion to withdraw, which must be served on the client and all other parties, along with a proposed order.

(i) If no objection is filed within 10 days after the motion is served on the client, the court must sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney must serve a copy of the order on the client. The withdrawing attorney also must promptly serve a written notice of the entry of such order, together with the client's name, last known address, and telephone number, on all other parties.

(ii) If an objection is filed within 10 days after the motion is served, the court must conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

(d) Notice of Settlement. It is the duty of an attorney of record, or any party if unrepresented by counsel, to give prompt notice to the assigned judge or commissioner, the clerk, and court administrator of the settlement of any action or matter set for trial, hearing, or argument. If prompt notice is not afforded, the court may impose sanctions on the attorneys of record or the parties to ensure future compliance with this rule. Jury fees may be taxed as costs as provided in statute and local rule.

Rule 39. Attorney Appearance, Substitution and Withdrawal

(1) Attorney of Record; Duties of Counsel

(a) Appearance. An attorney may appear as attorney of record by oral appearance of by filing a document including a notice of appearance, a motion to intervene enter an initial appearance either by appearing personally or telephonically [WG Note: cross-reference Rule 42] before the court and advising the court that the attorney is representing a party, or by filing a written notice of appearance and providing a copy to the assigned judge and all other parties.

(a) Representation of Parties. An attorney must represent a party until: 10/25 STOP HERE [Nov. 22: JUDGES QUIGLEY AND YOUNG WILL REVISE (b) AND (c).]

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

(2) the appellate court issues a mandate, if counsel was ordered to represent the party on appeal; or

(3) the court orders the termination of representation.

(b) Withdrawal and Substitution. An attorney may withdraw or be substituted as attorney of record in a pending action only by written court order. The attorney's written or oral application must be supported by the reasons for the withdrawal or substitution and must include the name, residence, and telephone number of the client, as follows:

(1) If an application includes the client's written approval, it must be accompanied by a proposed written order and it may be presented to the court *ex parte*. The withdrawing attorney must promptly give other parties [or their attorneys] [**Staff Note:** Should there be a rule that a represented party is served with court filings through their attorney? Such a rule should also say that whenever a party files a document, it must serve copies on the other parties. This proposed rule could eliminate redundant provisions that the filer must serve the filing on the other parties.] notice of the entry of the order, together with the client's name and residence.

(2) If an application does not include the client's written approval, it must be made by motion and served upon the client and all other parties [or their attorneys]. The motion must include the attorney's certification that (i) the client has been notified in writing of the status of the case including dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and

~~the possibility of sanctions, or (ii) the client cannot be located or for other reasons cannot be notified of the motion and the status of the case.~~

~~(3) An attorney may not withdraw after an action has been set for trial, unless the application includes either (i) the signature of a substituting attorney stating that the substituting attorney is advised of the trial date and will be prepared for trial or (ii) the signature of the client stating that the client is advised of the trial date and has made suitable arrangements to be prepared for trial. Otherwise, if the case has been set for trial, an attorney may withdraw only if the court is satisfied that good cause exists for the attorney's withdrawal. [**Staff Note:** This language is slightly different, but no substantive change was intended. Also consider adding a provision that corresponds to Criminal Rule 6.3(c)(2), which provides that the attorney need not provide this information if there are ethical grounds for withdrawing.]~~

~~(4) The provisions in paragraph C do not apply to attorneys who have been appointed counsel for a child or as a guardian *ad litem* for a child. [**Staff Note:** If the provisions in subpart C do not apply in those circumstances, what provisions do?]~~

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

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

Applicability. As used in this rule, the term "attorney" includes a guardian ad litem.

(a)

~~**(1) Attorney of Record; Duties of**~~ **Attorney's Duties** ~~**or Self-Represented Party**~~ **.**

(b)

~~**(a)**~~ ***Appearance.*** An attorney may appear as attorney of record by filing ~~a document including~~ a notice of appearance, a petition, or a motion to intervene.

An attorney may also enter an initial appearance either by appearing personally or telephonically ~~before the court to~~and ~~advise~~ advising the court that the attorney is representing a party.~~. [WG Note: cross-reference Rule 42]~~

~~**Acting without Appearance.** No~~ An attorney may not file ~~anything~~ a document in any action or act on behalf of a party ~~in open court~~ without appearing first as attorney of record.

~~**(b)**~~**(1)**

~~(c)~~**(2)** ***Filed Documents.*** ~~A copy~~A person who files a document must provide a ~~copy~~ of ~~all filed~~the ~~document~~s ~~must be provided~~ to the assigned judge~~,~~ ~~and~~ the parties through their attorney of record~~, and any self-represented parties~~. [**Workgroup Note:** Delete this subpart in Part III, and request WG-1 to add to Rule 7 an analog to Civil Rule 5(c).]

~~**(d)**~~**(3)** ***Representation~~ ~~*of Parties*~~*.* ~~Once~~ After an attorney has appeared ~~as an attorney~~ of record in any action ~~in an action~~, the attorney will be ~~deemed~~ responsible ~~as the party's attorney of record in~~for all matters involving the action until:

~~**a.**~~**(A)** ~~The~~ A dependency action is dismissed and the time for filing a notice of appeal has expired.

~~**b.**~~**(B)** The court enters an order ~~s the~~ termination~~on~~ng ~~of~~ representation and, if applicable, any time for filing a notice of appeal has expired.

~~**c.**~~**(C)** Another attorney is substituted ~~in~~ as attorney of record for a party.

~~**d.** The issuance of an appellate mandate~~ ~~I~~if an attorney ~~was ordered to~~ represent~~ed~~ ~~the~~ party on appeal~~.~~, the issuance of an appellate mandate

(D) .

~~(2)~~**(c)** **Withdrawal.** ~~-~~ ~~-~~An attorney of record may withdraw ~~as attorney of record in a pending action~~ only by court order. The attorney's written or oral motion must be supported by the reasons for the requested withdrawal. A written motion must list the future hearing dates ~~and:~~ .

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

present and consents to a withdrawal, the court may rule on the ~~application~~ motion at that time.

(1)

No Client Consent: Oral Motion. If a motion does not include the client's ~~written~~ consent, and with permission of the court, the attorney may orally move to withdraw. The attorney must provide the court with the reasons for the withdrawal and the client's last known address, which the court will endorse on the minute entry.

(2)

(3) ***No Client Consent: Written Motion.*** If the attorney does not move to withdraw under subparts (1) or (2), ~~it must~~the attorney must move to withdraw in writing and serve the client with ~~be served upon the client~~ the motion, unless the client's ~~whereabouts are~~location is unknown. The attorney~~, and~~ also must provide a copy of the motion ~~provided~~ to ~~all~~ the other parties' attorneys. The motion must include the attorney's certification that (~~i~~A) the client has been notified in writing of the status of the case including dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions, or (~~ii~~B) the client cannot be located or for other reasons cannot be notified of the motion and the status of the case. ~~If the motion is not on the record, a~~A proposed order must accompany the motion.

~~(b)~~ ***Attorney for a Child.***

~~(d)~~

~~(c) Subsections (a) and (b) do not apply to attorneys who have been appointed counsel or as a guardian ad litem for a child.~~An attorney representing a child may withdraw or substitute only by court order.

(4)

~~(3)~~ **Attorney Substitution.**

(d)

~~(a)~~ ***Generally.*** Except as provided in subpart (2), ~~A~~an attorney may substitute ~~in~~ as attorney of record in a pending action only by court order ~~unless except when the change of attorney is within the same firm or office~~. The attorney must submit a written motion which contains the client's written consent and a proposed order. ~~The written motion must contain the client's written consent and~~ The motion and proposed order may be presented to the court *ex parte*. ~~with a proposed order.~~

The substituting attorney must promptly provide the signed order to the other parties' attorneys.

(1)

~~(b)~~ ***Within the Same Firm or Office.*** If there is a change of attorney within the same law firm or governmental office, a notice of substitution must be filed. The notice must state the names of the attorneys who are the subjects of the substitution.

(2)

~~(a) (4)~~ **Withdrawal or Substitution of Counsel When Matter Set for Trial**. The court may not permit an attorney to withdraw or substitute ~~in~~ after a matter has been set for trial, unless the motion provides:

(e)

(1) ***From a new or substituting attorney:*** the name and address of the attorney and a signed statement from that attorney acknowledging the trial date and avowing that the attorney will be prepared for trial;

(2) ***From a Self-Represented Party:*** when a client wishes to represent themself and the attorney is withdrawing, the client must put into writing or state on the record that the client has been advised of the trial date and has made suitable arrangements for self-representation and will be prepared for trial.

(3) Ethical ground for withdrawing, or

(4) good cause for the attorney's withdrawal.

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

(g) Responsibility to the ~~e~~Court.

~~(1)~~ ***Attorneys and Self-Represented Litigants.*** Each attorney of record, guardian ad litem. and self-represented litigant is responsible for staying informed of the status of, and the deadlines in, pending actions in which that attorney or self-representative litigant has appeared.

