

Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Monday, April 12, 2021

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

Telephonic Meeting: **602-609-7512**, Access Code **496625995#**

Item no. 1	Call to Order	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Approval of the March 5, 2021 meeting minutes	<i>Justice Berch</i>
Item no. 3	Review of workgroup changes to the second draft set of rules subsequent to the March 5 Task Force meeting, including but not limited to the following rules: Part I: Rules 102, 104 Part II: Rules 205, 217 [WG-3], 218 Part III: Rules 302, 303, 304, 305, 307, 309, 311, 317 [WG-1], 323, 324 [new], 326, 335, 346, 349, 351 Part IV: Rules 402, 407. 417 Part V: Rules 501 through 505 generally Part VI: Rules 601, 602, 603, 604, 609, 610 Tables and Forms	<i>All</i>
Item no. 4	Discussion of the <u>second</u> draft of a rule petition, including a discussion of forms	<i>All</i>
Item no. 5	Roadmap Next meeting: To be scheduled	<i>Justice Berch</i>
Item no. 6	Call to the Public Adjourn	<i>Justice Berch</i>

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

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

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

**Juvenile Rules Task Force
Public Meeting, March 5, 2021
(All members and guests attending telephonically)**

Meeting Minutes

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong, Professor Barbara Atwood, Beth Beckmann, Beth Beringhaus, Dale Cardy, Maria Christina Fuentes by her proxy Steve Selover, John Gilmore, Magdalena Jorquez by her proxy Randi Alexander, Hon. Joseph Kreamer, Donna McQuality, Eric Meaux, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Smith, Denise Avila Taylor, Hon. Patricia Trebesch, Edward Truman by his proxy Carey Turner, Kent Volkmer, Hon. Anna Young

Members absent: Kathleen Coughlin, Tina Mattison, Hon. Rick Williams

Guests: Shari Anderson Head, Elise Kulik, David Euchner

AOC staff: Caroline Lutt-Owens, Joe Kelroy, Mark Meltzer, Angela Pennington

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the fifteenth Task Force meeting – its tenth consecutive virtual meeting – to order at 10:00 a.m. There were no workgroup or Editorial Group meetings in February. The rules were locked after the February 5 Task Force meeting to allow Ms. Pennington an opportunity to prepare the second draft of the rules without intervening text changes. Ms. Pennington completed the full second draft set (240 pages) on February 17, then posted those rules on the Task Force webpage. Each of the six Parts of the second draft set of rules was posted separately. That same day, staff emailed links to the webpage to stakeholders whose names had been previously provided by members and to others, such as COSC, COJC, and the State Bar Juvenile Law section. Staff's email invited comments from the stakeholders.

As of March 3, 2021, staff had received 14 comments. A few of the comments were from Task Force members, but most were from judicial officers, practitioners, and agencies. COA-1 and COA-2 also provided comments. Staff included these 14 comments in a pre-petition comment table, which was included the meeting packet. The first page of the table shows the rules in each of the 6 Parts that were addressed by the first 14 comments. Most of the comments in the table were cut-and-pasted from emails and were unedited. Two long comments in letter style, from Laurie Owen and David Euchner, appeared separately in the packet after the comment table. Staff received 5 comments thereafter, which, in the interests of circulating them promptly, were distributed verbatim as email attachments in lieu of adding them to the table. (The Chair noted that one of those comments, from Judge Johnson, was a draft document that was not intended for distribution; but given the timing of its receipt and the desirability of considering her comment, even as a draft, it was nonetheless circulated to the members.) Some comments

focused on just one or two rules, others addressed multiple rules or global concerns. By day's end on March 4, the Task Force had received 19 comments regarding the draft rules. (Staff received a 20th comment after the meeting, via Professor Atwood, from Judge Laurie San Angelo regarding Rule 417.) The comments were all thoughtful, and the Chair expressed her appreciation to each person who submitted one.

Before proceeding to the comments, the Chair asked members to review draft minutes of the February 5, 2021 Task Force meeting. There were no corrections.

Motion: A member moved to approve the February 5, 2021 meeting minutes. The motion received a second and it passed unanimously. **JRTF 016**

2. Introduction to the second draft rules; plan for reviewing the comments.

The Chair introduced the second draft set of rules by comparing it to the first draft set, which had been presented at the February 5 Task Force meeting. Unlike the first draft, which had one, two, or three-digit rule numbers, the second draft utilizes three-digit rule numbering throughout. The first of these numbers refers to the Part where the rule is located, and therefore provides the user with a cue on the rule's subject matter. (Three-digit numbering is similarly used in the Arizona Rules of Evidence.) The second draft also includes rules that had been inadvertently omitted from the first draft, or that had not been approved prior to the February 5 meeting. Rules in the first draft were not properly sequenced, but they have been in the second draft, so rules with a common subject matter are grouped together, and rules appear in the order in which events are likely to occur. The second draft also includes a table of contents for each Part.

The Chair then proposed her plan for reviewing the 19 comments. Because the time available at today's meeting is insufficient for a complete review of those comments, she prefers that members focus on the most substantive comments, or those that could have the most impact. She acknowledged that determining which comments are in those categories is not clear cut. Nonetheless, she suggested deferring to the Editorial Group comments concerning grammatical edits, which includes portions of the comments from Judge Warner, Ms. Rosenberg, and Mr. Conant. The Editorial Group would also review comments concerning Part V, which were few in number. If, before the Task Force files its petition, there is time for the workgroups to convene, the Chair would refer to them for their review and recommendations the comments, or portions of the comments, from Ms. Meiser, Ms. Jorquez, Judge Farrar, Mr. Truman, Mr. Meissen, and Judge Johnson. The Task Force would then begin the morning session of today's meeting with a review of other comments concerning Parts I, II, and VI, and continue thereafter with a review of comments concerning Parts III and IV. Members concurred with the plan of review.

3. Review of comments to Parts I, II, and VI. Comment #1, from Commissioner Bibbens, suggested that the definition of "parent" in Rule 102(r) match the definition of parent in A.R.S. § 25-401(4). After discussion, members agreed to make the

suggested change by adding the second sentence of the statutory definition to the definition in Rule 102.

In Rule 104(d)(3) (“evaluation report”), Judge Warner noted in comment #3 that beginning the provision with the words “before any dependency [etc.]” was confusing. He suggested saying instead “in any dependency.” Members agreed with the suggestion. They agreed to make a similar change in Rule 104(d)(2) (“admissibility of child safety worker’s report”), which also begins with the words “before any.” While on the subject of Rule 104(d)(2), a member commented that current Rule 45 (“admissibility of evidence”), section (c) (“admissibility of reports”) uses the word “shall [admit those reports],” which the member contended means “must admit.” The draft rule, on the other hand, says “must review...and may admit.” The member asked to change “may” to “must.” Comment #12 from Mr. Koltunovich also proposed a change to Rule 104(d)(2). A judge member reminded members that they had extensive discussions on this section at previous meetings and asked whether today’s meeting was an appropriate forum for reconsidering issues that had been previously resolved. The Chair agreed that it was not. Therefore, members did not make the suggested changes to Rule 104(d). The Chair noted that members did not have consensus on every one of the hundreds of proposed rule changes. If members believe the Task Force incorrectly resolved an issue, rather than reconsidering the issue at today’s meeting, they should propose adding an explanatory note in the rule petition.

Members then turned to comment #7, a lengthy memo to the Task Force from David Euchner primarily concerning Part VI rules. For the reasons specified in the preceding paragraph of these minutes, members did not consider the portions of Mr. Euchner’s comment concerning ineffective assistance of counsel or motions for new trial. Ms. Beckmann, who expressed appreciation for Mr. Euchner’s comment, took the lead on addressing the remainder of his comment. One area of his comment asked whether the list of appealable final orders in Rule 103(b) was actually inclusive, as it purports to be. His comment said, “the list includes some orders that clearly are not final, while excluding others that are arguably ‘more final’ than some that are on the list.” Ms. Beckmann responded that the listed orders are based on case law, but with a catch-all in Rule 601(b)(2)(N) (“any other order that is final pursuant to Arizona case law”) because future appellate opinions might change what is a final appealable order. Neither Ms. Beckmann nor members saw the need to change the draft rule in this regard. Mr. Euchner’s comment also raised issues concerning the nature of time-extending motions and the associated tight deadlines. Ms. Beckmann will speak with her Division One counterpart on those issues.

Ms. Beckmann added a related concern regarding the 12-day deadline under Rule 317 (“altering or amending a final order”), subpart (b)(1), the second sentence of which allows the court to extend or excuse the deadline for extraordinary circumstances. (See comment #10 from COA-2.) Ms. Beckmann proposed an outer limit on when the court can do this, for example, no later than 6 months after entry of the order. Members favored

adding such a limit; they did not support the alternative of removing the second sentence of Rule 317(b)(1). Another issue in comment #10 (the portion from Mr. Truman) noted concerns with reducing the time for filing a petition for review under Rule 609 to 20 days; it is 30 days under the current rule. The members' rationale for 20 days was that most appellants don't file a petition for review, and the shorter time would allow an appellate court to issue its mandates more promptly, which would benefit many children. However, a member suggested a compromise: retain the 30-day limit for filing the petition for review but require a party who intends to file the petition to file a notice of that intent within 15 days. Judge Kremer advised that workgroup 1 will consider this suggestion.

Rule 603 ("notice of appeal"), subpart (a)(5) allows the court for good cause to excuse an untimely notice of appeal. Mr. Euchner proposed an edit that would preclude the State or DCS from filing a delayed notice. Although members did not generally favor that change, one member supported it, and observed that the State does not have constitutional rights at stake, whereas parents do. Counsel may also have difficulty locating a parent within the time for filing a notice of appeal, whereas the State should not have a similar difficulty. The workgroup will consider Mr. Euchner's proposed amendment. [Note: Mr. Euchner subsequently spoke at the Call to the Public and commented on this issue. He said that dependency and termination appeals are not purely civil; rather, they have aspects that are quasi-criminal in nature. Parents in those proceedings typically have appointed counsel, and if their counsel did not timely file a notice of appeal, it would constitute ineffective assistance and be an error of constitutional dimension. He said that similar to the State in a criminal case, the State in these juvenile cases does not have the same constitutional rights as an individual, and accordingly, should not have a co-extensive right to file an untimely notice of appeal. Mr. Euchner said his proposed amendment is a recognition of this difference.]

Rule 604 ("the record on appeal"), section (f) ("sanctions") would allow the appellate court to impose sanctions on a party for a supplemental designation of items for the appellate record that were unnecessary. Mr. Euchner's comment contended that the proposed rule "is entirely unworkable and counterproductive" and would require the appellate court to second-guess an attorney's decision to make a supplemental designation. Although current Rule 104(G) permits sanctions for unnecessary designations, members generally concurred with Mr. Euchner's observations. They also agreed that in egregious circumstances, the appellate court would have inherent authority to impose sanctions. However, a judge member cautioned that removing the provision could open the door for attorneys using supplemental designations solely with the intent of extending time. The workgroup will also look at this issue.

A member noted an issue raised by Ms. Owen (comment #6) concerning the admission of DCS reports that contain statements from unidentified declarants. The member believed that parties should know the identities of declarants, or their statements should be stricken from the reports. Another member replied that neither case law nor

statutes contain a requirement that reports disclose a hearsay declarant's identity. One member proposed adding to the pertinent sections of Rule 104(c) ("admissibility of reports") that a timely disclosed report is admissible "with proper foundation." Because Rule 104(d)(2) says that the court "may" admit the report, the court has discretion to exclude it or to give it little weight. Workgroup 1 will discuss this issue.

Although members did not raise other issues during the morning session concerning comments to Parts I, II, and VI, Judge Kreamer noted that a number of the remaining comments raise important issues. He cited as an example portions of comment #12 regarding Part II rules. He noted that many of the comments were received just days before today's meeting, and he supported allowing the workgroups additional time to review the comments.

4. **Review of comments to Parts III and IV.** A portion of Commissioner Bibbens' comment (comment #1) overlapped with a parallel comment from the Pima LGBTQ+ Task Force (comment #4). Comment #4 proposed adding to the subjects enumerated in Rule 309 ("education requirements for a court-appointed attorney or GAL"), section (d) ("later training") "the needs of LGBTQ youth in care." Members did not oppose this amendment, but several members felt that it didn't go far enough in identifying other disproportionately affected minority youth. A workgroup will follow-up on this issue.

Judge Warner's comment (#3) observed that Rule 303(d) ("manner of appointment") requires the court to "enter an order or issue a minute entry" assigning or appointing counsel. Rule 324 ("minute entries") provides that "an unsigned minute entry is an order of the court." Accordingly, the language of Rule 303(d) - and similar language in other rules - is duplicative. The members supported a suggestion to relocate Rule 324, which is a two-sentence rule, to Rule 102 ("definitions"). But in doing so, members should assure that the new definition is consistent with Supreme Court Rule 125 and make appropriate conforming changes to other juvenile rules. A workgroup will address this. Judge Warner's comment also proposed adding this sentence to Rule 304(c) ("withdrawal"), subpart 4: "The attorney remains the person's attorney of record until a notice of withdrawal is filed." Members agreed to make that change and another change Judge Warner proposed to Rule 304(c)(1) concerning withdrawal with the client's consent.