(1)

~~(2)~~ ***Attorneys.*** If an attorney changes his or her office or email address or telephone number, the attorney must notify the clerk in each of the counties in which that attorney has pending actions of the attorney's current office and email addresses and telephone number and must file a notice in each case in which the attorney has appeared containing that information. ~~***From a new or substituting attorney:*** the name and address of the new attorney and a signed statement from the new or substitutingthat attorney that acknowledgesing the trial date(s) and avowing s that the new attorney will be prepared for trial; or~~

(2)

Self-Represented Litigants. Self-represented litigants must file a notice containing their mailing address, phone number, and any e-mail address, and provide copies of the notice to the other parties' attorneys. It is the responsibility of a self-represented litigant to file an updated notice of any change in contact information within 7 days of the change, and to promptly provide a copy of the updated notice to the parties' attorneys.

~~(a) ***From a self-represented party:*** when a client wishes to representto represent themself and themselves and the attorney is withdrawing, the client must put in writing or state on the record that the client has been advised of the trial date and has made suitable arrangements for self-representation and will be prepared for trial; or~~

~~(b) ***Ethical grounds:*** ethical grounds for withdrawing; or~~

~~**(c)**~~

~~(c) ***an attorney may withdraw only if the court is satisfied that******Good cause:*** good cause exists for the attorney's withdrawal. [**Staff Note:** Added a provision that corresponds to Criminal Rule 6.3(c)(2), which provides that the attorney need not provide this information if there are ethical grounds for withdrawing.]~~

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

(5) Responsibility to the Court.

Attorneys and Self-Represented Litigants. Each attorney of record, guardian ad litem, and self-represented litigant is responsible for staying informed of the status of, and the deadlines in, pending actions in which that attorney or self-representative litigant has appeared. I

Attorneys. If an attorney changes his or her office or email address or telephone number, the attorney must notify the clerk and the court administrator, in each of the counties in which that attorney has pending actions that are pendingof the attorney's current office and email addresses and telephone number, and must file a notice in each case in which the attorney has appeared containing that information, of the attorney's current office address and telephone number.

Self-Represented Litigants. SelfSelf-represented litigantss must file with the clerk of the court, and provide a copy to the parties' attorneys, a notice containing their mailing address, phone number, and any e-mail address, and provide copies of the notice to the other parties' attorneys.. It is the responsibility of a self-represented litigant to file an updated notice of any change in contact information within 7 days of the change, with the clerk of the court and to promptly provide a copy of the updated notice to the parties' attorneys when any contact information changes, within seven days of the change.

(6) Duty of Attorney After Withdrawal or Substitution. Within seven days of withdrawal or a substitution, other than within the same firm or office, the former attorney shall transfer the file and all disclosure to the new lawyer or to the client, if self-represented, and include the client's the most current contact information.

(3)

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

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

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

(c) Explain the Role. An attorney must explain to a parent the attorney's role and the ethical obligations associated with that role.

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

(e) Participate in the Proceeding. The attorney must, as appropriate, participate in discovery, file pleadings, subpoena witnesses, provide the parent with disclosure and court documents, and develop the parent's position for each hearing. The attorney must advocate for appropriate services for the parent and explain to the parent the procedural and substantive status of the case. The attorney must notify the court when an interpreter is needed. Except for the preliminary protective hearing, if a parent is incarcerated, the attorney must ensure that the proper notice or motion is filed to enable the parent to participate in the hearing.

(f) Possess General Knowledge. An attorney must be familiar with the child and public welfare systems, community-based organizations serving parents, and how to obtain services. Examples of such services are behavioral health, substance abuse treatment, domestic violence services, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, and permanency services.

~~COMMENT TO THE 2022 AMENDMENTS~~

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

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

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

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

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

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

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

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

~~parent or guardian ad litem's~~ position for each hearing. The attorney must advocate for appropriate services for the parent ~~or guardian~~ and explain to the parent the procedural and substantive status of the case. The attorney must notify the court when an interpreter is needed. Except for the preliminary protective hearing, ~~I~~if a parent is incarcerated, the attorney must ensure that the proper notice or motion is filed to enable the parent ~~or guardian~~ to participate in the hearing. ~~[The guardian ad litem shall must advocate for the best interests of the parent or guardian.]~~

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

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

~~(g)~~ **(f) Possess General Knowledge.** An attorney must be familiar with the child and public welfare systems, community-based organizations serving parents, and how to obtain services. Examples of such services are behavioral health, substance abuse treatment, domestic violence services, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, and permanency services.

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

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

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

~~***Later Training.*** An attorney and guardian ad litem must complete an additional 2 hours of court-approved training within the first year of practice in juvenile court. Each year thereafter, an attorney they must complete at least 8 hours of education and training specifically on juvenile law and related topics, such as child welfare policy and procedures, substance abuse and addiction, mental illness and treatment options,~~

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

(3)

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

COMMENT TO THE 2022 AMENDMENTS

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

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

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

~~(4)~~

Rule 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 Part III of these rules, and who is or will be subject to the requirements of Rule 40.1, Rule 40.2, or Rule 40.3.

(b) Generally. An attorney and 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 juvenile court presiding judge 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 (subsequent?) year, an attorney or guardian ad litem must complete at least 8 hours of continuing education on the relevant state and federal juvenile laws described in section (b). This continuing education may [should?] include topics such as ICWA, child welfare policy, child and adolescent development (including infant/toddler mental health), bonding and attachment, behavioral health services, effects of parental incarceration, educational opportunities and challenges, parent and child immigration issues, the need for timely permanency, the impact of out of home placements, the traumatic effects of domestic violence, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, the effects of trauma and trauma-informed practices, cultural awareness, issues surrounding families involved in the dependency process, and other related topics and issues concerning abused or neglected children.

(e) Affidavit of Completion.

(1) ***Initial Training.*** An attorney or guardian ad litem must provide to the presiding juvenile judge or the judge's designee an affidavit of completion of the initial 6-hour court-approved training requirement before appointment as an attorney or guardian ad litem, unless the juvenile court presiding judge in which the appointment is made waives this requirement.

(2) ***Later training.*** Concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or guardian ad litem must provide an affidavit of completion to 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 contain a list of courses, including the dates and number of hours for each course, and the name of the training provider.

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

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

(a)

(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 juvenile court presiding judge 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 (subsequent?) year, an attorney or guardian ad litem must complete at least 8 hours of continuing education on the relevant state and federal juvenile laws described in section (b). This continuing education may [should?] include topics such as ICWA, child welfare policy, child and adolescent development (including infant/toddler mental health), bonding and attachment, behavioral health services, effects of parental incarceration, educational opportunities and challenges, parent and child immigration issues, the need for timely permanency, the impact of out of home placements, the traumatic effects of domestic violence, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, the effects of trauma and trauma-informed practices, cultural awareness, issues surrounding families involved in the dependency process, and other related topics and issues concerning abused or neglected children.

(e) Affidavit of Completion.

(1) ***Initial Training.*** An attorney or guardian ad litem must provide to the presiding juvenile judge or the judge's designee an affidavit of completion of the initial 6-hour court-approved training requirement before appointment as an attorney or guardian ad litem, unless the juvenile court presiding judge ~~of the juvenile court~~ in which the appointment is made waives this requirement.

Later training. Concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or guardian ad litem must provide an affidavit of completion to 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 contain a list of courses, including the dates and number of hours for each course, and the name of the training provider.

~~**(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:~~

~~***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 impact of out of home placements, the traumatic effects of parental domestic violence on a child, and other issues concerning abuse or neglect of children.~~

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, ICWA, 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. .

(d) Later Training. Each (subsequent?) year, an attorney or guardian ad litem must complete at least 8 hours of continuing education and training on the relevant state and federal juvenile laws described in section (b). including ICWA, rules, regulations, child welfare policy, and related topics. This continuing education and training must be on juvenile law and may [should?] include related topics such as ICWA, child welfare policy, child and adolescent development (including infant/toddler mental health), bonding and attachment, behavioral health services, effects of parental incarceration, educational opportunities and challenges, parent and child immigration issues, the need for timely permanency, the impact of out of home placements, the traumatic effects of domestic violence, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, the effects of trauma and trauma- informed practices, cultural awareness, issues surrounding families

~~involved in the dependency process, and other related topics and issues concerning abused or neglected children.~~

~~(c)~~

~~(a) Affidavit of Completion.~~

~~*(1) Initial Training.* An attorney or guardian ad litem must provide to the presiding juvenile judge or the judge's designee 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 provide an affidavit of completion to 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~~ contain a list of courses, including the dates and number of hours for each course, and the name of the training provider.

(2)

Statutes we found related to disclosure/confidentiality:

H2038 – proposed to amend 8-807 to permit a parent to authorize the disclosure of any DCS information regarding that parent.
8-807 and 8-807.01 – DCS responsibilities for disclosure/confidentiality – information re: death/near death of a child is placed on DCS's public website
8-502 – Confidentiality for Foster Parents (Class 2 Misd for violation)
8-525 – Statute upon which current rule 41 is based
8-526 – DCS reporting requirements for aggregate data
8-530- Foster parents, rights maintain confidentiality re: issues that arise in the foster home and to have placement information kept confidential when necessary to protect foster family
8-541 - Records Disclosure – subject to 8-807 and 8-807.01
8-542 Confidentiality – to disclose, receive or permit use records without authority is class 2 misd
~~8-453(A)(8) (DCS may exchange information with DES)~~
~~8-804 (Central Registry- but not about hearing)~~

Notes:

Beth was involved in the drafting of 8-525. Per Beth, the rule was never intended to apply to everyone in the courtroom – only the public. I think that courts have taken this beyond the public and applied it to parties and participants. When you look at our draft, re-read 8-525 with the history Beth provides, and see if you agree with our drafting.