Judge Warner also suggested a change to the wording of Rule 323 ("simultaneous dependency and legal-decision making/parenting time proceedings"). Members preferred his suggested language for section (a) ("transfer to juvenile division") to the current wording. His clearer language says, "If pending family law and dependency proceedings concern the same parties, the judge presiding over the juvenile case makes decisions concerning the children." Members requested that a workgroup also consider Professor Bennett's margin comment concerning the applicability of rules on a Rule 323 determination. (He asked whether family law rules apply when a juvenile court makes

decisions regarding parenting time.) Judge Warner requested that the juvenile rules distinguish summary adjudications from contested adjudications, and that a new rule describe “what a summary adjudication is.” However, while a word search of Part III rules revealed references to summary judgment motions, there were no references to summary adjudications. Members supported Judge Warner’s proposed amendment to Rule 339(b) (“time limits”), which would add to that section the words “and may accelerate the disposition to the time a dependency finding is made.”

Rule 342 (“motion for return of the child”), section (b) (“time limits”) would require the court (“must set”), as current Rule 59(b) requires (“shall be set), to schedule a hearing on a motion for return of the child. Judge Warner noted the possibility of recurring motions under this rule and the rule’s requirement in that circumstance to set repeated hearings. He suggested that the rule should require the court to set a hearing, for example, only when a motion had not been filed in the previous six months. One member noted that the pertinent statute contains no such limitation. Another member observed that a parent might be able to rectify a situation within weeks and should not need to wait months to file the motion. Members concluded that currently there is not an actual problem with the number of Rule 59 motions that are filed, and they declined to add a limitation to Rule 342.

Professor Bennett’s narrative comment raised an issue of attorneys for parents not attending DCS child and family team meetings, either because the attorneys were concerned about violating ER 4.2 (“communication with person represented by counsel”) or because they were explicitly told by DCS staff that they could not attend. (Compare Rule 306(g), which requires a child’s attorney to attend and provide input at a DCS staffing.) Counsel’s attendance poses an ethical issue because the DCS caseworker at these meetings is a representative of an attorney-represented party in litigation. A member acknowledged that parents are occasionally excluded from these meetings. Sometimes, but not always, it is because the parent’s attorney assumes an adversarial role at a staffing. But the member added that a staffing is supposed to be more open than DCS sometimes acknowledges. Those who attend should participate in good faith, and guidelines are in place to further that objective. A judge member noted that attorneys could abuse the intended purpose of a staffing, but also believed there a rule concerning a DCS staffing might be needed to assure that everyone is aware of who can participate and the nature of the engagement. A workgroup will review this issue further.

At a later point in the meeting, members considered Professor Bennett’s proposed amendment to Rule 306 (“duties and responsibilities of an attorney and GAL for a child”). Professor Bennett’s proposed section (h) (untitled), would exempt the child’s attorney and GAL from the requirement of ER 4.2 for the limited purpose of communicating with child safety workers. His proposed text would also impose a duty on the Attorney General’s office to inform the child’s attorney and GAL of any scheduled staffing and inform DCS that the child’s attorney and GAL “are encouraged to fully participate in child and family team meetings.” A member from the Attorney General’s office thought

that appropriate contact would be reasonable, but it might be problematic to give the child's attorney unlimited access to the case worker. Members distinguished contact with a case worker on routine matters from contact involving contested issues. The Chair referred the matter to the workgroup but noted that there might not be an easy fix and it might be difficult to resolve this issue in a court rule.

Professor Bennett also proposed adding a new untitled section (d) to Rule 315 ("disclosure and discovery"). This one-sentence section would provide, "If a child is moved to a new placement, the DCS must disclose full contact information to the attorney and GAL for the child within 36 hours of the move." Members generally favored the amendment but proposed both longer and shorter times for the requirement (24, 48, or 72 hours.) A member noted that pursuant to current DCS policy, DCS has up to 10 days to notify the child's attorney and GAL of a child's relocation, which most agreed was too long. Members agreed that the court-appointed attorney and GAL representing the child should know the child's whereabouts at all times, and it is the court's responsibility to assure that DCS timely provides this information. They also agreed that DCS could provide this information by telephone or email (see Rule 315(a)(2)). The workgroup will review the proposed amendment and include the necessary details.

Members also discussed Professor Bennett's comment regarding the admission of a parent's report under Rule 104. If Professor Bennett's comment was directed at the admission of an evaluation report from the parent's expert, Rule 104(d)(3) would already allow admission of the report, and his proposed amendment would be unnecessary. A related question in Professor Bennett's comment was whether a report admitted at a preliminary protective hearing remains admitted for purposes of future hearings, including a termination adjudication. Members initially disagreed on the answer to that question. While the initial response of some members was "no," others noted Rule 351 ("termination adjudication hearing"), section (g) ("social study"), permitting the admissibility of a social study as provided in Rule 104(d). They also cited Rule 340 ("motion to determine the provision of reunification services"), which allows the court to consider "documents entered into evidence at prior proceedings." Some members preferred to leave this question for trial judges. Judges can determine if, notwithstanding the admission of a report at a prior hearing, there are reasons to exclude it at a subsequent proceeding. This might also be an issue for judicial education, i.e., instruction that previous admission of a report is by itself an insufficient basis for admitting it at a subsequent hearing.

Professor Bennett proposed adding a third sentence to Rule 305 ("appointment of a guardian ad litem") that would direct the court appointing a GAL for a child or an adult to "state the reason for the appointment and the expected role of the guardian ad litem." Members had previously included similar, but not identical, language in Rule 308 ("duties and responsibilities of a guardian ad litem for a parent, guardian, or Indian custodian"). Members discussed the benefit of having language like this in those two rules as well as in Rule 306 ("duties and responsibilities of an attorney and GAL for a

child"). One proposed solution would expand the language of Rule 308 to make it applicable to a child's GAL. The workgroup will consider how to best achieve the members' objective.

Members then discussed various other comments concerning the Part III rules. Ms. Jorquez, in comment #11, wanted a participant's right to be heard under Rule 311 ("participants' rights") to be limited to matters concerning the child. Members agreed with the change and the workgroup will review her proposed modification to Rule 311(b). In his text changes to Rule 311 associated with comment #13, Mr. Conant requested the addition of an amendment regarding a participant's right to counsel. Members agreed that participants have a right to retain counsel, but not a right to court-appointed counsel, and that a participant's attorney can address the court. But members believed the proposed amendment implied that participants had a status approaching that of a party and concluded that the amendment was unnecessary. Ms. Rosenberg's comment (#9) proposed adding text regarding a guardianship subsidy to the guardianship rules; she will provide the workgroup with specific language. The comment from Ms. Owen (comment #6) proposed adding to Rule 333 ("contested review of temporary custody"), subpart (a)(2)(A), the words "to prevent abuse or neglect" (i.e., "whether removal of the child from the home was clearly necessary to prevent abuse or neglect.") Members agreed to add those words.

A member proposed that comments concerning the QRTP, including comments #5 from Ms. Jorquez, #17 from Ms. Dunn on behalf of the Children's Action Alliance, and #19 from Ms. Ronan on behalf of the Center for Law in the Public Interest, be referred to the workgroup. Judge Portley expressed the view that the new federal statute provides the essential requirements for QRTPs, i.e., that judges timely consider assessments and set subsequent review hearings. He believes that proposed Rule 335 accomplishes these objectives. He suggested that proposals contained in comments #17 and #19 exceed the basic federal requirements and add what he considers to be best practices. Although Arizona can adopt its own statutes that incorporate the FFPSA's requirements and add best practices, as other states, e.g., Washington, have done, Arizona has not yet done so. A member added that until the FFPSA is operationalized in Arizona, Arizona stakeholders might not even know which best practices would be desirable. Some members agreed with Judge Portley, but to get a better sense, the Chair called for a straw poll. By a ratio of 5:1, a majority concluded that Arizona currently needed a rule containing a basic structure required by the FFPSA, and that incorporating additional best practices should be deferred until after Arizona has implemented the program.

However, one member had a concern with comment #5. The concern was that if DCS is doing its own assessments, as the proposed amendment in comment #5 would allow after DCS obtains a waiver, then DCS might use a QRTP as a substitute for a group home when a foster family is unavailable. A DCS representative advised that DCS does not currently intend to request waivers, but it might do so in the future and wanted to preserve that option. Members declined to simply cross-reference in Rule 335 the federal

statute that contains the waiver provisions, but rather they preferred to add appropriate text to the body of the rule, as proposed by comment #5. Another comment noted that the acronym “QRTP” as it appeared in Rule 335 was sometimes erroneous and requires correction. Judge Kremer posed the possibility that DCS might implement the QRTP sooner than October 1, 2021, and the rule petition might need to request an even earlier effective date for Rule 335. He will keep the Task Force advised of any news on this point.

Members then turned to comments on the Part IV rules.

Rule 411 (“service of the petition to adopt and notice of hearing”) requires the petitioner to serve, among others, “any person who has initiated a paternity action.” Ms. Meiser (comment #2) suggested adding the words “within the time required by A.R.S. § 8-106.” Members agreed and added “(J)” to the statutory reference. Ms. Meiser also had a concern with Rule 408 (“certification to adopt”). The concern was that a prospective adoptive parent who anticipated an unfavorable determination from an agency might withdraw the application and reapply through a different agency. She suggested that there be a record of withdrawn applications, such as requiring that the subsequent application provide the details of a prior application. During their discussion, members noted that a prospective adoptive parent might be dissatisfied with an agency for legitimate reasons, and withdraw their application accordingly, and there shouldn’t be a negative inference from the withdrawal of a previous application. In addition, if this is actually a widespread problem, it should be addressed by statute. Members also considered but declined to make a change to the ICWA provisions in Rule 416 (“hearing to finalize adoption”), as comment #2 proposed.

Members then reviewed another portion of comment #11, from Ms. Jorquez, concerning Rule 417 (“setting aside an adoption”). Her comment indicated that the timing in Rule 417(a) (“motion to set aside”), which required the court to hold a hearing within 10 days of filing, was inconsistent with the time in Rule 417(c) (“initial hearing”), which requires the court to set an initial hearing no later than 15 days after filing. Members agreed that the contradiction could be remedied by deleting the first sentence of section (c). However, during the ensuing discussion, members noted two other anomalies. First, although Rule 317 (“altering or amending order”) includes a 12-day time limit, Rule 407(f), which can also be a time extending motion under Rule 603(a)(3), contains no similar procedure. Second, Rule 407(f) and Rule 417(a) address the same subject: a motion to set aside an adoption judgment. On the second item, a member proposed relocating the substance of Rule 407(f) to Rule 417(a). The workgroup will address these issues.

Mr. Conant’s comment (#13) included a few additional matters. Professor Atwood will discuss his comment in Rule 408 (“certification to adopt”) regarding the ICPC with a subject matter expert. (The ICPC is a defined term in Rule 102(l).) Members declined his proposed amendment to Rule 404 (“appointment, appearance, and withdrawal of counsel”) because it would tend to elevate a prospective adoptive parent to near-party

status and lead to a situation that could be detrimental to the actual parties, especially if the goal of an ongoing dependency proceeding is family reunification. The workgroup will discuss Mr. Conant's proposed amendment to Rule 410 ("petition to adopt").

A member proposed adding a definition of "agency," because sometimes this word refers to an adoption agency and other times it refers to DCS. The member also suggested that the term "DCS" be used wherever the rules now mention "division" or "department."

5. Draft rule petition. The Chair advised that staff initially drafted the rule petition, and she reviewed and edited the document. The draft in the meeting packet includes some of her comments concerning text that might be deleted to reduce the length of the petition. She asked members to advise of any items that should be added to the petition, or that were not adequately discussed in the draft. She noted the oddity of including a proposed amendment to Civil Rule 81.1, but no one objected to the inclusion. The draft requests an early effective date for Rule 335 on the QRTP, which would be provisionally numbered Rule 52.1 until the remaining rules become effective on July 1, 2022, as proposed. However, she also raised the possibility of filing a separate petition concerning this rule.

The petition proposes that the Court consider the petition in December rather than August. The proposed July 1, 2022 effective date would allow 6 months for judicial and stakeholder training on the new set of juvenile rules following their anticipated adoption in December. Members still need to consider forms, and whether forms should continue to be part of the rules or alternatively, that forms be made available elsewhere, such as on the Arizona Judicial Branch website. Members concurred in the three-digit rule numbering and thought it would be helpful.

6. Roadmap. The Chair requested workgroups to set meetings and review their respective items as noted and discussed at today's meeting. The petition filing deadline is currently March 31, 2021. The Chair advised that she will ask the Chief Justice about the possibility of extending that date one month, until the end of April. Even if it appears that the Court might look favorably upon the request, members should still proceed apace. If the Court approves the request, the Chair would like to set another Task Force meeting at the beginning of April, after the round of workgroup meetings.

7. Call to the public; adjourn. Mr. Euchner responded to a Call to the Public. His comments concerning Rule 603 are noted in section 3 of these minutes (at page 4). Mr. Euchner added that he appreciates the three-digit rule numbering. The Chair concluded the meeting by thanking members for their work and time, for their attention to detail, and for their thoughtfulness and diligence.

The meeting adjourned at 3:35 p.m.

Post-March 5 TF meeting workgroup revisions to the second draft set of juvenile rules

This document does not include stylistic or non-substantive revisions, or technical corrections. Except as noted, it does not contain suggested rule changes that workgroups declined to adopt. The revisions noted below are shown in SharePoint (2nd Draft Sets.)

Part I

102 – added new definitions of “A.R.S.,” “court day,” and “minute entry.” (“Minute entry” was relocated from Rule 324.) Revised the definition of “parent.”