Rule 41. Public Attendance at Hearings; Considerations and Limitations

(a) Definitions.

(1) "Public" includes anyone who is not a party, a participant as defined in Rule 37, an attorney, or a CASA.

(2) "Personal identifiable information" includes a person's name, address, date of birth, social security number, tribal enrollment number, telephone number, driver license number, places of employment, school or military affiliation, or any other distinguishing characteristic that tends to identify a specific party or participant involved in the case.

(b) Open Hearings. As required by A.R.S. § 8-525, court proceedings concerning dependent children, permanent guardianships of children, and termination of parental rights are open to the public. This includes court proceedings concerning child abuse,

abandonment, or neglect that resulted in a fatality or near fatality subject to the requirements of the factors in section (c).

(c) Closed Hearings. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must ask the parties if there are any reasons the proceeding should be closed. In deciding whether to close a proceeding, the court must consider:

(1) Whether doing so is in the child's best interests.

(2) Whether an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.

(3) The privacy rights of the child, the child's siblings, parents, guardians, and caregivers, and any other person whose privacy rights need protection.

(4) Whether all the parties have agreed that the proceeding should be open.

(5) The wishes of a child at least 12 years of age who is a party to the proceeding.

(6) Whether an open proceeding could cause specific material harm to a criminal investigation.

(d) Subsequent Proceedings. For good cause, the court may order any subsequent open proceeding closed to the public after consideration of the factors above.

(e) Request to Reopen. If the court has closed a proceeding, a person may request the court to reopen the proceeding or a specific hearing to the public. The court must consider the factors above. (Do we need to give guidance for how "a person" may request a closed hearing to be opened to the public?)

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

(1) Is essential to protect the privacy, well-being or safety interests described in section (c).

(2) Protects the identity and safety of a person who reports child abuse or neglect, and to protect any other person, if the court believes that disclosure of the DCS information would likely endanger the person's safety.

(3) Is confidential by law, which the court must maintain according to applicable law.

(g) Admonition at Public Hearings.

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

(2) ***Exceptions.*** Persons employed by the court, attorneys, school personnel, medical personnel, or person providing, or a participant in a court hearing are not prohibited from performing their duties or sharing personally identifiable information within the normal course of their employment or position. (Beth recommended language like this – similar to that in 8-541 and 8-542 - to clarify that these individuals while "within the definition of public" often are in the hearings but have a legitimate need to share information re: the case in the normal course of their employment? We toyed with language.)

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

Should we include an end date for this rule? (upon closure of case, etc. or does this rule apply in perpetuity?)

Rule 41.1. Child's Rights

(a) Generally. A child who is the subject of a dependency petition has the rights to attend court hearings and to speak to the judge.

(b) First Hearing. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of this right and whether the child understands this right as required by Rule 40.1(b).

(c) Later Hearings. At every hearing thereafter, if the child is not present, the court must inquire whether the child requested to attend the hearing.

Rule 41.2. Participants' Rights

(a) Right to Notice. If DCS is a party, it must provide notice of the date, time, and location of all proceedings that will be held concerning the child to:

(1) participants, or

(2) any relative who has been identified as a possible placement for a child who is in out of home care and under the responsibility of DCS.

(b) Right to be Heard. Participants have a right to be heard in any court proceeding regarding a child.

(c) Status. Although participants have the right to notice and the right to be heard, they do not have the status of parties.

(d) Duties. Participants with whom a child is placed by DCS have a continuing duty to provide DCS with a current and correct mailing address, including any address protected by court order. (Question: Do we need this based on 8-847(B)? – the court is required to give notice. Or, is this working, and we do not need to touch? What about this notice in Private cases?)

(e) Review Hearings. Rule 41.2 does not limit the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.

(f) Limiting a Participant. The court may limit the presence of a participant with whom a child is not placed to the time the participant is heard or testifies, if

(1) it is in the best interest of the child; or

(2) it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

SUGGESTION FOR RULE 37: Consider adding to definition of "Participant" pre-adoptive parents (i.e. sometimes child has not been placed in their care yet – transition, out of state, etc. pre-adoptive parent is referred to in the original Rule 41for notice and right to be heard.) If you do not agree, we need to add pre-adoptive parent up above under notice for right to be present.

Statutes we found related to disclosure/confidentiality:

H2038 – proposed to amend 8-807 to permit a parent to authorize the disclosure of any DCS information regarding that parent.
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Beth was involved in the drafting of 8-525. Per Beth, the rule was never intended to apply to everyone in the courtroom – only the public. I think that courts have taken this beyond the public and applied it to parties and participants. When you look at our draft, re-read 8-525 with the history Beth provides, and see if you agree with our drafting.

Rule 41. Public Attendance at Hearings; Considerations and Limitations

~~(a)~~ **Definitions.**

(a)

(1) "Public" includes anyone who is not a party, a participant as defined in Rule 37, an attorney, or a CASA.

(2) "Personal identifiable information" includes a person's name, address, date of birth, social security number, tribal enrollment number, telephone number, driver license number, places of employment, school or military affiliation, or any other distinguishing characteristic that tends to identify a specific party or participant involved in the case.

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

(c) Closed Hearings. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must ask the parties if there are any reasons the proceeding should be closed. In deciding whether to close a proceeding, the court must consider:

(1) Whether doing so is in the child's best interests.

(2) Whether an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.

(3) The privacy rights of the child, the child's siblings, parents, guardians, and caregivers, and any other person whose privacy rights need protection.

(4) Whether all the parties have agreed that the proceeding should be open.

(5) The wishes of a child at least 12 years of age who is a party to the proceeding.

(6) Whether an open proceeding could cause specific material harm to a criminal investigation.

(d) Subsequent Proceedings. For good cause, the court may order any subsequent open proceeding closed to the public after consideration of the factors above.

(e) Request to Reopen. If the court has closed a proceeding, a person may request the court to reopen the proceeding or a specific hearing to the public. The court must consider the factors above. (Do we need to give guidance for how "a person" may request a closed hearing to be opened to the public?)

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

(1) Is essential to protect the privacy, well-being or safety interests described in section (c).

(2) Protects the identity and safety of a person who reports child abuse or neglect, and to protect any other person, if the court believes that disclosure of the DCS information would likely endanger the person's safety.

(3) Is confidential by law, which the court must maintain according to applicable law.

(g) Admonition at Public Hearings.

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

(2) ***Exceptions.*** Persons employed by the court, attorneys, school personnel, medical personnel, or person providing, or a participant in a court hearing are not prohibited from performing their duties or sharing personally identifiable information within the normal course of their employment or position. (Beth recommended language like this – similar to that in 8-541 and 8-542 - to clarify that these individuals while "within the definition of public" often are in the hearings but have a legitimate need to share information re: the case in the normal course of their employment? We toyed with language.)

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

~~(1) "Public". The public isincludes anyone who is not a party, a participant as defined in Rule 37, an attorney, or a CASA.~~

~~1.~~

~~2. (2) "Personal identifiable information". Iincludes a person's name, address, date of birth, social security number, tribal enrollment number, telephone number, driver license number, places of employment, school or military affiliation, or any other distinguishing characteristic that tends to identify a specific party or participant involved in the case~~

~~**Open Hearings.** As required by A.R.S. § 8-525, court proceedings concerning dependent children, permanent guardianships of children, and termination of parental rights are open to the public. This includes court proceedings concerning child abuse, abandonment, or neglect that~~

resulted in a fatality or near fatality subject to the requirements of the factors belowin section (c). need new section #

Persons employed by the court, attorneys, school personnel, medical personnel, or person providing, or a participant in a court hearing are not prohibited from performing their duties or sharing personally identifiable information within the normal course of their employment or position. (Beth recommended language like this – similar to that in 8-541 and 8-542 - to clarify that these individuals while "within the definition of public" often are in the hearings but have a legitimate need to share information re: the case in the normal course of their employment? We toyed with language.)

Closed Hearings.

Inquiry. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must ask the parties if there are any reasons the proceeding should be closed.

Considerations. In deciding whether to close a proceeding, the court must consider:

(i) Whether doing so is in the child's best interests.
(i) Whether an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.
(i) The privacy rights of the child, the child's siblings, parents, guardians, and caregivers, and any other person whose privacy rights need protection.
(i) Whether all the parties have agreed that the proceeding should be open.
(i) The wishes of a child at least 12 years of age who is a party to the proceeding.
(i) Whether an open proceeding could cause specific material harm to a criminal investigation.

Subsequent Proceedings. For good cause, the court may order any subsequent open proceeding closed to the public after consideration of the factors above.

Request to Reopen. If the court has closed a proceeding, a person may request the court to reopen the proceeding or a specific hearing to the public. The court must consider the factors above. (Do we need to give guidance for how "a person" may request a closed hearing to be opened to the public?)