104d9 – modified language of this subpart; a report marked for identification but not admitted would become part of the appellate record only by supplemental designation. See further changes to Rule 606

Part II

205c1 – added an explanation of a provisional warrant

217 – workgroup 3 added a new reference to QRTP in section (a) and a new section (f) concerning a QRTP

218c2 – Note: no change to the 24 + 24-hour provision (24 hours to file a petition + 24 hours for a court appearance)

221(e) – Note: this rule continues to use “judgment” (i.e., judgment of acquittal). See further Rules 407 and 417, which also use the word “judgment.”

Part III

302, 303, and 305 – removed the definitions of “child’s attorney” and “guardian ad litem” in Rule 302(d) and (e), and relocated the pertinent portions to Rules 303(c) and 305

304c – added that the attorney remains of record until the court grants a motion to withdraw

305 – added that the court must define the purpose and scope of a GAL’s appt

307 – deleted section (a) (definition of “parent”)

309 – modified section (d) on “later training”

311 – modification in section (b) on participant’s right to be heard

317e – workgroup 1 added to Rule 317 (“altering or amending a final order”) this new section titled “effect on appeal time”

323 – inserted Judge Warner’s suggested language in section (a)

324 – the title of this rule was formerly “minute entries.” It is now “notice of change of child’s placement.” The proposed rule establishes a duty for DCS to give timely notice of a child’s new placement.

326 – keep this rule or not?

04.05.2021

335 – revisions to the definition of “qualified individual.” Extensive changes to section (c) (“time to complete the assessment and documentation”), section (d) (“QRTP placement and approval”), and section (e) (“continuing review of QRTP placement”).

346g2E – requires the court to direct DCS to assist the permanent guardian in applying for a guardianship subsidy [see further 348g]

349(d) – modification by WG-3 to the service provisions of this rule

351(g) – minor modification to the Rule 104d cross-reference

Part IV

402a – added a definition of “agency”

407f – revised this section (“motion to set aside judgment”) by adding, “if a motion to set aside under this section concerns a final order of adoption, Rule 417 also applies.”

417 – revised section (a) (“motion to set aside”) to conform to the aforesaid change to 407f, and by eliminating a conflicting time requirement that is also contained in section c (“initial hearing”)

407 + 417 – note: both rules continue to refer to “judgment”

Part V

502 + 505 – made modifications based on SB 1332 (Chapter 144, 2021 session)

Part VI

601b1E – added for final orders in a delinquency case “any other order that is final pursuant to Arizona case law”

601 – added a new comment to this rule regarding 601(b)(2)(E)

602b – modified the appellate caption for cases involving multiple juveniles

603a3 – made clarifying revisions to the subpart on time extending motions

603a5 – added that clerical errors of counsel not attributable to the client may constitute good cause for a delayed appeal

604a1B -- deleted from the presumptive record any report offered into evidence but not admitted. A similar deletion was made in Rule 606c2

604(f) -- deleted this section that allowed sanctions for excessive (“not necessary for proper consideration”) designation of the appellate record

609 – added a provision regarding the filing of a notice of intent to file a PR

610 – added a provision that allows the COA to issue a mandate when a notice of intent to file a PR isn’t timely filed

Title changes of the following rules:

<u>Rule #</u>	<u>As shown in the original second draft set of the rules</u>	<u>Has been changed to:</u>
210	Discovery	Disclosure
301	Scope of Rules	Application and Interpretation
305	Appointment of a Guardian ad Litem	Appointment of a GAL
306	Duties and Responsibilities of an Attorney and GAL for a Child	Duties of a Child's Attorney or a Child's GAL
307	Duties and Responsibilities of Attorneys Who Represent Parents, Guardians, and Indian Custodians	Duties of a Parent's Attorney
308	Duties and Responsibilities of a Guardian ad Litem for a Parent, Guardian, or Indian Custodian	Duties of a Parent's GAL
309	Education Requirements for a Court-Appointed Attorney or Guardian ad Litem	Education Requirements for Court-Appointed Attorneys and GALs
324	Notice of Change of Child's Placement	Providing Notice of a Change in a Child's Placement
405	Appointment of a Guardian ad Litem	Appointment of a GAL

Derivation Table

New Rule #	This column shows the title of the new juvenile rule.	The new rule is derived from the former rule shown in this column. A new rule might derive from multiple former rules, as shown. In some instances, a new rule might have incorporated only a portion of the referenced former rule.
Part I: GENERAL PROVISIONS		
101	Scope and Construction	1. Applicability; Definitions; Required Format of Stipulations; Motions and Orders
102	Definitions	1. Applicability; Definitions; Required Format of Stipulations; Motions and Orders 47.2. Minute Entries
103	Priority of Proceedings; Conducting Proceedings; Applicability of Other Rules of Procedure	6. Formality of Proceedings
104	Applicability of the Arizona Rules of Evidence; Admissibility of Evidence and Reports	45. Admissibility of Evidence
105	Form of Filed Documents	1. Applicability; Definitions; Required Format of Stipulations; Motions and Orders
106	Serving Documents After Service of Case Initiating Documents	15. Motions 46. Motions 74. Motions
107	Computing and Extending Time	17. Computation of Time 43. Computation of Time 72. Computation of Time
108	Change of Judge	2. Change of Judge or Commissioner
109	Combining Hearings	14. Consolidation of Hearings
110	Virtual Proceedings; Declared Emergencies	13. Attendance of Witnesses and Counsel by Telephone or Video Conference 42. Telephonic Testimony, Video Conferencing 71. Telephonic Testimony, Video Conferencing
111	Indian Child Welfare Act (“ICWA”)	8. Applicability of the Indian Child Welfare Act
112	Court-Appointed Special Advocate (“CASA”)	3. Appointment of Special Advocate
113	Intervention	New

Derivation Table

	PART II: DELINQUENCY	PART II: DELINQUENCY AND INCORRIGIBILITY
	Subpart 1. Delinquency Scope and Procedures	Subpart 1. General Delinquency Provisions
201	Scope of the Delinquency Rules	New
202	Referral; Diversion	22. Pre-petition Investigation and Diversion 33. Disposition of Non-Felony Offenses
203	Content of a Petition	24. Content of Petition
204	Filing a Petition	25. Filing of a Petition
205	Notice to Appear; Service; Failure to Appear	26. Service of Petition and Notice to Appear
206	Appointment of an Attorney for a Juvenile	10. Appointment and Waiver of Counsel
207	Attorney's Appearance and Withdrawal	11. Appearance of Counsel
208	The Juvenile's Attendance at Court Proceedings; Restraints	12. Attendance of Juvenile at Proceedings
209	Attendance of Witnesses and Appearance of Attorneys by Telephone or Video Conference	13. Attendance of Witnesses and Counsel by Telephone or Video Conference
210.	Disclosure	16. Discovery
211	Subpoenas	27. Subpoenas
212	Computation of Time in a Delinquency Case	17. Computation of Time
213	Speedy Justice	18. Duties of Counsel; Speedy Justice
214	Victims' Rights	21. Rights of Victims
215	Records and Proceedings	19. Records and Proceedings
216	Motions	15. Motions
217	Mandatory Judicial Determinations	19.1. Mandatory Judicial Determinations; Determinations Required Under Title IV-E of the Social Security Act

Derivation Table

	Subpart 2. Delinquency Proceedings	Subpart 2. Delinquency and Incurability Proceedings
218	Detention and Probable Cause Hearing	23. Detention and Probable Cause Hearing
219	Advisory Hearing	28. Advisory Hearing
220	Admission or Change of Plea	28. Advisory Hearing
221	Adjudication Hearing	29. Adjudication Hearing
222	Disposition	30. Disposition
223	Probation	31. Probation
224	Revocation of Probation	32. Revocation of Probation
225	Intercounty Transfers	20. Intercounty Transfers
226	Transfer for Criminal Prosecution	34. Transfer for Criminal Prosecution
227	Post Transfer	35. Post Transfer
	PART III. CHILD DEPENDENCY AND GUARDIANSHIP; TERMINATION OF PARENTAL RIGHTS	PART III. DEPENDENCY, GUARDIANSHIP, AND TERMINATION OF PARENTAL RIGHTS
	---	Subpart 1. Scope of Rules
	Subpart 1. General Provisions; Parties and Participants	Subpart 2. General Provisions
301	Application and Interpretation	36. Scope of Rules
302	Definitions	37. Definitions
303	Assignment and Appointment of an Attorney; Advisory Attorney	38. Assignment, Appointment of Counsel
304	Appearance, Substitution, and Withdrawal; Responsibilities of Parties	39. Appearance of Counsel
305	Appointment of a GAL	40. Appointment of Guardian Ad Litem
306	Duties of a Child’s Attorney or a Child’s GAL	40.1. Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem
307	Duties of a Parent’s Attorney	40.2. Duties and Responsibilities of Appointed Counsel for Parent Representation
308	Duties of a Parent’s GAL	40. Appointment of Guardian ad Litem
309	Education Requirements for Court-Appointed Attorneys and GALs	40.1. Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem 40.2. Duties and Responsibilities of Appointed Counsel for Parent Representation
310	Child’s Rights	41. Attendance at Hearings
311	Participants’ Rights	41. Attendance at Hearings
	Subpart 2. General Provisions on Proceedings and Procedures	
312	Public Attendance at Hearings	41. Attendance at Hearings

Derivation Table

313	Release of Information	47. Release of Information
314	Change of Venue	New
315	Disclosure and Discovery	44. Disclosure and Discovery
316	Motions	46. Motions
317	Altering or Amending a Final Order	New
318	Motions to Continue, for Summary Judgment, and to Set Aside a Final Order	46. Motions
319	Motions for Judgment as a Matter of Law	New
320	Placement Preferences	New
321	ICWA Placement Preferences	50.1. Deviation from Placement Preferences
322	Transfer to a Tribal Court	New
323	Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings	New [see further Family Law Rule 5.1]
324	Providing Notice of a Change in a Child's Placement	New
325	Mandatory Judicial Determinations	47.1. Mandatory Judicial Determinations
326	Required Admonition and Findings	New
	Subpart 3. Dependency Proceedings	Subpart 3. Dependency
327	Court Authorized Removal	47.3. Court Authorized Removal
328	Petition, Temporary Orders and Findings, Notice of Preliminary Protective Hearing, Amended Petition	48. Petition, Temporary Orders and Findings, Notice of Hearing, and Service of Petition
329	Service of the Dependency Petition, Temporary Orders, and Notice of Hearing	48. Petition, Temporary Orders and Findings, Notice of Hearing, and Service of Petition
330	In-Home Intervention	48.1. In-Home Intervention Hearings
331	Preliminary Protective Conference	49. Pre-Hearing Conference
332	Preliminary Protective Hearing	50. Preliminary Protective Hearing
333	Contested Review of Temporary Custody	51. Review of Temporary Custody
334	Initial Dependency Hearing	52. Initial Dependency Hearing
335	Qualified Residential Treatment Program; Judicial Review	New
336	Settlement Conference	53. Settlement Conference
337	Pretrial Conference	54. Pretrial Conference
338	Dependency Adjudication Hearing	55. Dependency Adjudication Hearing
339	Disposition Hearing	56. Disposition Hearing
340	Motion to Determine the Provision of Reunification Services	57. Provision of Reunification Services Hearing
341	Review Hearing	58. Review Hearing
342	Motion for Return of the Child	59. Return of the Child
343	Permanency Hearing	60. Permanency Hearing

Derivation Table

	Subpart 4: Guardianship Proceedings	Subpart 4: Permanent Guardianship
344	Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship	61. Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship
345	Initial Guardianship Hearing	62. Initial Guardianship Hearing
346	Guardianship Adjudication Hearing	63. Guardianship Adjudication Hearing
347	Successor Permanent Guardianships	63.1. Motion, Notice of Hearing, Service of Process and Orders for Successor Permanent Guardianship
348	Initial Successor Permanent Guardianship Hearing	63.2. Initial Successor Permanent Guardianship Hearing
	Subpart 5: Proceedings for Termination of Parental Rights	Subpart 5: Termination of Parental Rights
349	Petition, Motion, Notice of Hearing and Service of Process and Orders	64. Motion, Petition, Notice of Hearing and Service of Process and Orders
350	Initial Termination Hearing	65. Initial Termination Hearing
351	Termination Adjudication Hearing	66. Termination Adjudication Hearing
	Part IV. ADOPTIONS	Part IV. ADOPTION
	--	Subpart 1: Scope of Rules
	Subpart 1: General Adoption Provisions	Subpart 2: General Adoption Provisions
401	Scope of Rules	67. Scope of Rules
402	Meaning of Terms	68. Definitions
403	Confidentiality; Release of Information	75. Release of Information 86. Adoption Records
404	Appointment, Appearance, and Withdrawal of Counsel	69. Appointment, Appearance and Withdrawal of Counsel
405	Appointment of a GAL	70. Appointment of Guardian Ad Litem
406	Disclosure and Discovery in Contested Adoptions	73. Disclosure and Discovery
407	Motions	74. Motions
	--	Subpart 3: Certification
	Subpart 2: Adoption Proceedings	Subpart 4: Adoption
408	Certification to Adopt	77. Certification to Adopt
409	Petition for Child's Custody by a Non-Certified Person	78. Temporary Custody
410	Petition to Adopt	79. Petition to Adopt
411	Service of the Petition to Adopt and Notice of Hearing	76. Notice of Hearing 79. Petition to Adopt
412	Birth Parent Living Expenses	80. Birth Parent Living Expenses
413	Consent to Adopt	81. Consent to Adopt
414	Petition to Revoke Consent	82. Petition and Hearing to Revoke Consent
415	Documentation Required to Adopt	83. Documentation Required to Adopt
416	Hearing to Finalize Adoption	84. Hearing to Finalize Adoption