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

~~(1) Is essential to protect the privacy, well-being or safety interests described in section (c).~~

~~a. Protects the identity and safety of a person who reports child abuse or neglect, and to protect any other person, if the court believes that disclosure of the DCS information would likely endanger the person's safety.~~

~~1. Is confidential by law, which the court must maintain according to applicable law.~~

~~**Admonition at Public Hearings.**~~

~~Generally. At the beginning of a hearing that is open to the public, the court must advise any public attendees as follows: "You are prohibited from disclosing outside this hearing personal identifiable information about the child, the child's siblings, parents, guardians, caregivers, and others mentioned in the hearing. You are advised that by remaining in the courtroom after this admonition, you have submitted yourself to the power of the court for purposes of this order. Failure to follow this order is contempt of court for which you could be fined or given time in jail."~~

~~Exceptions. Persons employed by the court, attorneys, school personnel, medical personnel, or person providing, or a participant in a court hearing are not prohibited from performing their duties or sharing personally identifiable information within the normal course of their employment or position. (Beth recommended language like this – similar to that in 8-541 and 8-542 - to clarify that these individuals while "within the definition of public" often are in the hearings but have a legitimate need to share information re: the case in the normal course of their employment? We toyed with language.)~~

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

Should we include an end date for this rule? (upon closure of case, etc. or does this rule apply in perpetuity?)

Rule ~~XX~~ 41.1. Child's Rights

(a) Generally. A child who is the subject of a dependency petition has the rights to attend court hearings and to speak to the judge.

(b) First Hearing. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of this right and whether the child understands this right as required by Rule 40.1(b).

(c) Later Hearings. At every hearing thereafter, if the child is not present, the court must inquire whether the child requested to attend the hearing.

~~**Generally.** A child who is the subject of a dependency petition has the rights to attend any court hearings and to speak to the judge.~~

~~**First Hearing.** At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of this right and whether the child understands this right as required by Rule 40.1(b).~~

~~**Later Hearings.** At every hearing thereafter, if the child is not present, the court must inquire whether the child requested to attend the hearing.~~

Rule ~~XX~~ 41.2. Participants' Rights ~~to Notice and to Be Heard~~

(a) Right to Notice. If DCS is a party, it must provide notice of the date, time, and location of all proceedings that will be held concerning the child to:

(1) participants, or

(2) any relative who has been identified as a possible placement for a child who is in out of home care and under the responsibility of ~~the~~ DCS.

(b) Right to be Heard. Participants have a right to be heard in any court proceeding regarding a child.

(c) Status. Although participants have the right to notice and the right to be heard, they do not have the status of parties.

(d) Duties. Participants with whom a child is placed by ~~the~~ DCS have a continuing duty to provide ~~the~~ DCS with a current and correct mailing address, including any address protected by court order. - (Question: Do we need this based on 8-847(B)? – the court is required to give notice. Or, is this ~~working~~working, and we do not need to touch? What about this notice in Private cases?)

(e) Review Hearings. Rule 41.2 does not limit the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.

(f) Limiting a Participant. -The court may limit the presence of a participant with whom a child is not placed to the time the participant is heard or testifies, if

(1) it is in the best interest of the child; or

(2) it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

~~**Right to Notice of Proceedings.** If the DCS is a party, it must provide notice of the date, time, and location of all proceedings that will be held concerning the child to:~~

Pparticipants, or

any relative who has been identified as a possible placement for a child who is in out of home care and under the responsibility of the DCS.

Right to be Heard. Participants have a right to be heard in any court proceeding regarding a child.

Status. Although participants have the right to notice and the right to be heard, they do not have the status of parties.

Duties. Participants with whom a child is placed by the DCS have a continuing duty to provide the DCS with a current and correct mailing address, including any address protected by court order. (Question: Do we need this based on 8-847(B)? – the court is required to give notice. Or, is this working and we do not need to touch? What about this notice in Private cases?)

Right to be Heard. Participants have a right to be heard in any court proceeding regarding a child.

Not Parties. Participants are not granted party status based solely on the right to notice and the right to be heard.

Review Hearings. This ruleRule 41.2 does not limit the periodic review hearing notice requirements of A.R.S. § 8-847(B). regarding periodic review hearings.

Limiting a Participant. The court may limit the presence of a participant with whom a child is not placed to the time the participant is heard or testifies, if :

(1)

a. it is in the best interest of the child; or

a. (2)it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

SUGGESTION FOR RULE 37: Consider adding to definition of "Participant" pre-adoptive parents (i.e. sometimes child has not been placed in their care yet – transition, out of state, etc. pre-adoptive parent is referred to in the original Rule 41for notice and right to be heard.) If you do not agree, we need to add pre-adoptive parent up above under notice for right to be present.

Rule 42. Telephonic Testimony, Video Conferencing

On the court's own initiative or a party's motion, the court may permit an appearance or testimony telephonically or by video in any dependency, guardianship, or termination of parental rights proceeding. A party's motion must be in writing unless the court orders otherwise.

Rule 42. Telephonic Testimony, Video Conferencing

~~Upon~~ On the court's own initiative or a party's motion, the court may permit ~~a~~ an appearance or testimony telephonically or by video ~~testimony~~ in any dependency, guardianship, or termination of parental rights ~~hearings~~proceeding. A party's motion must be in writing unless the court orders otherwise.

~~[**Staff Note:** Because the delinquency rules and the dependency rules each contain a rule regarding telephonic testimony, would it be feasible to include a rule in Part I that applies to both proceedings? Also note that this rule omits details for telephonic testimony contained in other rule sets. See, for example, FLR 8.]~~

Rule 43. Computing and Extending Time

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

Workgroup Note: See FLR 4.

Family Law Rule 4. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) *Day of the Event Excluded.* Exclude the day of the act, event, or default that begins the period.

(2) *Exclusions if the Deadline Is Less Than 11 Days.* Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) *Last Day.* Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(b) Extending Time.

(1) *Generally.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* The court may not extend the time to act under Rules 83 or 85 unless otherwise allowed by those rules, or:

(A) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry;

(B) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier; and

(C) the court finds that no party would be prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 43(b)(2)(C) or (D). When a party may or must act within a specified time after service and service is made under Rule 43(b)(2)(C) or (D), 5 calendar days are added after the specified period would otherwise expire under Rule 4(a). This rule does not apply to the clerk's distribution of notices--including notice of entry of judgment under Rule 78(h)--minute entries, or other court-generated documents.

(d) Minute Entries and Other Court-Generated Documents. Notices, minute entries, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order states that an act may or must be done within a specified time after the order is entered, the date the order is filed is “the day of the act, event or default” under Rule 4(a)(1).

Civil Rule 6. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) *Day of the Event Excluded*. Exclude the day of the act, event, or default that begins the period.

(2) *Exclusions if the Deadline Is Less Than 11 Days*. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) *Last Day*. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(4) *Next Day*. The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(b) Extending Time.

(1) *Generally*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also

extend the time to act under those rules for 10 days after the entry of the order extending the time, if:

(A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and

(C) the court finds that no party would be prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 5(c)(2)(C), (D), or (E). When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C), (D), or (E), 5 calendar days are added after the specified period would otherwise expire under Rule 6(a). This rule does not apply to the clerk's distribution of notices--including notice of entry of judgment under Rule 58(c)--minute entries, or other court-generated documents.

(d) Minute Entries, Orders, and Other Court-Generated Documents. Notices, minute entries, orders, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order or other court-generated document states that an act may or must be done within a specified time after the document is entered, the date the document is filed is “the day of the act, event or default” under Rule 6(a)(1).

Rule 43. ~~Computation of~~Computing and Extending Time

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

~~[**Staff Note:** Staff suggests relocating this rule. It seems to get lost between other rules, especially because it's a one-sentence provision. For example, consider placing this provision in draft Rule 3(d).]~~

Workgroup Note: See FLR 4.

Family Law Rule 4. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) *Day of the Event Excluded.* Exclude the day of the act, event, or default that begins the period.

(2) *Exclusions if the Deadline Is Less Than 11 Days.* Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) *Last Day.* Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(b) Extending Time.

(1) *Generally.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* The court may not extend the time to act under Rules 83 or 85 unless otherwise allowed by those rules, or:

(A) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry;

(B) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the

entry of the judgment or order triggering the time to act under these rules, whichever is earlier; and

(C) the court finds that no party would be prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 43(b)(2)(C) or (D). When a party may or must act within a specified time after service and service is made under Rule 43(b)(2)(C) or (D), 5 calendar days are added after the specified period would otherwise expire under Rule 4(a). This rule does not apply to the clerk's distribution of notices--including notice of entry of judgment under Rule 78(h)--minute entries, or other court-generated documents.

(d) Minute Entries and Other Court-Generated Documents. Notices, minute entries, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order states that an act may or must be done within a specified time after the order is entered, the date the order is filed is "the day of the act, event or default" under Rule 4(a)(1).

Civil Rule 6. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) *Day of the Event Excluded*. Exclude the day of the act, event, or default that begins the period.

(2) *Exclusions if the Deadline Is Less Than 11 Days*. Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) *Last Day*. Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

(4) *Next Day*. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(b) Extending Time.

(1) *Generally*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:

(A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and

(C) the court finds that no party would be prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 5(c)(2)(C), (D), or (E). When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C), (D), or (E), 5 calendar days are added after the specified period would otherwise expire under Rule 6(a). This rule does not apply to the clerk's distribution of notices--including notice of entry of judgment under Rule 58(c)--minute entries, or other court-generated documents.

(d) Minute Entries, Orders, and Other Court-Generated Documents. Notices, minute entries, orders, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order or other court-generated document states that an act may or must be done within a specified time after the document is entered, the date the document is filed is “the day of the act, event or default” under Rule 6(a)(1).

Rule 44. Disclosure and Discovery

(a) Generally.

(1) ***Duty to Disclose.*** A party must disclose to other parties all relevant information that is not privileged or confidential. A party must allow other parties to inspect materials, with or without copying and regardless of whether those materials are in physical, paper, or electronic form.

(2) ***Manner of Disclosure.*** A party should disclose information in the least burdensome and most cost-effective manner.

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

(c) Disclosure Statement in Contested Dependency, Guardianship, and Termination Adjudication Hearings.

(1) The uncontested facts deemed material.

(2) The contested issues of fact and law which may be material or applicable.

(3) A statement of other issues of fact or law which the party believes to be material.

(4) A list of the witnesses the party intends to call at trial, including the names, addresses, e-mail addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good cause, a party may not call a witness at trial who was not disclosed in accordance with this rule. A disclosure statement must note if a witness' testimony will be offered in the form of a deposition.

(5) A list and copies of all exhibits the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection stating the specific grounds for each objection within 10 days after receiving the list of exhibits. A party waives specific objections or grounds not identified in the notice of objection unless the court allows otherwise. A party may not use exhibits at trial other than those disclosed in accordance with this rule, except for good cause. [Staff Note: Will need to include a general rule on service, i.e., when a document is filed, other parties must get a copy.]

(d) Time Limits for Supplemental Disclosure. Unless the court orders otherwise, the parties must exchange disclosure statements containing the following information

within 60 at least 30 days before a contested dependency, guardianship, or termination adjudication hearing:

(1) Unless the court orders otherwise, any document that is received by, or prepared by, a party after the party's initial disclosure and that is subject to disclosure must be disclosed within 5 (?) days after its receipt or preparation.

(2) If a party receives or prepares a document less than 5 days before a hearing, the party must disclose it as soon as practicable before the hearing.

(3) Unless the court orders otherwise, parties may supplement their list of witnesses and exhibits for the adjudication hearing not later than 10 days before the hearing.

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

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

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

(2) If the contested hearing does not require a report prepared by DCS, the parties must disclose all relevant information at least 5 days prior to the hearing or as ordered by the court.

(g) Sanctions. Upon a party's motion or the court's own motion, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include precluding the evidence, granting a continuance, or entering any order against a party the court deems appropriate. Any sanction should accord with the intent of these rules set forth in Rule 36, should generally be limited to the least possible power adequate to the end proposed, and should not exclude competent and potentially significant evidence that bears on the child's best interests. [Language from *James A. v. Dep't of Child Safety*, 244 Ariz. 319, 321-22, ¶ 8 (App. 2018).] (PROVIDING THAT THE SANCTION SHOULD TAKE INTO ACCOUNT THE SAFETY OF THE CHILD).

Rule 44. Disclosure and Discovery

(a) Generally.

(1) ***Duty to Disclose.*** A party must disclose to other parties all relevant information that is not privileged or confidential. A party must allow other parties to inspect materials, with or without copying and regardless of whether those materials are in physical, paper, or electronic form.

(2) ***Manner of Disclosure.*** A party should disclose information in the least burdensome and most cost-effective manner.

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

(c) Disclosure Statement in Contested Dependency, Guardianship, and Termination Adjudication Hearings.

(1) The uncontested facts deemed material.

(2) The contested issues of fact and law which may be material or applicable.

(3) A statement of other issues of fact or law which the party believes to be material.

(4) A list of the witnesses the party intends to call at trial, including the names, addresses, e-mail addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good cause, a party may not call a witness at trial who was not disclosed in accordance with this rule. A disclosure statement must note if a witness' testimony will be offered in the form of a deposition.

(5) A list and copies of all exhibits the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection stating the specific grounds for each objection within 10 days after receiving the list of exhibits. A party waives specific objections or grounds not identified in the notice of objection unless the court allows otherwise. A party may not use exhibits at trial other than those disclosed in accordance with this rule, except for good cause. [Staff Note: Will need to include a general rule on service, i.e., when a document is filed, other parties must get a copy.]

(d) Time Limits for Supplemental Disclosure. Unless the court orders otherwise, the parties must exchange disclosure statements containing the following information

within 60 at least 30 days before a contested dependency, guardianship, or termination adjudication hearing:

(1) Unless the court orders otherwise, any document ~~thereafter~~that is received by, or prepared by, a party after the party's initial disclosure and that is subject to disclosure must be disclosed within 5 (?) days after its receipt or preparation.

(2) If a party receives or prepares a document less than 5 days before a hearing, the party must disclose it as soon as practicable before the hearing.

(3) Unless the court orders otherwise, parties may supplement their list of witnesses and exhibits for the adjudication hearing not later than 10 days before the hearing.

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

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

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

(2) If the contested hearing does not require a report prepared by DCS, the parties must disclose all relevant information at least 5 days prior to the hearing or as ordered by the court.

Sanctions. Upon a party's motion or the court's own motion, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include precluding the evidence, granting a continuance, or entering any order against a party the court deems appropriate. Any sanction should accord with the intent of these rules set forth in Rule 36, should generally be limited to the least possible power adequate to the end proposed, and should not exclude competent and potentially significant evidence that bears on the child's best interests. [Language from *James A. v. Dep't of Child Safety*, 244 Ariz. 319, 321-22, ¶ 8 (App. 2018).] (PROVIDING THAT THE SANCTION SHOULD TAKE INTO ACCOUNT THE SAFETY OF THE CHILD).

Scope and manner of Disclosure, Generally. Generally.

Duty to Disclose. A party must disclose to other parties all relevant information that is not privileged or confidential. A party must allow other parties to inspect materials, with or without copying and regardless of whether those materials are in physical, paper, or electronic form.

(1) ***Manner of Disclosure.*** A party should disclose information in the least burdensome and most cost-effective manner, and . must allow the inspection of materials, with or without copying and regardless of whether information is in physical, paper, or electronic form. Disclosure must include but is not limited to the following:

1. reports prepared by or at the request of any party;

2. reports of any social service provider;

d. Foster Care Review Board and Court Appointed Special Advocate reports;

1. transcripts of interviews and prior testimony;

2. probation reports;

a. photographs and video or audio recording;

a. physical evidence;

a. records of prior criminal convictions;

a. medical and psychological records and reports;

1. results of medical or other diagnostic tests; and

1. any other information relevant to the proceedings.

(b)Time Limits for Disclosure Forfor Preliminary Protective Hearings.

1. *Documentary Evidence.* Within at least 24 hours before [Staff Note: Shouldn't this be "at least" rather than "within" 24 hours?] the preliminary protective hearing, the The parties must exchange disclose all documents within their possession that ARE are may be [Staff Note: "May be" or "are?"] subject to disclosure at least 24 hours before as defined in subsection (a). the preliminary protective hearing.

2. If disclosure is untimely, the court may continue a temporary custodythe hearing if a party has requested a temporary custody hearing hearing.

1. Time Limits for Disclosure in Guardianship Proceedings. [Staff note: Suggest incorporating all of the disclosure requirements in section B by reference, and then adding other items required for guardianship proceedings. Same with section D.]

1. *Documentary Evidence*. Any document received by, or prepared by, a party must be disclosed within 5 days of its receipt or preparation. If a party receives or prepares a document less than 5 days before a hearing, the party must disclose it as soon as practicable before the hearing.

Disclosure Statement Prior to Guardianship Adjudication Hearing. Unless the court orders otherwise, parties must exchange the information identified in subpart (B)(2)(a-e) of this rule and the report required by A.R.S. 8-872(E) and Rule 61(D) within 30 days of the initial hearing. Subpart (B)(2)(e) governs objections to the admissibility of exhibits.

(c) Disclosure Statement Prior toin Contested Dependency, Guardianship, and Termination Adjudication Hearings.

Unless the court orders otherwise, the parties must exchange disclosure statements containing the following information within 60 at least 30 days prior to thebefore a contested dependency, guardianship, or termination adjudication hearing: after the preliminary protective hearing, or within 60 days after service of the petition upon a party who did not appear at the preliminary protective hearing, if the matter is set for a contested adjudication hearing:

1. 1. The uncontested facts deemed material.

1. 2. The contested issues of fact and law which may be material or applicable.

1. 3. A statement of other issues of fact or law which the party believes to be material.

4. A list of the witnesses the party intends to call at trial, including the names, addresses, e-mail addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good cause, a party may not call a witness at trial who was not disclosed in accordance with this rule. A

disclosure statement must note if a witness' testimony will be offered in the form of a deposition.

1.

5. A list of and copies of all exhibits the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection stating the specific grounds for each objection within 10 days after receiving the list of exhibits. A party waives specific objections or grounds not identified in the notice of objection, unless the court allows otherwise. A party may not use exhibits at trial other than those disclosed in accordance with this rule, except for good cause. [Staff Note: Will need to include a general rule on service, i.e., when a document is filed, other parties must get a copy.]