Derivation Table

417	Setting Aside an Adoption	85. Motion and Hearing to Set Aside Adoption
418	Enforcement or Modification of Post-Placement Agreements	87. Modification of Post-Placement Agreements
	PART V. EMANCIPATION	
	--	Subpart 1: Scope of Rules
	--	Subpart 2: General Provisions
	--	Subpart 3: Emancipation Proceedings
	--	Subpart 4: Emancipation Order
501	Emancipation Generally	88. Scope of Rules 89. Definitions 91. Legal Representation 92. Records and Hearings 93. Fees and Waivers 96. Allegation of Abuse or Neglect
502	Petition and Documentation Requirements	90. Venue 94. Petition, Filing, Content and Documentation Requirements
503	Time for Hearing, Notice of Hearing	95. Hearing, Service of Petition and Notice 100. Time Limits and Exclusions
504	Proceedings After Service of the Petition	97. Responses and Objections 98. Proceedings and Court Orders 99. Discovery
505	Determination and Order of Emancipation	101. Burden of Proof 102. Findings, Order of Emancipation
	PART VI. APPEALS	PART VI. APPEALS
601	Right to Appeal	103. Initiation of an Appeal
602	General Provisions	103. Initiation of an Appeal
603	Notice of Appeal	104. Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal 108. Service; How Made; Filing; Extensions of Time
604	The Record on Appeal	104. Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal
605	Notice of Non-Participation	104. Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal
606	Assigning an Appellate Case Number; Filing, Serving, and Transmitting the Record on Appeal	105. Docketing of Appeal; Transmission and Filing of Record on Appeal; Filings in Juvenile Court After Commencement of Appeal

Derivation Table

607	Briefing in the Court of Appeals; Transfer to the Supreme Court	106. Briefing, Consideration and Disposition in the Court of Appeals
608	Dismissal and Other Action by the Court of Appeals; No Motion for Reconsideration; Motion for Publication [new]	106. Briefing, Consideration and Disposition in the Court of Appeals
609	Petition for Review	107. Petition for Review
610	Appellate Court Mandate	107. Petition for Review
	FORMS	FORMS
		Form 1. Notice to Parent in Dependency Action
		Form 1A. Notice to Parent in In-home Dependency Action
		Form 2. Notice to Parent in Guardianship Action
		Form 3. Notice to Parent in Termination Action
	[abrogated]	Form 4. Counsel’s Certification of Diligent Search
	Form 5a. Notice of Appeal: delinquencies Form 5b. Notice of Appeal: general	Form 5. Sample Notice of Appeal [abrogated]
	Form 6: Supplemental Designation of the Record	
	MISCELLANEOUS	
	Civil Rule 81.1 [Amended]	Civil Rule 81.1

References to ICWA authority in the Juvenile Rules (General references to “ICWA” are omitted)

Juvenile Rule	Federal statute or regulation referenced in the juvenile rule	Title of the federal provision (subpart titles are omitted)
102. Definitions	25 U.S.C. §§ 1901 through 1963 Part 23 of Title 25 of the Code of Federal Regulations	Chapter 21: Indian Child Welfare Indian Child Welfare Act
111. Indian Child Welfare Act (“ICWA”) [comment to the 2022 amendment]	25 C.F.R. § 23.107 25 C.F.R. §§ 23.115-119 25 U.S.C. § 1911(b)	How should a state court determine if there is reason to know the child is an Indian child? Petitions to transfer to tribal court Indian tribe jurisdiction over Indian child custody proceedings
302. Definitions	25 C.F.R. § 23.2 25 C.F.R. § 23.107 43 U.S.C. § 1602(c)	Definitions How should a state court determine if there is reason to know the child is an Indian child?
311. Participants’ Rights	25 C.F.R. § 23.111	What are the notice requirements for a child-custody proceeding involving an Indian child?
321. ICWA Placement Preferences	ICWA § 1915 25 C.F.R. § 23.131 25 C.F.R. § 23.132 25 U.S.C. Chapter 21	Placement of Indian children What placement preferences apply in foster care or pre-adoptive placements? How is a determination of ‘good cause’ to depart from the placement preferences made? Chapter 21: Indian Child Welfare

322. Transfer to a Tribal Court	25 C.F.R. § 23.2 ICWA § 1911 (b) 23 C.F.R. §§ 23.115 through 23.119	Definitions Indian tribe jurisdiction over Indian child custody proceedings Petitions to transfer to tribal court
327. Court Authorized Removal	25 C.F.R. § 23.113(b)(1) 25 C.F.R. § 23.113(d).	What are the standards for emergency proceedings involving an Indian child?
329. Service of the Dependency Petition, Temporary Orders, and Notice of Hearing [comment to the 2022 amendment]	ICWA § 1922 25 C.F.R. § 23.113	Emergency removal or placement of child; termination; appropriate action What are the standards for emergency proceedings involving an Indian child?
332. Preliminary Protective Hearing	25 C.F.R. § 23.107 ICWA § 1922 25 C.F.R. § 23.113 25 C.F.R. § 23.114 ICWA § 1912(a) 25 C.F.R. § 23.131 25 C.F.R. § 23.132	How should a state court determine if there is reason to know the child is an Indian child? Emergency removal or placement of child; termination; appropriate action What are the standards for emergency proceedings involving an Indian child? What are the requirements for determining improper removal? Pending court proceedings What placement preferences apply in foster care or pre-adoptive placements? How is a determination of ‘good cause’ to depart from the placement preferences made?

334. Initial Dependency Hearing	25 C.F.R. § 23.107 25 C.F.R. § 23.131 ICWA § 1915 ICWA § 1912(a)	How should a state court determine if there is reason to know the child is an Indian child? What placement preferences apply in foster care or pre-adoptive placements? Placement of Indian children Pending court proceedings
336. Settlement Conference 337. Pretrial Conference	ICWA § 1915 25 C.F.R. § 23.131	Placement of Indian children What placement preferences apply in foster care or pre-adoptive placements?
338. Dependency Adjudication Hearing	ICWA § 1912 25 C.F.R. § 23.121 ICWA § 1915 25 C.F.R. § 23.131	Pending court proceedings What are the applicable standards of evidence? Placement of Indian children What placement preferences apply in foster care or pre-adoptive placements?
339. Disposition Hearing	ICWA § 1915 25 C.F.R. § 23.131	Placement of Indian children What placement preferences apply in foster care or pre-adoptive placements?
340. Motion to Determine the Provision of Reunification Services	ICWA § 1912 25 C.F.R. § 23.120 25 C.F.R. § 23.121	Pending court proceedings How does the state court ensure that active efforts have been made? What are the applicable standards of evidence?
341. Review Hearing	ICWA § 1915	Placement of Indian children

<p>342. Motion for Return of the Child 343. Permanency Hearing</p>	<p>25 C.F.R. § 23.131</p>	<p>What placement preferences apply in foster care or pre-adoptive placements?</p>
<p>346. Guardianship Adjudication Hearing</p>	<p>ICWA § 1912</p>	<p>Pending court proceedings</p>
<p>351. Termination Adjudication Hearing</p>	<p>ICWA § 1912 25 C.F.R. § 23.2 25 C.F.R. § 23.121 25 C.F.R. § 23.122 ICWA §1915 25 C.F.R. §23.130 25 C.F.R. 23.131 25 C.F.R. § 23.132</p>	<p>Pending court proceedings Definitions What are the applicable standards of evidence? Whom may serve as a qualified expert witness? Placement of Indian children What placement preferences apply in adoptive placements? What placement preferences apply in foster care or pre-adoptive placements? How is a determination of “good cause” to depart from the placement preferences made?</p>
<p>402. Meaning of Terms</p>	<p>ICWA § 1915 25 C.F.R. § 130 25 C.F.R. § 23.131 25 C.F.R. § 23.132 25 U.S.C. § 1917</p>	<p>Placement of Indian children What placement preferences apply in adoptive placements? What placement preferences apply in foster care or pre-adoptive placements? How is a determination of “good cause” to depart from the placement preferences made? Tribal affiliation information and other information for protection of rights from tribal relationship; application of</p>

	25 U.S.C. § 1951	subject of adoptive placement; disclosure by court Information availability to and disclosure by Secretary
403. Confidentiality; Release of Information	25 U.S.C. § 1917 25 U.S.C. § 1951	Tribal affiliation information, etc. [see above for the full title] Information availability to and disclosure by Secretary
407. Motions	ICWA § 1913 ICWA § 1914	Parental rights; voluntary termination Petition to court of competent jurisdiction to invalidate action upon showing of certain violations
409. Petition for Child’s Custody by a Non-Certified Person	ICWA § 1915 25 C.F.R. § 23.130 25 C.F.R. § 23.131 25 C.F.R. § 23.132	Placement of Indian children What placement preferences apply in adoptive placements? What placement preferences apply in foster care or pre-adoptive placements? How is a determination of “good cause” to depart from the placement preferences made?
410. Petition to Adopt	ICWA § 1915 25 C.F.R. § 23.130 25 C.F.R. § 23.112	Placement of Indian children What placement preferences apply in adoptive placements? What time limits and extensions apply?
411. Service of the Petition to Adopt and Notice of Hearing	25 C.F.R. § 23.111	What are the notice requirements for a child-custody proceeding involving an Indian child?

<p>413. Consent to Adopt</p>	<p>ICWA § 1913</p> <p>25 C.F.R. § 23.124</p> <p>25 C.F.R. § 23.125</p> <p>25 C.F.R. § 23.126</p>	<p>Parental rights; voluntary termination</p> <p>What actions must a state court undertake in voluntary proceedings?</p> <p>How is consent obtained?</p> <p>What information must a consent document contain?</p>
<p>414. Petition to Revoke Consent</p>	<p>25 C.F.R. § 23.128</p>	<p>How is withdrawal of consent to a termination of parental rights or adoption achieved?</p>
<p>416. Hearing to Finalize Adoption</p>	<p>ICWA § 1913</p> <p>ICWA § 1915</p> <p>25 C.F.R. § 23.130</p> <p>25 C.F.R. § 23.131</p> <p>25 C.F.R. § 23.132</p> <p>ICWA § 1912</p> <p>25 C.F.R. § 23.121</p> <p>25 C.F.R. § 23.122</p> <p>ICWA § 1951</p>	<p>Parental rights; voluntary termination</p> <p>Placement of Indian children</p> <p>What placement preferences apply in adoptive placements?</p> <p>What placement preferences apply in foster care or pre-adoptive placements?</p> <p>How is a determination of “good cause” to depart from the placement preferences made?</p> <p>Pending court proceedings</p> <p>What are the applicable standards of evidence?</p> <p>Who may serve as a qualified expert witness?</p> <p>Information availability to and disclosure by Secretary</p>
<p>417. Setting Aside an Adoption</p>	<p>ICWA § 1913</p>	<p>Parental rights; voluntary termination</p>

To the child’s parent or legal guardian:

READ THIS NOTICE CAREFULLY.

The Department of Child Safety (DCS) [or ____] has filed a dependency petition concerning your child.

As a parent or legal guardian, you have rights in this case. You have the right to an attorney. Your attorney will be with you at every hearing in your case. You have a right to a trial (called an adjudication hearing) on the allegations in the petition. At the adjudication hearing your attorney can question any witness who testifies against you. You have the rights at the adjudication hearing to subpoena witnesses, to present documents, and to testify on your own behalf. Hearings are open to the public, but you may ask the court to close the hearing.

The court will decide whether your child is dependent based on the evidence. If the court determines that your child is dependent, your child will become a ward of the court. If your child is a ward of the court, DCS and the court will make decisions about your child’s care and custody until you show that you are able to do so. If within a certain time you cannot fix the problems that caused your child to be dependent, the court may terminate your parental rights and your child may be adopted, or a permanent guardian may be appointed for your child.

As a parent or legal guardian, you also have responsibilities:

1) You must appear for every court date. There will be court dates in your case— for a pre-trial conference, a settlement conference, and an adjudication hearing—and you must attend these conferences and hearings. If you don’t show up for a court date and you don’t have a good reason for not showing up, the court may find that you waived your rights in this case and that you admitted the allegations in the dependency petition. The court may then consider evidence in your absence and find that your child is dependent.

2) You must participate in reunification services. You must participate in all the services that DCS offers to you to help you reunite you with your child. Your failure or refusal to remedy the circumstances that caused your child to be removed from the home may be grounds for terminating your parental rights or establishing a permanent guardianship.

3) You must attend termination or guardianship hearings. If a motion or petition is filed to terminate your parental rights or to establish a guardianship, you must attend all the additional court hearings concerning that request, including the initial hearing, a

pretrial conference, and the adjudication. If you fail to show up at any of these hearings without a good reason, the court may find that you have waived your right to object to termination of your parental rights or the guardianship. The court may then consider evidence in your absence and terminate your parental rights or order a permanent guardianship.

The Court will presume you understand this notice unless you tell the Court at today's hearing that you do not.

Your next hearing is called:

The date and time are:

The judge is:

The courthouse address is:

The courtroom number is:

Your court's attorney's telephone number is:

My signature means that I received a copy of this document on this date and that I understand my rights, my responsibilities, and the consequences should I fail to appear at future hearings or fail to participate in reunification services.