1.

1. Time Limits for Disclosure in Termination Proceedings.

1. *Documentary Evidence.* Any document received by, or prepared by, a party must be disclosed within 5 days of its receipt or preparation. If a party receives or prepares a document less than 5 days before a hearing, the party must disclose it as soon as practicable before the hearing.

1. *Disclosure Statement Prior to Termination Adjudication Hearing*. Unless the court orders otherwise, parties must exchange the information identified in subpart (B)(2)(a-e), and any social study prepared pursuant to A.R.S. 8-536 or by order of the court, within 30 days after the initial hearing. Subpart (B)(2)(e) governs the admissibility of exhibits.

(d) Time Limits for Supplemental Disclosure.

Unless the court orders otherwise, any document thereafter received by, or prepared by, a party after the party's initial disclosure and that is subject to disclosure must be disclosed within 5 (?) days after its receipt or preparation.

If a party receives or prepares a document less than 5 days before a hearing, the party must disclose it as soon as practicable before the hearing.

Unless the court orders otherwise, parties may supplement their list of witnesses and exhibits for the adjudication hearing not later than 10 days before the hearing.

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

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

(g) Disclosure Not Related to a in Cases Other Than Contested DependencyDependencies, Guardianships, or Terminations. Adjudication. Except as noted in subsection (c), parties shall disclose information defined by subsection (a) within 30 days of receipt or preparation. If, however, the information is intended for use in a contested hearing other than a dependency, guardianship, or termination adjudication, parties must disclose the information as follows:

1. If the contested hearing requires a report prepared by the DepartmentDCS, all parties must disclose relevant information by the date such the report is due according to statute or rule.

1.

2. If the contested hearing does not require a report prepared by the DepartmentDCS, the parties must disclose all relevant information at least 5 days prior to the hearing or as ordered by the court.

2.

(g) (h) **Sanctions.** Upon a party's motion or the court's own motion, the court may impose sanctions on a party who fails to disclose information in its possession that is subject to disclosure or fails to disclose that information in a timely manner as required by this rule. Sanctions may include precluding the evidence, granting a continuance, or entering any order against a party the court deems appropriate. Any

~~sanction should accord with the intent of these rules set forth in Rule 36, should generally be limited to the least possible power adequate to the end proposed, and should not exclude competent and potentially significant evidence that bears on the child's best interests. [Language from *James A. v. Dep't of Child Safety*, 244 Ariz. 319, 321-22, ¶ 8 (App. 2018).] (PROVIDING THAT THE SANCTION SHOULD TAKE INTO ACCOUNT THE SAFETY OF THE CHILD).~~

Rule 47.2. Minute Entries

Except as the rules and requirements of juvenile appellate procedure may provide, an unsigned minute entry containing the court's findings or orders constitutes an order of the court.

[**Staff Note:** This rule probably should be located further toward the beginning of the dependency rules. But more to the point, many of the subsequent rules require that findings and orders be in a signed order. It seems anomalous to require a signed order but that an unsigned minute entry has equivalent authenticity. (These rules say that "findings and orders shall be in the form of a signed order or contained in a minute entry." See further Civil Rule 58(b), which requires that judgments, including a judgment in the form of a minute entry, be signed by a judicial officer.) If members consider this to be an inconsistency, it should be resolved.]

Rule 47.2. Minute Entries

Except as the rules and requirements of ~~civil [**Staff Note:** Staff added the word "civil", so the rule refers to the ARCAP rather than to Criminal Rule 31.]~~ juvenile~~-~~ appellate procedure may provide, an unsigned minute entry containing the court's findings or orders constitutes an order of the court.

[**Staff Note:** This rule probably should be located further toward the beginning of the dependency rules. But more to the point, many of the subsequent rules require that findings and orders be in a signed order. It seems anomalous to require a signed order but that an unsigned minute entry has equivalent authenticity. (These rules say that "findings and orders shall be in the form of a signed order or contained in a minute entry." See further Civil Rule 58(b), which requires that judgments, including a judgment in the form of a minute entry, be signed by a judicial officer.) If members consider this to be an inconsistency, it should be resolved.]

Rule 47.3. Court Authorized Removal

[**Staff Note:** Most of the substance of this rule has been codified in ARS Section 8-821, et seq. Is it necessary or prudent to have a rule that duplicates the statute? Alternatively, staff suggests that Rules 47.1 and 47.3 be relocated to Subpart 3 ("Dependency').]

(a) Generally. [**Staff Note:** Most if not all the "purpose" sections in Part III of the rules mirror the "purpose" provisions of the corresponding Title 8 statutes, so they are largely duplicative. Staff suggests changing "purpose" to "generally" in the rules concerning this series of proceedings. These sections on "purpose" describe the nature of each hearing, but they might not expressly include a purpose. Staff believes that "generally" is a more flexible and appropriate section title.] A child safety worker, a child welfare investigator, or a peace officer (collectively referred to in this rule as "the applicant") may submit an application under oath that requests the court authorize DCS to take temporary custody of a child.

(b) Burden of Proof. The applicant has the burden of stating specific facts showing that probable cause exists to believe:

(1) court authorization for DCS to take temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect; and

(2) it would be contrary to the child's welfare if the child remained in the child's current home.

For an Indian child and under ~~25 C.F.R. § 23.113(b)(1)~~ ICWA, the applicant also must state facts that support a finding that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

(c) Procedure.

(1) ***Application.*** An applicant may request court authorization for DCS to take temporary custody of the child from a judicial officer designated by the Maricopa County superior court presiding judge to receive and respond to applications under this rule. [**Staff Note**: Maricopa for the whole state?] The application must state:

(A) the applicant's professional qualifications;

(B) the particular reasons each child is presently or imminently in danger of abuse or neglect; [**Staff Note**: The standard here appears to conflate (b)(1) and the requirement in section (b) for ICWA.]

(C) a detailed account of facts and circumstances that require authorization of temporary custody; [**Staff Note**: Aren't the facts and circumstances also the reasons?]

(D) efforts made to determine the availability of less restrictive voluntary options, including care by a parent or relative, that effectively removes or controls the danger; and

(E) the identity and description of each child for whom temporary custody authorization is sought.

If the applicant has reason to know the child is an Indian child, the applicant also must provide the information in the application and in a dependency petition, as required under 25 C.F.R. § 23.113(d).

(2) ***Form.*** The application must be in a written format and manner approved by the Supreme Court Administrative Director. If an applicant is unable to submit a written application, the applicant may apply for authorization of temporary custody by a recorded oral statement or by other means acceptable to the court. The recorded oral statement or other means of communication must be submitted under oath and otherwise comply with this rule.

(3) ***Evidence.*** Evidence in support of an application may include reliable hearsay, in whole or in part.

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

(d) Findings and Order.

(1) ***Content.*** The order must state whether there is probable cause to believe that authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect, and whether remaining in the child's current home is contrary to the welfare of the child as required by Rule 47.1(A). An order granting an application must: (a) identify the factual basis for authorizing temporary custody of each child, and (b) identify and describe each child with reasonable particularity.

For an Indian child, under 25 C.F.R. § 23.113(b)(1) the court also must find that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

(2) ***Form.*** If the applicant and judicial officer are not in each other's physical presence, the judicial officer may:

(A) sign the order authorizing temporary custody using an electronic signature to serve as the original order;

(B) orally authorize the applicant to sign the judicial officer's name on the order; or

(C) sign an electronically transmitted version of the original order which is then deemed to be the original.

The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order.

(3) ***Notice.*** DCS must provide the parent or other custodian a copy of the application and the order authorizing temporary custody when the Temporary Custody Notice (TCN) is provided as required by law, unless DCS determines disclosure would cause harm under A.R.S. §§ 8-471, -807(L), or other provisions of state or federal law, and DCS provides notice of the order in the TCN.

(4) ***Execution and Duration.*** [**Staff Note:** Rule 47.3(D)(5) as shown in the 2019 volume of the Rules of Court is no longer current. Recent amendments, which are shown below, distinguish children who are receiving inpatient care.]

(A) *Child Not Receiving Inpatient Care.* If the child who is the subject of the order is not receiving inpatient care when the order is sought, DCS may execute the order until the earlier of a material change in the factual basis for the probable cause determination or 10 calendar days from the date of issuance. [**Staff Note:** What is the origin or basis for the 10-calendar day term?]

(B) *Child Receiving Inpatient Care.* If the child who is the subject of the order is receiving inpatient care when the order is sought and there is no material change in the factual basis for the probable cause determination, the Department of Child Safety may execute the order until the later of ten days from the issuance of the order or the child's discharge from inpatient care.

(C) *Expiration.* The court's temporary custody authorization order will expire after 72 hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in Rules 50 and 51.

(5) ***Filing.*** The applicant must file the application and order when the dependency petition is filed.

Rule 47.3. Court Authorized Removal

[**Staff Note:** Most of the substance of this rule has been codified in ARS Section 8-821, et seq. Is it necessary or prudent to have a rule that duplicates the statute? Alternatively, staff suggests that Rules 47.1 and 47.3 be relocated to Subpart 3 ("Dependency').]

(a) Generally. [**Staff Note:** Most if not all the "purpose" sections in Part III of the rules mirror the "purpose" provisions of the corresponding Title 8 statutes, so they are largely duplicative. Staff suggests changing "purpose" to "generally" in the rules concerning this series of proceedings. These sections on "purpose" describe the nature of each hearing, but they might not expressly include a purpose. Staff believes that "generally" is a more flexible and appropriate section title.] A child safety worker, a child welfare investigator, or a peace officer (collectively referred to in this rule as "the applicant") may submit an application under oath that requests the court authorize DCS to take temporary custody of a child.

(b) Burden of Proof. The applicant has the burden of stating specific facts showing that probable cause exists to believe:

(1) court authorization for DCS to take temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect; and

(2) it would be contrary to the child's welfare if the child remained in the child's current home.

For an Indian child and under ~~25 C.F.R. § 23.113(b)(1)~~ ICWA, the applicant also must state facts that support a finding that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

(c) Procedure.

(1) ***Application.*** An applicant may request court authorization for DCS to take temporary custody of the child from a judicial officer designated by the Maricopa County superior court presiding judge to receive and respond to applications under this rule. [**Staff Note**: Maricopa for the whole state?] The application must state:

(A) the applicant's professional qualifications;

(B) the particular reasons each child is presently or imminently in danger of abuse or neglect; [**Staff Note**: The standard here appears to conflate (b)(1) and the requirement in section (b) for ICWA.]

(C) a detailed account of facts and circumstances that require authorization of temporary custody; [**Staff Note**: Aren't the facts and circumstances also the reasons?]

(D) efforts made to determine the availability of less restrictive voluntary options, including care by a parent or relative, that effectively removes or controls the danger; and

(E) the identity and description of each child for whom temporary custody authorization is sought.

If the applicant has reason to know the child is an Indian child, the applicant also must provide the information in the application and in a dependency petition, as required under 25 C.F.R. § 23.113(d).

(2) ***Form.*** The application must be in a written format and manner approved by the Supreme Court Administrative Director. If an applicant is unable to submit a written application, the applicant may apply for authorization of temporary custody by a recorded oral statement or by other means acceptable to the court. The recorded oral statement or other means of communication must be submitted under oath and otherwise comply with this rule.

(3) ***Evidence.*** Evidence in support of an application may include reliable hearsay, in whole or in part.

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

(d) Findings and Order.

(1) ***Content.*** The order must state whether there is probable cause to believe that authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect, and whether remaining in the child's current home is contrary to the welfare of the child as required by Rule 47.1(A). An order granting an application must: (a) identify the factual basis for authorizing temporary custody of each child, and (b) identify and describe each child with reasonable particularity.

For an Indian child, under 25 C.F.R. § 23.113(b)(1) the court also must find that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

(2) ***Form.*** If the applicant and judicial officer are not in each other's physical presence, the judicial officer may:

(A) sign the order authorizing temporary custody using an electronic signature to serve as the original order;

(B) orally authorize the applicant to sign the judicial officer's name on the order; or

(C) sign an electronically transmitted version of the original order which is then deemed to be the original.

The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order.

(3) ***Notice.*** DCS must provide the parent or other custodian a copy of the application and the order authorizing temporary custody when the Temporary Custody Notice (TCN) is provided as required by law, unless DCS determines disclosure would cause harm under A.R.S. §§ 8-471, -807(L), or other provisions of state or federal law, and DCS provides notice of the order in the TCN.

(4) ***Execution and Duration.*** [**Staff Note:** Rule 47.3(D)(5) as shown in the 2019 volume of the Rules of Court is no longer current. Recent amendments, which are shown below, distinguish children who are receiving inpatient care.]

(A) *Child Not Receiving Inpatient Care.* If the child who is the subject of the order is not receiving inpatient care when the order is sought, DCS may execute the order until the earlier of a material change in the factual basis for the probable cause determination or 10 calendar days from the date of issuance. [**Staff Note:** What is the origin or basis for the 10-calendar day term?]

(B) *Child Receiving Inpatient Care.* If the child who is the subject of the order is receiving inpatient care when the order is sought and there is no material change in the factual basis for the probable cause determination, the Department of Child Safety may execute the order until the later of ten days from the issuance of the order or the child's discharge from inpatient care.

(C) *Expiration.* The court's temporary custody authorization order will expire after 72 hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in Rules 50 and 51.

(5) ***Filing.*** The applicant must file the application and order when the dependency petition is filed.

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).

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

(1) Inquire if any party has reason to know that the child is an Indian child.

(2) Appoint counsel pursuant to Rule 38(b), unless counsel has previously been appointed.

(3) Appoint an attorney or guardian ad litem, or both, for the child if none has been previously appointed**.**

(4) Determine whether service of process has been completed pursuant to Rule 64 or waived as to each party.

(5) Advise the parent, guardian, or Indian custodian of 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 termination petition or 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, 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.]

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

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

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

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

(A) failure to appear at the termination pre-trial conference, settlement conference, or termination adjudication hearing without good cause may result in a finding

that they waived legal rights and are deemed to have admitted the allegations in the termination petition or motion; and

(B) the termination adjudication hearing may go forward in their absence and may result in the termination of their parental rights based upon the record and evidence presented.

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

(5) If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof 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.]

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

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

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(~~B~~b), 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 an attorney or guardian ad litem, or both, for the child if none has been previously appointed.~~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:

~~**(6)**~~**(5)** ~~Advise the parent, guardian, or Indian custodian of their rights as follows:~~

~~**(A)** The right to counsel, including court-appointed counsel if the parent, guardian, or Indian custodian is indigent; and~~

~~**(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~~ termination petition or 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, 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)**~~

~~—~~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.]

(7) ~~Set a deadline for requesting amendments to the grounds for termination.~~

~~WG-4: STOPS HERE 2/18/2020~~

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

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

(B) the termination adjudication hearing may go forward in their absence and may result in the termination of their parental rights based upon the record and evidence presented.

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

~~(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)~~**(5)** If ~~ICWA applies~~the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof as required under ICWA, [including whether placement of the Indian child is in accordance with ICWA and or whether there is good cause to deviate from the preferences.]

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

~~(5)~~**(e) Form.** The court may provide the parent, guardian, or Indian custodian with a copy of Form 3, "Notice to Parent in a Termination Action." The court also may request that the parent, guardian, or Indian custodian sign and return a copy of the form and note on the record that the form was provided.

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 66. Termination Adjudication Hearing

(a) Generally. At a termination adjudication hearing, the court determines whether the petitioner or moving party has met the burden of proving grounds for terminating parental rights, and whether termination is in the child's best interests.

(b) Time Limits When Filing a Termination Motion. If a motion for termination of parental rights was filed: ~~the termination adjudication hearing must be held no later than 90 days after the permanency hearing. [**Staff Note:** This time limit is already contained in Rule 65(c)(6); does it need to be in both rules?] The court may continue the hearing for 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence, and the best interests of the child would not be adversely affected. The court may allow a continuance beyond that 30-day period only upon a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen[1] or unavoidable. Any party requesting a continuance must do so by motion that sets forth reasons why extraordinary circumstances exist. The motion must be filed within 5 days of the discovery that extraordinary circumstances exist. The court's finding of extraordinary circumstances must be in writing and include the factual basis. [**Staff Note:** What is the time limit for a termination adjudication hearing when the proceeding was initiated by a petition?]~~

(1) The termination adjudication hearing must be held within 90 days after the permanency hearing.

(2) The court may continue the hearing for not more than 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected.

(3) The court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion that specifies the extraordinary circumstances within 5 days of discovering those circumstances. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

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

(1) by clear and convincing evidence, the alleged grounds for termination, and

(2) by a preponderance of the evidence, that the termination would serve the child's best interests.

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

(1) beyond a reasonable doubt, including testimony from a qualified expert witness, that continued custody of an Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, in accordance with ICWA section 1912 and 25 C.F.R. 23.122, and

(2) by clear and convincing evidence, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family and that those efforts have proven unsuccessful, in accordance with ICWA section 1912 and 25 C.F.R 23.2.

(e) Procedure.

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

(A) determine whether the party understands the rights being waived;

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

(C) determine whether a factual basis exists to support the termination of parental rights; and

(D) proceed with entering the findings and orders as set forth in section (f).

(2) ***Failure to Appear.*** If the parent, guardian, or Indian custodian fails to appear at the termination hearing without good cause, the court may proceed with the termination adjudication, 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:

(A) had notice of the termination adjudication hearing;

(B) was properly served pursuant to Rule 64; and

(C) had been admonished regarding the consequences of failing to appear at the termination adjudication hearing, including a warning that the hearing could go forward in 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.

(f) Social Study. A social study prepared pursuant to A.R.S. § 8-536 or by court order is admissible as evidence unless a party has filed a notice of objection as required by Rule 44 (B)(2)(e) and (D)(2). If the court sustains any objections, the court may:

(1) admit the social study into evidence after redacting those portions to which objections were sustained; and

(2) allow the petitioner a reasonable opportunity to call additional witnesses to testify regarding the redacted portions of the social study.