Signature:

Date:

emancipated minors; orders; employment rights

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 144
SENATE BILL 1332

AN ACT

AMENDING SECTIONS 12-2451, 12-2453, 12-2454 AND 23-235, ARIZONA REVISED STATUTES; RELATING TO EMANCIPATED MINORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-2451, Arizona Revised Statutes, is amended to
3 read:

4 12-2451. Petition for emancipation order; requirements;
5 notification; representation; waiver of filing
6 fees

7 A. A minor who wishes to be emancipated may file a petition for an
8 emancipation order with the clerk of the court in the county in which the
9 minor resides if all of the following apply:

- 10 1. The minor is at least sixteen years of age.
11 2. The minor is a resident of this state.
12 3. The minor is financially self-sufficient.

13 4. The minor acknowledges in writing that the minor has read and
14 understands information that is provided by the court and that explains
15 the rights and obligations of an emancipated minor and the potential risks
16 and consequences of emancipation.

17 ~~5. The minor is not a ward of the court and is not in the care,~~
18 ~~custody and control of a state agency.~~

19 B. A petition filed pursuant to this section must contain the
20 following:

- 21 1. The petitioner's name, mailing address, social security number
22 and date of birth.
23 2. The name and mailing address of the petitioner's parent or legal
24 guardian, if known.
25 3. Specific facts to support the petition, including:
26 (a) The minor's demonstrated ability to manage the minor's
27 financial affairs including proof of employment or other means of support.
28 (b) The minor's demonstrated ability to manage the minor's personal
29 and social affairs, including proof of housing.
30 (c) The minor's demonstrated ability to live wholly independent of
31 the minor's parent.
32 (d) The minor's demonstrated ability and commitment to obtain or
33 maintain education, vocational training or employment.
34 (e) How the minor will obtain or maintain health care.
35 (f) Any other information considered necessary to support the
36 petition.
37 (g) At least one of the following:
38 (i) Documentation that the minor has been living on the minor's own
39 for at least three consecutive months.
40 (ii) A statement explaining why the minor believes the home of the
41 minor's parent or legal guardian is not a healthy or safe environment.
42 (iii) A notarized statement that contains written consent to the
43 emancipation and an explanation by the minor's parent or legal guardian.
44 (h) **WHETHER THE MINOR HAS OBTAINED AN OFFER OF EMPLOYMENT.**

1 C. The court shall hold a hearing on the petition within ninety
2 days after the date of its filing and shall notify the petitioner and the
3 petitioner's parent or legal guardian of the date and place of the hearing
4 by certified mail at least sixty days before the hearing date. For good
5 cause shown, the court may continue the initial emancipation hearing.

6 D. The minor's parent or legal guardian may file a written response
7 objecting to the emancipation within thirty days ~~of~~ AFTER service of the
8 notice of the hearing.

9 E. The minor may participate in the court proceedings on the
10 minor's own behalf or be represented by an attorney chosen by the minor.
11 If the court determines it necessary, the court may appoint a guardian ad
12 litem for the petitioner.

13 F. The court may reduce or waive the fee prescribed in section
14 12-284 for filing a petition for emancipation of a minor for financial
15 hardship.

16 Sec. 2. Section 12-2453, Arizona Revised Statutes, is amended to
17 read:

18 12-2453. Factors; best interests of minor; burden of proof;
19 emancipation orders; filing requirements

20 A. The court shall determine emancipation based on the best
21 interests of the minor and shall consider all relevant factors, including:

22 1. The potential risks and consequences of emancipation and to what
23 degree the minor understands these risks and consequences.

24 2. The wishes of the minor.

25 3. The opinions and recommendations of the minor's parent or LEGAL
26 guardian.

27 4. The financial resources of the minor, including the minor's
28 employment history.

29 5. The minor's ability to be financially self-sufficient.

30 6. The minor's level of education and the minor's success in
31 school.

32 7. Whether the minor has a criminal record.

33 8. WHETHER THE MINOR HAS OBTAINED AN OFFER OF EMPLOYMENT.

34 B. The minor has the burden of proof by clear and convincing
35 evidence.

36 C. The court shall file an emancipation order with the clerk of the
37 court and issue a copy of the order to the minor and the department of
38 economic security or its agent, if the minor is a child in a title IV-D
39 case.

40 D. An emancipation order issued by a court pursuant to this
41 article:

42 1. Is conclusive evidence that the minor is emancipated.

43 2. Terminates a dependency action as to the minor by operation of
44 law.

1 Sec. 3. Section 12-2454, Arizona Revised Statutes, is amended to
2 read:

3 12-2454. Effect of emancipation

4 A. An emancipation order issued pursuant to this article recognizes
5 the minor as an adult for the following purposes:

- 6 1. The right to enter into a binding contract.
- 7 2. The ability to sue and be sued.
- 8 3. The right to buy and sell real property.
- 9 4. The right to establish a legal residence.
- 10 5. The obligation to pay child support.
- 11 6. The right to incur debts.
- 12 7. The right to access medical treatment and records.
- 13 8. The right to consent to medical, dental and psychiatric care
14 without parental consent, knowledge or liability.
- 15 9. The right to consent to medical, dental and psychiatric care for
16 the emancipated minor's child.
- 17 10. Eligibility for social services.
- 18 11. The right to obtain a license to operate equipment or perform a
19 service.
- 20 12. The right to apply for enrollment in any school or college.
- 21 13. The ability to apply for loans.
- 22 14. **THE ABILITY TO PURSUE ANY OTHER OPPORTUNITY THAT IS PROVIDED BY**
23 **LAW TO A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE.**

24 B. An emancipation order issued pursuant to this article terminates
25 a parent's or legal guardian's:

- 26 1. Right to the emancipated minor's income.
- 27 2. Future child support obligations relating to the emancipated
28 minor.
- 29 3. Tort liability for the emancipated minor's actions.
- 30 4. Obligation to financially support the emancipated minor after
31 the first day of the month following entry of this order.
- 32 5. Obligation to provide medical support for the emancipated minor.

33 Sec. 4. Section 23-235, Arizona Revised Statutes, is amended to
34 read:

35 23-235. Exemptions

36 A. ~~The provisions of~~ Sections 23-231, 23-232 and 23-233 ~~shall~~ **DO**
37 not apply to persons:

- 38 1. Employed by a grandparent, brother, sister, aunt, uncle, first
39 cousin, stepparent or parent, including a relative of the same degree
40 through marriage or adoption, or person in loco parentis in occupations in
41 which the grandparent, brother, sister, aunt, uncle, first cousin,
42 stepparent or parent or person in loco parentis owns at least ten ~~percent~~
43 **PERCENT** of the employing organization and such owner is actively engaged
44 in the daily operation of the organization, if either:

1 (a) The person is under ~~the age of~~ eighteen years OF AGE and IS not
2 engaged in manufacturing or mining occupations.

3 (b) The person is between ~~the ages of~~ sixteen and eighteen years OF
4 AGE and is engaged in manufacturing or mining occupations.

5 2. Employed as stars or performers in motion picture, theatrical,
6 radio or television productions if before the beginning of production the
7 production company provides the department of labor of the industrial
8 commission with the name and address of the person, the length, location
9 and hours of employment and any other information required by the
10 department.

11 3. Involved in career education programs.

12 4. Involved in vocational or technical training school programs
13 pursuant to title 15, chapter 7, article 5.

14 5. Employed as apprentices and registered by the bureau of
15 apprenticeship and training of the United States department of labor in
16 accordance with the standards established by that bureau or registered by
17 the apprenticeship council or employed under a written apprenticeship
18 agreement and conditions ~~which~~ THAT are found by the secretary of labor to
19 conform substantially with such federal or state standards.

20 6. Trained under either the 4-H federal extension service or the
21 United States office of education vocational agriculture training
22 programs, if employed outside school hours on the equipment for which they
23 have been trained.

24 7. Who have completed vocational or career education programs
25 approved by the department of education if the programs are directly
26 related to the prohibited occupation or employment or if working in the
27 prohibited occupation is part of the vocational or career education
28 program.

29 8. Who are married.

30 9. Who have a high school diploma or its equivalent.

31 10. WHO ARE MINORS AND WHO HAVE BEEN EMANCIPATED PURSUANT TO
32 TITLE 12, CHAPTER 15.

33 B. Sections 23-231 and 23-232 do not apply to:

34 1. The operation of power-driven equipment used in the care and
35 maintenance of lawns and shrubbery not connected to retail, food service
36 and gasoline service establishments.

37 2. Clerical employment in an office in which duties are performed
38 without exposure to the hazards described or defined in this article.

APPROVED BY THE GOVERNOR MARCH 26, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 26, 2021.

extensive that a redline would be more confusing than helpful. Appendix B contains new forms referenced in these rules.

For reasons explained in Section 10, this petition also requests amendments to Rule 81 of the Rules of Civil Procedure. Appendix C shows the proposed amendments to that civil rule.

The conclusion of this petition, Section 14, includes other requests.

1. Background. Administrative Order No. 2019-74, entered on July 1, 2019, established this Task Force. This Order directed the Task Force to

... review the Arizona Rules of Procedure for the Juvenile Court and identify possible changes that would conform these rules to modern usage, simplify the language, clarify and improve current procedures, reorganize the rules to enhance their usability, and account for recent Arizona and federal legislation, including the Family First Prevention Services Act.

The proposed rules address each of these elements.

The 26 members of the Task Force include a broad range of individuals, as shown in the attachment to this petition. Subject matter experts from the Attorney General's office, DCS, AOC-Legal, and private law practice, as well as active superior court judges, also attended a number of Task Force and workgroup meetings and provided valuable insights and guidance to the members.

2. The Juvenile Rules are Complex. Juvenile rules apply to a mixture of case types. These cases can be either criminal or civil in nature. Not only do Arizona statutes and case law apply in juvenile proceedings, but so does federal law,

including the Family First Prevention Services Act and the Indian Child Welfare Act (“ICWA.”) In short, the revision of the juvenile rules has been a major and challenging undertaking.

3. Restyling. The proposed juvenile rules include stylistic revisions that make the rules more understandable and user-friendly. They employ consistent formatting and nomenclature and generally follow the conventions utilized in previous restyling projects.

Many of the current juvenile rules, even lengthy ones, have no titles for sections within the rule. The proposed rules correct this omission by adding titles to virtually every section, and frequently to subparts, too. These titles, along with the uniform organization, makes it easier for users to navigate the rules and locate pertinent provisions.

Many of the proposed rules are related to Title 8 statutes. (The exception is the emancipation rules, which have their origin in Title 12.) The proposed rules include frequent cross-references to particular Arizona statutes and, when appropriate, to federal authority, which should assist the readers in locating and understanding applicable law.

4. Organization and Numbering. The current Juvenile Rules are divided into 6 parts: Part I, General Provisions; Part II, Delinquency and Incurrigibility; Part III, Dependency, Guardianship and Termination of Parental Rights; Part IV,

Adoption; Part V, Emancipation; and Part VI, Appeals. Several of these parts include subparts. The proposed rules retain the structure of these 6 major Parts, but the titles of some Parts have been edited, and the organization of certain subparts has changed.

The number of rules in this set has also changed. There currently are 116 juvenile rules. (The last numbered rule is currently Rule 108, but some rule numbers include a number to the right of a decimal point, which accounts for a number higher than 108.) By comparison, the set proposed by this petition includes 124 rules. The following factors affected the total number of proposed rules.

(A) In the current set, 13 rules are shown as “reserved,” “repealed,” or “renumbered.” The proposed rules no longer include these placeholders.

(B) The current 15 emancipation rules in Part V have been reorganized. There are now only 5 proposed emancipation rules.

(C) Several rules were consolidated, but others were bifurcated, or even trifurcated. For example, current Rule 1 is titled, “Applicability; Definitions; Required Format of Stipulations, Motions and Orders.” The restyled rules separate these subjects into three rules: proposed Rule 101 (“Scope and Construction,” Rule 102 (“Definitions”), and Rule 105 (“Form of Filed Documents”). In other instances, two or more rules have been consolidated into a single rule.

(D) The petition proposes several entirely new rules. These new rules address subjects such as intervention (Rule 113), change of venue (Rule 314), a motion for judgment as a matter of law (Rule 319), and providing notice of a change in a child’s placement (Rule 324).

The reduction in the number of rules, combined with the volume of additional rules, made it apparent midway through this project that the proposed set of Juvenile Rules would require renumbering. The Task Force proposes three-digit numbering. Three-digit numbering for the proposed rules is effective because the first number of a rule corresponds with the Part in which the rule is located, and therefore provides a cue regarding the subject matter of the rule. For example, a reader might not know the subject of Rule 35, but in the proposed rules, that same rule is numbered 227, a signal that the rule is within Part II regarding delinquency. Accordingly, the rules in Part I are numbered 101, 102, etc.; in Part II they are numbered 201, 202, etc.; and this numbering pattern is continued through Part VI. This method of numbering is not unique; the Arizona Rules of Evidence are similarly numbered, with the initial digit of an Evidence Rule number indicating the Article (or “Part”) where the rule is located.

5. Task Force Methodology. Task Force members were divided into 4 workgroups, which were assigned to revise roughly equivalent portions of the rules. Workgroups met 100 times between October 2019 and April 2021. Outside of

meetings, the workgroups reviewed drafts, researched law, and edited documents. The workgroups presented proposed revisions to the full Task Force at public meetings.