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

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

(2) If the moving party or petitioner has met its burden of proof, the court must:

(A) make specific findings of fact in support of the termination of parental rights and grant the motion or petition for termination;

(B) appoint a guardian for the child, but it may vest legal custody in another person or authorized agency;

(C) enter orders for the financial support of the child;

(D) set or reaffirm the dependency review hearing; and

(E) If ICWA applies, make findings required under ICWA, including whether there is good cause to deviate from the placement preferences.

(3) Deny the termination motion or petition if the moving party or petitioner did not meet its burden of proof and order the parties to submit a revised case plan before the dependency review hearing.

Rule 66. Termination Adjudication Hearing

(a) Generally. At a termination adjudication hearing, the court determines whether the petitioner or moving party ~~or the petitioner~~ has met the burden of proving grounds for terminating parental rights, and whether termination is in the child's best interests.

(b) Time Limits When Filing a Termination Motion. If a motion for termination of parental rights was filed:~~, the termination adjudication hearing must be held no later than 90 days after the permanency hearing. [**Staff Note:** This time limit is already contained in Rule 65(c)(6); does it need to be in both rules?] The court may continue the hearing for 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence, and the best interests of the child would not be adversely affected. The court may allow a continuance beyond that 30-day period only upon a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen[1] or unavoidable. Any party requesting a continuance must do so by motion that sets forth reasons why extraordinary circumstances exist. The motion must be filed within 5 days of the discovery that extraordinary circumstances exist. The court's finding of extraordinary circumstances must be in writing and include the factual basis. [**Staff Note:** What is the time limit for a termination adjudication hearing when the proceeding was initiated by a petition?]~~

(1) The termination adjudication hearing must be held within 90 days after the permanency hearing.

(2) The court may continue the hearing for not more than 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected.

(3) The court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion that specifies the extraordinary circumstances~~. The party must file the motion~~ within 5 days of discovering those circumstances. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

~~**(b)**~~

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

(1) by clear and convincing evidence, ~~the facts [**Staff Note:** The current rule refers to proof of the "grounds" for termination, but isn't it more accurate to say "facts in support of the alleged grounds" or "facts that establish the alleged grounds?"] that establish~~ the alleged ~~alleged~~ grounds for termination, and

(2) by a preponderance of the evidence, that the termination would serve the child's best interests.

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

(1) beyond a reasonable doubt, including testimony from a qualified expert witness, ~~,~~ ~~that~~ that continued custody of an Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, in accordance with ICWA section 1912 and 25 C.F.R. 23.122, and

~~(3)~~**(2)** by clear and convincing evidence, ~~. The moving party or petitioner must also satisfy the court~~ that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family and that those efforts have proven unsuccessful, in accordance with ICWA section 1912 and 25 C.F.R 23.2.

~~(d)~~**(e) Procedure.** ~~The presentation of evidence at the termination adjudication hearing must be as informal as the requirements of due process and fairness permit. The hearing should generally proceed in a manner similar to the trial of a civil action before the court without a jury.~~

(1) ***Admission/No contest.*** The parent, guardian, or Indian custodian may waive the right to trial on the allegations contained in the petition or motion ~~or petition~~ for termination of parental rights by admitting or not contesting the allegations orally or in writing. ~~An admission or plea of no contest may be oral or in writing.~~ In either circumstance, ~~accepting an admission or plea of no contest,~~ the court must:

(A) determine whether the party understands the rights being waived;

(B) determine whether the ~~party~~ party knowingly, intelligently, and voluntarily admits or does not contest the allegations~~admission or plea of no contest is knowing, intelligent, and voluntary~~;

(C) determine whether a factual basis exists to support the termination of parental rights; and

(D) proceed with entering the findings and orders as set forth in ~~sub~~section (~~F~~f) ~~of this rule~~.

Failure to Appear. If the parent, guardian, or Indian custodian fails to appear at the termination hearing without good cause, the court may proceed with the termination adjudication, 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:

(2)

(A) had notice of the termination adjudication hearing;~~,~~

(B) was properly served pursuant to Rule 64;~~,~~ and

(C) had been admonished regarding the consequences of failing to appear at the termination adjudication hearing, including a warning that the hearing could go forward in 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.

~~**(2)** *Failure to Appear*. If the court finds the parent, guardian, or Indian custodian failed to appear at the termination adjudication hearing without good cause, 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 their failure to appear may constitute a waiver of rights and an admission to the allegation contained in the motion or petition for termination, the court may terminate parental rights based upon the record and evidence presented at the hearing. The court must enter its findings and orders pursuant to subsection (E) of this rule.~~

~~(e)~~**(f) Social Study**. A social study prepared pursuant to A.R.S. § 8-536 or by court order is admissible as evidence unless a party has filed a notice of objection as required by Rule 44 (B)(2)(e) and (D)(2). If the court sustains any objections, the court may:

(1) admit the social study into evidence after redacting those portions to which objections were sustained; and

(2) allow the petitioner a reasonable opportunity to call additional witnesses to testify regarding the redacted portions of the social study.

~~(f)~~**(g) Findings and Orders by the court.** All findings and orders must be in a signed order or contained in a signed minute entry. At the conclusion of the hearing the court must:

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

(2) If the moving party or petitioner has met its burden of proof, the court must:

(A) make specific findings of fact in support of the termination of parental rights and grant the motion or petition for termination;

(B) appoint a guardian for the child, but it may vest legal custody in another person or authorized agency;

(C) enter orders for the financial support of the child;

(D) set or reaffirm the dependency review hearing; and

(E) If ICWA applies, make findings required under ICWA, including whether there is good cause to deviate from the placement preferences.

(3) Deny the termination motion or petition if the moving party or petitioner did not meet its burden of proof and order the parties to submit a revised case plan before the dependency review hearing.

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.

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

(1) In delinquency and incorrigibility proceedings:

(A) A disposition order for a juvenile who is adjudicated incorrigible or delinquent is a final order.

(B) A restitution order entered after the date of the disposition order is a separately appealable final order, but if a separate appeal is filed and if practicable, it should be consolidated with an appeal of the disposition order.

(C) When the court finds the juvenile violated probation, its disposition order is a final order.

(D) An order transferring a juvenile for prosecution as an adult is a final order.

(2) In all other juvenile proceedings, final orders include:

(A) An order granting a dependency petition and declaring a child dependent or denying or dismissing a dependency petition.

(B) A disposition order entered after a juvenile has been adjudicated dependent.

(C) An order granting or denying a motion to intervene.

(D) An order relieving DCS of its obligation to provide reunification services.

(E) An order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody.

(F) An order terminating visitation.

(G) An order granting or denying a petition or motion for termination of parental rights.

(H) An order granting or denying an adoption petition.

(I) An order granting or denying a Title 8 guardianship petition or motion.

(J) An order granting or denying a petition for emancipation.

(K) An order granting or denying a motion to set aside a final order under Rule 46(e).

(L) Any other order that is final pursuant to Arizona case law.

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.

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

(1) In delinquency and incorrigibility proceedings:~~,~~

(A) A disposition order for a juvenile who is adjudicated incorrigible or delinquent is a final order.

(B) A restitution order entered after the date of the disposition order is a separately appealable final order, but if a separate appeal is filed and if practicable, it should be consolidated with an appeal of the disposition order.

(C) When the court finds the juvenile violated probation, its disposition order is a final order.

(D) An order transferring a juvenile for prosecution as an adult is a final order.

(2) In all other juvenile proceedings, final orders include:

(A) An order granting a dependency petition and declaring a child dependent or denying or dismissing a dependency petition.

(B) A disposition order entered after a juvenile has been adjudicated dependent.

(C) An order granting or denying a motion to intervene.

(D) An order relieving DCS of its obligation to provide reunification services.

(E) An order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody.

(F) An order terminating visitation.

(G) An order granting or denying a petition or motion for termination of parental rights.

(H) An order granting or denying an adoption petition.

(I) An order granting or denying a Title 8 guardianship petition or motion.

(J) An order granting or denying a petition for emancipation.

(K) An order granting or denying a motion to set aside a final order under Rule 46(e).

~~(b)~~ Any other order that is final pursuant to Arizona case law.

~~1. In delinquency and incorrigibility proceedings,~~

~~A. A disposition order for a juvenile who is adjudicated incorrigible or delinquent is a final order.~~

~~B. A restitution order entered after the date of the disposition order is a separately appealable final order, but if a separate appeal is filed and if practicable, it should be consolidated with an appeal of the disposition order.~~

~~C. When the court finds the juvenile violated probation, its disposition order is a final order.~~

~~D. An order transferring a juvenile for prosecution as an adult is a final order.~~

~~2. In all other juvenile proceedings, final orders include~~

~~A. An order granting a dependency petition and declaring a child dependent or denying or dismissing a dependency petition.~~

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

~~C. An order granting or denying a motion to intervene.~~

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

~~E. An order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody.~~

~~F. An order terminating visitation.~~

~~G. An order granting or denying a petition or motion for termination of parental rights.~~

~~H. An order granting or denying an adoption petition.~~

~~I. An order granting or denying a Title 8 guardianship petition or motion.~~

~~J. An order granting or denying a petition for emancipation.~~

~~K. An order granting or denying a motion to set aside a final order under Rule 46(e).~~

~~L. Any other order that is final pursuant to Arizona case law.~~

(L)