The Task Force met 16 times during late 2019, 2020, and early 2021. Members learned early in the process that there was no low-hanging fruit in the juvenile rules; most of the rules were lengthy, included legal or practical issues, or both. Many rules included controversial provisions that were the subject of extensive discussion. (Click here [ADD HYPERLINK] to review more than 100 pages of meeting minutes, grouped by rule number, that memorialize those discussions.)

In addition, beginning in July 2020, and with the authorization of Task Force members, an Editorial Group reviewed each rule after it had been considered by the Task Force. Consequently, the proposed rules underwent 3 levels of review: first by a workgroup, then by the Task Force, and again by the Editorial Group. (The Editorial Group was composed of the Chair, Judges Mark Armstrong, Joseph Kreamer, and Kathleen Quigley, as well as Beth Beckmann and Mark Meltzer.) The Editorial Group has met more than 20 times. The Editorial Group improved the grammar, syntax, and organization of the approved rules, and with the authority of Task Force members, it made substantive changes that furthered the spirit and intent of Task Force discussions.

6. Court Comments to the Rules. Most of the comments in the current rules have been deleted. The Task Force moved any appropriate substantive content from the comment to the proposed new rule. The Task Force also retained several comments and even added a few new ones.

8. The Proposed Rules. This section summarizes some of the significant and substantive items in the proposed rules.

- **Part I: General Provisions (Rules 101 - 113).** Part I, which are rules that apply in each of the other 5 Parts, currently has 6 rules. By comparison, Part I as proposed includes more than twice that number. Some of the increase is attributable to the splitting of Rule 1, but new rules also have been added,.

Two new Part I rules govern the applicability of other Arizona procedural rules. Rule 103, “Priority of Proceedings; Conducting Proceedings; and Applicability of Other Rules,” provides that civil, civil appellate, criminal, family law, probate, protective order, and Supreme Court rules, “are applicable only as specifically set forth or incorporated by reference in these rules.” Rule 103(d). For the most part, then, the proposed juvenile rules are self-contained. The second, Rule 104, specifically concerns the Arizona Rules of Evidence. Rule 104 distinguishes the applicability of the Rules of Evidence in a contested adjudication hearing from other, non-adjudication proceedings, where evidentiary standards are relaxed. Rule 104 includes detailed provisions regarding the admissibility of reports, including

reports from a “child safety” or case worker. Rule 104(d)(10) addresses a recurring issue on the meaning of “unavailable for cross-examination.”

Part I includes a new rule, Rule 110, on “virtual proceedings; declared emergencies,” which might be the first Arizona court rule on procedures for conducting a proceeding when the governor declares a statewide emergency, such as the current pandemic. Under the provisions of Rule 110, evidentiary hearings would presumptively be conducted in person in the absence of an emergency; but during a declared emergency, evidentiary hearings would presumptively be conducted virtually. The rule provides exceptions for overcoming the presumption in either situation.

- **Part II: Delinquency (Rules 201 - 217).** Although there are very few incorrigibility cases compared to number of delinquency actions, the delinquency rules often use the couplet “delinquency or incorrigibility” to refer to both. The proposed rules eliminate the need for these repeated references by simply saying, “The delinquency rules apply to incorrigibility proceedings.” Rule 201 (“Scope of the Delinquency Rules”). Similarly, Rule 202 (“Referral; Diversion”) defines “parent” for the delinquency rules as including “parent or guardian.” This avoids the need to say “and guardian” every time the rules refer to a parent. There are similar but slightly different definitions of “parent” in the dependency and adoption rules. See Rule 302 (“Definitions”) and Rule 402 (“Meaning of Terms.”)

The sequence of the delinquency rules has changed. The current delinquency rules begin with provisions such as the appointment of counsel and the attendance of witnesses, i.e., rules that apply after a proceeding has been initiated. The proposed rules remediate this cart-before-the-horse approach by starting with rules on referrals to juvenile court and the filing and service of a delinquency petition.

Rule 215 (“Records and Proceedings”) retains the terms “legal file” and “social file” used in current Rule 19. However, Rule 215(a)(1)(D) adds a new term, “disposition file,” which includes the disposition report and any documents from the legal or social file attached to that report. A rule in Part VI (“Appeals”) requires transmission of the disposition file to the appellate court as a component of the record on appeal. See Rule 604(a)(1)(A). Part II includes a new Rule 220 (“Admission or Change of Plea”), which permits the court to enter an admission at multiple stages of a case. By comparison, current Rule 28(C)(7) (“Advisory Hearing”) unintentionally implies that the entry of an admission is limited to that stage of the proceeding.

- **Part III: Child Dependency and Guardianship; Termination of Parental Rights (Rules 301- 351).**

In both the current and proposed rules, the general provisions in Part III apply to dependency, Title 8 guardianship, and termination proceedings. The first two subparts of proposed Part III, result from the bifurcation of the current subpart on

“general provisions.” The first of these new subparts concerns “parties and participants.” The second new subpart contains general provisions on “proceedings and procedures.”

First subpart. This subpart begins with Rule 301, which has separate sections on “application” and “interpretation.” The second section requires the court to interpret the rules not only to protect the child’s best interests, but also to protect the rights of the parties. Subsequent rules in the first subpart require the court to appoint an attorney for a child in any dependency or termination case. See Rule 303(c) (“Appointment of an Attorney for a Child”). Task Force members were not unanimous on this new provision, because some courts prefer to appoint only a guardian ad litem (“GAL”), for example, when the child is an infant and cannot express needs and wishes to an attorney. While the proposed rules require every child to have a court-appointed attorney, court appointment of GAL for the child would be discretionary and would be in addition to appointed counsel. See Rule 305 “Appointment of a GAL.” A GAL appointed under Rule 305 must also be an attorney.

Proposed Rule 306, “Duties and Responsibilities of an Attorney and GAL for a Child,” contains a more detailed description of the explanation of the attorney’s role to the child than exists in current Rule 40.1(B). It includes guidance on the “Relationship,” “Diminished Capacity,” and “Substituted Judgment.” It also

includes a cross-reference to Ethical Rule 1.14 (“Client with Diminished Capacity”). The proposed rule requires an attorney to observe the child in the placement home, eliminating the current 5-year age limitation on this requirement.

The current continuing education requirements for court-appointed attorneys, GALs, and counsel for parents contained overlap. Rule 40.1(J), 40.2(G). These requirements have been consolidated in a new Rule 309 (“Education Requirements for Court-Appointed Attorneys and GALs”). Part III, subpart 1, also contains freestanding rules on a child’s rights (Rule 310) and participants’ rights (Rule 311).

Second subpart. The next proposed Part III subpart, concerning “proceedings and procedures,” includes a new rule on change of venue to another county (Rule 314). It also includes a new Rule 317 on motions to alter or amend a final order, which addresses an issue that arose in *Francine C. v. DCS*, 1 CA-JV 19-00366 (2020). (See ¶ 22: “...the Juvenile Rules applicable to a dependency do not authorize a party to challenge a dependency order by filing a motion for reconsideration or clarification.”) *Francine C.* involved omitted findings of fact and conclusions of law, and motions under Rule 317 are limited to correcting clerical errors or addressing insufficient findings or conclusion. Rule 318(c), which is derived from current Rule 46(E), concerns motions setting aside a final order on grounds specified in Civil Rule 60. Motions under Rule 317 or Rule 318(c), when filed within 12 days after entry of a final order, extend the time for appealing from the order. See Rule

603(a)(3) (“Effect of Certain Post-Judgment Motions on the Time for Filing a Notice of Appeal”).

New Rule 319 (“Motion for Judgment as a Matter of Law”) would allow a party other than the petitioner to move for judgment as a matter of law after the petitioner has concluded its presentation of evidence in a dependency, termination, or guardianship adjudication. A Rule 319 motion is analogous to a JMOL motion under Civil Rule 50, but the latter occurs in the context of a jury trial whereas the new juvenile rule would apply in bench trials. Current Juvenile Rule 50.1 (“Deviation from ICWA Placement Preferences”) is now Rule 321 of subpart II. There is a new but related rule, Rule 320 (“Placement Preferences”), which is based on A.R.S. § 8-514 and describes placement preferences for a non-Indian child.

Rule 323 (“Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings”) is a new rule that is the analog of Family Law Rule 5.1. If there are pending family and juvenile cases involving the same child, Rule 323 provides that the judge presiding over the juvenile case makes decisions regarding the children. Rule 324 (“Providing Notice of a Change in a Child’s Placement”) is also new. It requires DCS to provide timely notice to the child’s attorney and GAL of the child’s new placement address, and to provide notice of the placement, without the address, to the parent’s attorney.

Third subpart. Because removal might be the first judicial proceeding in a dependency case, Rule 327 (“court authorized removal,” formerly Rule 47.3), was moved from its current location in the subpart on general provisions to the front of proposed subpart 3 on “Dependency Proceedings.” Current Rule 48 on filing and service of a dependency petition is now two rules: Rule 328 on the content of the petition and ancillary documents, and Rule 329 on service of those documents. Rule 329(f) is a new provision for service on an incarcerated person that is based on Family Law Rule 41(g).

Current Rule 49, titled “pre-hearing conference,” would become Rule 331 and have the more explanatory title of “preliminary protective conference.” Current Rule 50, which concerns the preliminary protective hearing, has been significantly reorganized in Rule 332. The proposed rule more clearly outlines what occurs at the preliminary protective hearing and details the court findings and orders that are required at the conclusion of the hearing.

Proposed Rule 333 (“Contested Review of Temporary Custody”) and Rule 334 (“Initial Dependency Hearing”) permit a parent at the initial dependency hearing who had not been served prior to, and did not appear at, the preliminary protective hearing, to request a temporary custody hearing at the parent’s first court appearance. Agreement on those new provisions was not unanimous, but they were supported by a strong majority of the members. (The Task Force discussion of this issue included

consideration of Division One’s opinion in [DCS v. Stocking-Tate \(Mark R.\)](#), 1 CA-SA 19-0001. Rules 332, 333, and 334 also involved a substantial discussion of pertinent provisions of A.R.S. Title 8 and ICWA, particularly 25 C.F.R. §§ 23.113 and 23.114, which contain additional requirements for the removal of an Indian child from the family home.)

Rule 335 was the subject of extensive discussion. This new rule requires initial and ongoing reviews for a child placed in a qualified residential treatment program (“QRTP”), as provided by the Family First Prevention Services Act. To become compliant concurrently with the effectiveness of the recent federal legislation, this new rule requires an October 1, 2021 effective date. Please see section 14 of this petition.

Fourth and fifth subparts. The fourth and fifth subparts of Part III respectively concern guardianship and termination proceedings. The proposed rules clarify the process when a parent fails to appear at one of these proceedings. The rules also restyle provisions regarding Indian children. There are frequent citations to specific ICWA statutes and Regulations throughout these subparts and the other Part III rules.

- **Part IV: Adoptions (Rules 401 - 418).** The Task Force bifurcated and also combined rules in current Part IV. For example, current Rule 79 (“Petition to Adopt”) has become separate Rules 410 (“Petition to Adopt”) and 411 (“Service

of the Petition to Adopt and Notice of Hearing”). Conversely, two current rules (Rule 75 on “Release of Information” and Rule 86 on “Adoption Records”) would become a single rule 403 (“Confidentiality; Release of Information”).

Unlike current Rule 77 (“Certification to Adopt”), which begins with a section on “dismissal of application” but does not provide for the filing of an application, proposed Rule 408 more logically begins with a new section on “application for certification.” If an application is incomplete, then in lieu of dismissing the application, the proposed rule would allow the court to permit the prospective parent to supplement the application.

As provided by Arizona case law (see [Denia L. v. DCS](#), 2 CA-JV 2019-0055), the Task Force modified the provision concerning motions to set aside an adoption judgment in Rule 407 (“Motions”), section (f) (“Motion to Set Aside Judgment”) by allowing a challenge to an allegedly void judgment at any time. Rule 414 requires that a petition to revoke consent must be filed before the adoption is finalized. A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 417 (“Setting Aside an Adoption”).

- **Part V: Emancipation (Rules 501 - 505).** There are currently 15 emancipation rules. The Task Force consolidated and reorganized many of the current provisions into only 5 emancipation rules. The proposed rules were modified

to conform to Senate Bill 1332 (Chapter 144, Laws 2021.) Otherwise, Part V contains no notable substantive changes.

- **Part VI: Appeals (Rules 601-610).** The rules on appeal, which apply to both delinquency and non-delinquency appeals, have substantial changes that increase their comprehensibility and functionality.

Current Rule 103 states only that an aggrieved party may appeal from a final order of the juvenile court. It does not otherwise specify orders that are final. The proposed corresponding rule, Rule 601 (“Right to Appeal”), section (b) (“Final Orders”) now identifies orders that Arizona appellate courts have recognized as final, appealable orders. Following a list of 4 final orders in delinquency cases and 13 final orders in non-delinquency cases, a catch-all provision allow an appeal from “any other order that is final pursuant to Arizona case law.” A new comment to this rule recognizes that a provision in Rule 601(b)(2)(E) that permits an appeal from “an order entered in a dependency removing a child who has been adjudicated dependent from a parent’s physical custody” might be inconsistent with certain Arizona case law, including a 2020 opinion by Division One, *Jessica C. v. DCS*.

Rule 602 (“General Provisions”), section (b) (“Caption on the Notice of Appeal”) prescribes a caption that requires only the type of the proceeding and the child’s name; the caption need not include names of parents or other parties. The caption would state, for example, In re the Dependency of A.B., or the Delinquency

of C.D. This should eliminate issues concerning the proper alignment of parties in the captions of dependency and severance appeals. Rule 602(f) (“Arizona Rules of Civil Appellate Procedure”) contains ARCAP provisions identified in current Rule 103(G), with certain modifications, but in an easy-to-read list format.

Although the trial court generally loses jurisdiction to rule on motions after a party files a notice of appeal, proposed Rule 603 (“Notice of Appeal”), section (a) (“Time for Filing a Notice of Appeal and Notice of Cross-Appeal”) includes 3 time-extending motions: a motion to alter or amend a final order under Rule 317, a motion under Rule 318 to set aside a final order in a dependency or termination proceeding, and a motion under Rule 407(f) to set aside a final adoption order. Although a notice of appeal from one of these final orders must be filed no later than 15 days after entry of the order, the filing of one of these motions no later than 12 days after entry of the final order extends the time for filing the notice of appeal pending the court’s disposition of the motion. This provision would allow a trial court to timely remedy a final order without the delay required for the appellate court to revest jurisdiction in the trial court. Rule 603(b) (“Content of the Notice of Appeal or Cross-Appeal”), subpart (4), contains the avowal of counsel currently found in Rule 104(B).

Rule 604 (“The Record on Appeal”) describes what is contained in a presumptive record on appeal. ~~These provisions identify the reporters’ transcripts of specified proceedings that preceded the final order that is the subject of the appeal.~~

The rule allows either party to designate supplemental documents or transcripts for the appellate record. Buried in current Rule 104(C)(2) is a provision allowing a party to file a notice advising that the party will not “participate actively” in the appeal. This untitled provision has been relocated to a freestanding Rule 605 (“Notice of Non-Participation”). The notice that the record on appeal is complete, which is untitled in current Rule 105(F), is now more visible and titled as “Notice of Completion of the Record” in Rule 606(e).

Rule 607 (“Briefing in the Court of Appeals; Transfer to the Supreme Court”) has a notable modification of an untitled provision in current Rule 106(G) that allows appellant’s counsel to file an affidavit affirming that counsel has lost contact with the client, or that there is no colorable issue for counsel to raise on appeal. This provision has been restyled and relocated in Rule 607(e) (“Notice and Avowal in Lieu of Opening Brief; Pro Se Brief”). This section differs from the current provision because it requires counsel who finds no non-frivolous issue to raise on appeal to then notify the client of that finding and advise the client of the opportunity to file a pro se brief. If the client requests to file a pro se brief, counsel must include that information in a court filing, and the court then must allow the client a specified time to file the pro se brief. The client does not have this opportunity under the current rules. If the client does not request to file a pro se brief, or if the client does

not timely file a brief, this new section permits the court to accelerate its issuance of the mandate.

Proposed Rule 608, which is new, has four sections derived from various provisions in the current rules: (a) Dismissal; (b) Action by the Appellate Court; (c) No Motion for Reconsideration; and (d) Motion for Publication. Rule 609 is a lengthy but essential rule on petitions for review. A party has 30 days to file a petition for review. To allow the Court of Appeals to issue its mandate without waiting a full month, a new provision requires the filing of a Notice of Intent to File a Petition for Review within 15 days after a disposition by the Court of Appeals. Rule 610, the final rule in Part VI that concerns the appellate court mandate, contains a corresponding provision.

9. Forms. There are currently 6 forms that follow the concluding Juvenile Rule.

Current Forms 1, 1A, 2, and 3 are notices to a parent in, respectively, dependency, in-home intervention, guardianship, and termination actions. The Task Force recognized the need to modify these forms and it is proposing revised forms.

Current Form 4 (“counsel’s certification of diligent search”) would be subsumed in the requirements of the juvenile appellate rules. Accordingly, the Task Force recommends abrogation of Form 4.

Current Form 5 is a sample notice of appeal. The Task Force proposes two new forms to replace Form 5. Form 5(a) would be the notice of appeal in a delinquency proceeding. Form 5(b) would be the notice of appeal in any other juvenile case.

As noted above, the restyled appellate rules provide for a presumptive record on appeal and specify what would be included in the presumptive record. The Task Force proposes a new Form 6, which a party would use to make a supplemental designation of the record on appeal.

[Note to the draft: Do we want the Court to adopt the new forms as part of the amended rules? We should discuss whether the forms could be approved by the Court yet not included within the rules. With appropriate wording in the rules or an Implementation Order, the forms could thereafter be modified by Administrative Directive rather than requiring the filing of another rule petition.]

10. Amendments to Civil Rule 81.1. Surprisingly, there is a Civil Rule 81.1 concerning emancipations. This short and often unnoticed rule says that “these [civil] rules apply to juvenile emancipation proceedings except as provided in Part V, Rules of Procedure for Juvenile Court.” By virtue of the amendments proposed by this petition, that statement would be incorrect because the Civil Rules generally do not apply in juvenile proceedings. The Task Force accordingly requests to amend

Rule 81.1 so it would instead say, “The rules that apply to juvenile emancipation proceedings are located in Part V of the Rules of Procedure for the Juvenile Court.”

11. Pre-filing Comments. Task Force workgroups continued to meet throughout January 2021, and the Task Force reconvened on February 5, 2021. On February 17, 2021, the Task Force sent its 240-page draft set of rules, with an invitation to comment, to the following organizations and individuals:

Children’s Action Alliance
Arizona Center for Law in the Public Interest
Arizona Council of Human Service Providers
Governor’s Legal Staff
Arizona Public Defender Association
Arizona Court of Appeals, Division One and Division Two
State Bar of Arizona Juvenile Law Section
Committee on Superior Court
Committee on Juvenile Court
Rita Meiser (a fellow of the American Academy of Adoption Attorneys)

The Task Force received 20 thoughtful and extensive comments, which necessitated the Task Force’s second request to extend the filing date for this rule petition. Members discussed many of those pre-filing comments at its March 5, 2021 meeting and made appropriate changes to its draft. However, the volume and scope of those comments also required further review by Task Force workgroups, which conducted 9 meetings over the ensuing month. The Editorial Group met again on April 5 meeting to discuss workgroup recommendations and to further review the draft rules and draft rule petition. The Editorial Group then met after the April 5 Task Force meeting to finalize the Task Force work product.

12. Request for a Bifurcated Comment Period and Consideration of this Petition at the December 2021 Rules Agenda. Given the number and complexity of the proposed rules, the belated April filing this petition, and the desirability of having further public comments, Petitioner requests the Court to consider this petition at its December 2021 rules agenda, rather than at its customary summer rules agenda.

Here is the schedule proposed by Petitioner's second motion for an extension of time:

Comments due: July 23, 2021

Petitioner's Reply due: September 30, 2021

If the Court adopts this schedule, including consideration of this petition in December, Petitioner proposes that the effective date of the newly adopted rules be deferred until July 1, 2022. Because of the extensive changes proposed by these rules, it would be desirable to have time for stakeholder training and familiarization with the new rules. This later effective date would facilitate judicial and attorney education during the first six months of 2022. [**Note to the draft:** Do we want to discuss proposed statutory amendments here?]

13. Request for Early Adoption of Rule 335. Proposed Rule 335 ("Qualified Residential Treatment Programs; Judicial Review") is an exception to the delayed effective date discussed in the preceding section. For Arizona to be

compliant with the Family First Prevention Services Act, Rule 335 should be adopted with an effective date of October 1, 2021.

For Rule 335 to have an October 1, 2021 effective date, the Court should consider this proposed Rule at its August 2021 Rules Agenda. New Juvenile Rule 335 would be effective for 9 months before the effective date of the remaining rules. However, Rule 335 would have a number that is incompatible with the numbering scheme of the current Juvenile Rules, which would continue to be effective until July 1, 2022. Petitioner therefore proposes that the rule be assigned a temporary number of Rule 52.1, as it follows, in both the current (Rule 52) and proposed (Rule 334) rules, the rule on the “Initial Dependency Hearing.” On July 1, 2022, Rule 52.1 would revert to rule number 335.

14. Conclusion. The Task Force makes the following requests:

(a) that the Court abrogate the current Juvenile Rules and, in their place, adopt the proposed new Juvenile Rules shown in Appendix A.

(b) that the newly adopted rules become effective on July 1, 2022, with the exception noted in the next request;

(c) that the Court adopt Rule 335 on an expedited basis, with an effective date of October 1, 2021 and with the temporary rule number 52.1; and that on July 1, 2022, Rule 52.1 revert to Rule number 335, with no changes to its title or content;

(d) that the Court adopt/approve [we need to explain what we are requesting regarding the forms; see the note in section 9 above]

(e) that the Court adopt the proposed amendments to Civil Rule 81, as shown in Appendix C, with an effective date of July 1, 2022; and

(f) that the Court open this petition for public comments, with an opportunity for Petitioner to thereafter file a Reply, as provided in the schedule set out in section 12 of this petition

RESPECTFULLY SUBMITTED this 28th day of April 2021.

By _____
Rebecca White Berch (Justice, ret.)
Chair, Juvenile Rules Task Force

Attachment

Task Force Membership:

Hon. Rebecca W. Berch, Chief Justice (ret.), Task Force Chair
Randi Alexander, DCS, successor to Magdalena Jorquez, DCS
Hon. Mark Armstrong, Superior Court of Arizona, Maricopa County (ret.)
Professor Barbara Atwood, University of Arizona College of Law
Beth Beckmann, Court of Appeals, Division 2
Beth Beringhaus, Maricopa County Attorney's Office
Dale Cardy, Pima County Attorney's Office
Kathleen Coughlin, Pima County Legal Defender's Office
Maria C. Fuentes/Steve Selover, Governor's Office of Youth, Faith, and Family
John Gilmore, Attorney at Law, Tucson
Hon. Joseph Kreamer, Superior Court of Arizona, Maricopa County
Tina Mattison, Pima County Juvenile Court Center
Donna McQuality, Clerk of Superior Court, Yavapai County
Eric Meaux, Superior Court of Arizona, Maricopa County
William Owsley, Office of the Legal Advocate, Maricopa County
Christina Phillis, Maricopa County Office of Public Defense Services
Hon. Maurice Portley, Court of Appeals, Division 1 (ret.)
Hon. Kathleen Quigley, Superior Court of Arizona, Pima County
Beth Rosenberg, Children's Action Alliance (ret.)
Denise Smith, Pinal County Juvenile Court Services
Denise Avila Taylor, Attorney at Law, Yuma
Hon. Patricia Trebesch, Superior Court of Arizona, Yavapai County (ret.)
Edward Truman, Office of the Attorney General
Kent Volkmer, Pinal County Attorney
Hon. Rick Williams, Superior Court of Arizona, Mohave County
Hon. Anna Young, Superior Court of Arizona, Yavapai County

Acknowledgments:

Hon. Randy Warner, Superior Court of Arizona, Maricopa County
Hon. Sara Agne, Superior Court of Arizona, Maricopa County
Rita Meiser, Attorney at Law, Phoenix
Carey Turner, Office of the Attorney General
Chanetta Curtis, DCS
David Withey and Nina Preston, AOC Legal
Every judge and practitioner who provided prefiling comments

Staff:

Mark Meltzer and Angela Pennington, AOC Court Services Division

Second Draft: 04.05.2021

Formatted: Underline
Formatted: Underline

Rebecca White Berch (Justice, ret.), Chair
Task Force on the Rules of Procedure for the Juvenile Court, Petitioner
1501 W. Washington St.
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

PETITION TO AMEND THE) Supreme Court No. R-20-0044
RULES OF PROCEDURE FOR)
THE JUVENILE COURT, AND) PETITION
TO AMEND CIVIL RULE 81)
) Request for Expedited Adoption of a
Bifurcated Comment Period
) and Expedited Adoption of One Rule 335

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Task Force on Rules of Procedure for the Juvenile Court (“Task Force”) petitions this Court to abrogate the current Rules of Procedure for the Juvenile Court and to instead adopt the proposed new set of rules. The proposed rules restyle and reorganize the current rules. They also contain substantive changes, including the addition of ~~more~~ several new rules.

Because the proposed amendments concern every one of the current juvenile rules, this petition presents the revisions as a complete new set of rules, rather than as individual rule amendments. Appendix A to this petition contains a clean version of the proposed rules. A “~~redline~~” version is not included because the changes are

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

so extensive that a redline would be more confusing than helpful. Appendix B contains new forms referenced in these rules.

For reasons explained in Section 10, this petition also requests amendments to Rule 81 of the Rules of Civil Procedure. Appendix C shows the proposed amendments to that civil rule.

The conclusion of this petition, Section 14, includes ~~several~~ other requests.

1. Background. Administrative Order No. 2019-74, entered on July 1, 2019, established ~~the this~~ Task Force. This Order directed ~~this the~~ Task Force to

... review the Arizona Rules of Procedure for the Juvenile Court and identify possible changes that would conform these rules to modern usage, simplify the language, clarify and improve current procedures, reorganize the rules to enhance their usability, and account for recent Arizona and federal legislation, including the Family First Prevention Services Act.

The proposed rules address each of these elements.

The 26 members of the Task Force include ~~active and retired judges from the Arizona Court of Appeals and the Superior Court of Arizona in Maricopa, Mohave, Pima, and Yavapai Counties. Task Force membership includes the Pinal County Attorney as well as attorneys from other public agencies, including the Attorney General's Office, the Department of Child Safety ("DCS"), Offices of the Maricopa and Pima County Attorneys, and public defender agencies in Maricopa and Pima Counties. Other members are private practitioners from Pima and Yuma Counties, chief juvenile probation officers in Maricopa, Pima, and Pinal Counties, a~~

Commented [BR1]: Can we shorten this, perhaps saying that the TF had excellent representation from a broad range of experts and practitioners in the field, then put much of this in a fn. Would that save enough space to be worthwhile?

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

~~representative of the Superior Court Clerks, the director of an Office of Public Defense Services, a chief staff attorney for the Arizona Court of Appeals; a Supreme Court staff attorney, a representative of the Governor's Office of Youth, Faith, and Family, a University of Arizona law school professor, and a representative of the Children's Action Alliance. The Chair is a retired Supreme Court Justice. a broad~~

Formatted: Not Highlight

range of individuals, as shown in the attachment to this petition. Subject matter experts from the Attorney General's office, DCS, AOC-Legal, and private law practice, as well as active superior court judges, also attended a number of Task Force and workgroup meetings and provided valuable insights and guidance to the members.

2. The Juvenile Rules are Complex. Juvenile rules apply to a mixture of case types. These cases can be either criminal or civil in nature. Not only do Arizona statutes and case law apply in juvenile proceedings, but so does federal law, including the Family First Prevention Services Act and the Indian Child Welfare Act ("ICWA.") In short, the revision of the juvenile rules has been a major and challenging undertaking.

3. Restyling. ~~The~~The proposed juvenile rules include stylistic revisions that make the rules more understandable and user-friendly. They employ consistent formatting and nomenclature and generally follow the conventions utilized in previous restyling projects.

Formatted: Underline

Formatted: Underline

Many of the current juvenile rules, even lengthy ones, have no titles for sections within the rule. The proposed rules correct this omission by adding titles to virtually every section, and frequently to subparts, too. These titles, along with the uniform organization, makes it easier for users to navigate the rules and locate pertinent provisions.

Many of the proposed rules are related to Title 8 statutes. (The exception is the emancipation rules, which have their origin in Title 12.) The proposed rules include frequent cross-references to particular Arizona statutes and, when appropriate, to federal authority, which should assist the readers in locating and understanding applicable law.

4. Organization and Numbering. The current Juvenile Rules are divided into 6 parts: Part I, General Provisions; Part II, Delinquency and Incurability; Part III, Dependency, Guardianship and Termination of Parental Rights; Part IV, Adoption; Part V, Emancipation; and Part VI, Appeals. Several of these parts ~~are broken down into~~include subparts. The proposed rules retain the structure of these 6 major Parts. ~~However,~~ but the titles of some Parts have been edited, and the organization of certain subparts has changed.

~~What is most notable on a first reading of the proposed rules is the manner of rule numbering.~~ The number of rules in this set has also changed. There currently are 116 juvenile rules. (The last numbered rule is currently Rule 108, but some rule

numbers include a number to the right of a decimal point, which accounts for a number higher than 108.) By comparison, the set proposed by this petition includes 124 rules. The following factors affected the total number of proposed rules.

(A) In the current set, 13 rules are shown as “reserved,” “repealed,” or “renumbered.” The proposed rules no longer include these placeholders.

(B) The current 15 emancipation rules in Part V have been reorganized. There are now only 5 proposed emancipation rules.

(C) Several rules were consolidated, but others were bifurcated, or even trifurcated. For example, current Rule 1 is titled, “Applicability; Definitions; Required Format of Stipulations, Motions and Orders.” The restyled rules separate these subjects into ~~two~~ three rules: proposed Rule 101 (“Scope and Construction,” Rule 102 (“Definitions”), and Rule 105 (“Form of Filed Documents”). In other instances, two or more rules have been consolidated into a single rule.

(D) The petition proposes ~~about 20~~ several entirely new rules. These new rules address subjects such as intervention (Rule 113), ~~child’s rights~~ change of venue (Rule 314), a motion for judgment as a matter of law (Rule 310319), and providing transfer of a case to a tribal court notice of a change in a child’s placement (Rule 322324).

The reduction in the number of rules, combined with the volume of additional rules, made it apparent midway through this project that the proposed set of Juvenile

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

Rules would require renumbering. The Task Force proposes three-digit numbering. Three-digit numbering for the proposed rules is effective because the first number of a rule corresponds with the Part in which the rule is located, and therefore provides a cue regarding the subject matter of the rule. For example, a reader might not know the subject of Rule 35, but in the proposed rules, that same rule is numbered 227, a signal that the rule is within Part II regarding delinquency. Accordingly, the rules in Part I are numbered 101, 102, etc.; in Part II they are numbered 201, 202, etc.; and this numbering pattern is continued through Part VI. This method of numbering is not unique; the Arizona Rules of Evidence are similarly numbered, with the initial digit of an Evidence Rule number indicating the Article (or “Part”) where the rule is located.

5. Task Force Methodology. Task Force members were divided into 4 workgroups, which were assigned to revise roughly equivalent portions of the rules.

Workgroups met ~~more than 90~~100 times between October 2019 and January-April 2021. Outside of meetings, the workgroups reviewed drafts, researched law, and edited documents. The workgroups presented proposed revisions to the full Task Force at public meetings.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

The Task Force met ~~15-16~~ times during late 2019, 2020, and early 2021. Members learned early in the process that there was no low-hanging fruit in the juvenile rules; most of the rules were lengthy, included legal or practical issues, or

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

both. Many rules included controversial provisions that were the subject of extensive discussion. (Click here [ADD HYPERLINK] to review more than 100 pages of meeting minutes, grouped by rule number, that memorialize those discussions.)

Commented [BR2]: Great idea

In addition, beginning in July 2020, and with the authorization of Task Force members, an Editorial Group reviewed each rule after it had been considered by the Task Force. Consequently, the proposed rules underwent 3 levels of review: first by a workgroup, then by the Task Force, and again by the Editorial Group. (The Editorial Group was composed of the Chair, Judges Mark Armstrong, Joseph Kreamer, and Kathleen Quigley, as well as Beth Beckmann and Mark Meltzer.) The Editorial Group has met more than 20 times. The Editorial Group improved the grammar, syntax, and organization of the approved rules, and with the authority of Task Force members, it made substantive changes that furthered the spirit and intent of Task Force discussions.

6. Court Comments to the Rules. Most of the comments in the current rules have been deleted. The Task Force moved any appropriate substantive content from the comment to the proposed new rule. The Task Force also retained several comments and even added a few new ones.

8. The Proposed Rules. This section summarizes some of the significant and substantive items in the proposed rules.

Formatted: Underline

Formatted: Underline

- **Part I: General Provisions (Rules 101 - 113).** Part I, which are rules that apply in each of the other 5 Parts, currently has 6 rules. By comparison, Part I as proposed includes more than twice that number. Some of the increase is attributable to the splitting of Rule 1, but ~~several~~ new rules also have been added, ~~including new rules on combining hearings (Rule 109) and intervention (Rule 113).~~

~~Proposed Rule 1 (“Scope and Construction”) has titles for its two sections: Section (a) is “Scope” and corresponds to current Rule 1(A), with modifications. Section (b) is “Construction,” which is a new provision that is analogous to introductory provisions regarding construction that are located in Civil Rule 1, Criminal Rule 1.2, Family Law Rule 1(b), and Probate Rule 1(c). Current Rule 1 includes definitions for “juvenile” and “authorized transcriber.” By comparison, proposed Rule 2 (“Definitions”), in addition to those definitions, includes more than 20 other defined words and terms.~~

Commented [BR3]: Consider deleting this paragraph. The preceding paragraph probably says enough, and the example isn't all that edifying.

Two new Part I rules govern the applicability of other Arizona procedural rules. Rule 103, “Priority of Proceedings; Conducting Proceedings; and Applicability of Other Rules,” provides that civil, civil appellate, criminal, family law, probate, protective order, and Supreme Court rules, “are applicable only as specifically set forth or incorporated by reference in these rules.” Rule 103(d). For the most part, then, the proposed juvenile rules are self-contained. The second, Rule 104, specifically concerns the Arizona Rules of Evidence. Rule 104 distinguishes

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

the applicability of the Rules of Evidence in a contested adjudication hearing from other, non-adjudication proceedings, where evidentiary standards are relaxed. Rule 104 includes detailed provisions regarding the admissibility of reports, including reports from a “child safety” or case worker. Rule 104(d)(10) addresses a recurring issue on the meaning of “unavailable for cross-examination.” ~~The comprehensive provisions of Rule 104 encompass what is currently Rule 45 (“Admissibility of Evidence”).~~

Commented [BR4]: Just checking whether we need this

Part I includes a new rule, Rule 110, on “virtual proceedings; declared emergencies,” which might be the first Arizona court rule on procedures for conducting a proceeding when the governor declares a statewide emergency, such as the current pandemic. Under the provisions of Rule 110, evidentiary hearings would presumptively be conducted in person in the absence of an emergency; but during a declared emergency, evidentiary hearings would presumptively be conducted virtually. The rule provides exceptions for overcoming the presumption in either situation.

- **Part II: Delinquency (Rules 201 - 217).** Although there are very few incorrigibility cases compared to number of delinquency actions, the delinquency rules often use the couplet “delinquency or incorrigibility” to refer to both. The proposed rules eliminate the need for these repeated references by simply saying, “The delinquency rules apply to incorrigibility proceedings.” Rule 201 (“Scope of

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

the Delinquency Rules”). Similarly, Rule 202 (“Referral; Diversion”) defines “parent” for the delinquency rules as including “parent or guardian.” This avoids the need to say “and guardian” every time the rules refer to a parent. There are similar but slightly different definitions of “parent” in the dependency and adoption rules. See Rule 302 (“Definitions”) and Rule 402 (“Meaning of Terms.”)

The sequence of the delinquency rules has changed. The current delinquency rules begin with provisions such as the appointment of counsel and the attendance of witnesses, i.e., rules that apply after a proceeding has been initiated. The proposed rules remediate this cart-before-the-horse approach by starting with rules on referrals to juvenile court and the filing and service of a delinquency petition.

Rule 215 (“Records and Proceedings”) retains the terms “legal file” and “social file” used in current Rule 19. However, Rule 215(a)(1)(D) adds a new term, “disposition file,” which includes the disposition report and any documents from the legal or social file attached to that report. A rule in Part VI (“Appeals”) requires transmission of the disposition file to the appellate court as a component of the record on appeal. See Rule 604(a)(1)(A). Part II includes a new Rule 220 (“Admission or Change of Plea”), which permits the court to enter an admission at ~~several different~~multiple stages of a case. By comparison, current Rule 28(C)(7) (“Advisory Hearing”) unintentionally implies that the entry of an admission is limited to that stage of the proceeding.

Formatted: Underline

Formatted: Underline

- **Part III: Child Dependency and Guardianship; Termination of Parental Rights (Rules 301- 351).** There are five subparts in Part III of the current rules. The first subpart (“scope of rules”) currently contains only one rule, Rule 36. This anomaly of having a subpart with one rule has been addressed by abrogating the current first subpart of Part III and by relocating this rule, which is renumbered as Rule 301, in another subpart of Part III. (The first subpart of current Part IV also contains a solitary rule, which has been similarly merged into another subpart of the proposed adoption rules.) Proposed Rule 301, titled “scope of rules,” has separate titled sections on “application” and “interpretation.” The second section requires the court to interpret the rules not only to protect the child’s best interests, but also to protect the rights of the parties.

Commented [BR5]: Consider deleting.

~~The first two subparts of proposed Part III result from the bifurcation of the current subpart on “general provisions.”~~ In both the current and proposed rules, these general provisions in Part III apply to dependency, Title 8 guardianship, and termination proceedings. The first two subparts of proposed Part III result, result from the bifurcation of the current subpart on “general provisions.” The first of these new subparts concerns “parties and participants.” The second new subpart contains general provisions on “proceedings and procedures.”

First subpart. This subpart begins with Rule 301, which has separate sections on “application” and “interpretation.” The second section requires the court to

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

interpret the rules not only to protect the child’s best interests, but also to protect the rights of the parties. ~~The Subsequent~~ rules in the first subpart require the court to appoint an attorney for a child in any dependency or termination case. See Rule 303(c) (“Appointment of an Attorney for a Child”). Task Force members were not unanimous on this new provision, because some courts prefer to appoint only a guardian ad litem (“GAL”), for example, when the child is an infant and cannot express needs and wishes to an attorney. While the proposed rules require every child to have a court-appointed attorney, court appointment of GAL for the child would be discretionary and would be in addition to appointed counsel. See Rule 305 “Appointment of a ~~Guardian ad Litem~~GAL.” A GAL appointed under Rule 305 must also be an attorney.

Proposed Rule 306, “Duties and Responsibilities of an Attorney and GAL for a Child,” contains a more detailed description of the explanation of the attorney’s role to the child than exists in current Rule 40.1(B). It includes guidance on the “Relationship,” “Diminished Capacity,” and “Substituted Judgment.” ~~Rule 306(a).~~ ~~The subpart on diminished capacity.~~ It also includes a cross-reference to Ethical Rule 1.14 (“Client with Diminished Capacity”). The proposed rule requires an attorney to observe the child in the placement home, eliminating the current 5-year age limitation on this requirement.

Commented [BR6]: Nice touch, but can be eliminated if space is an issue

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

The current continuing education requirements for court-appointed attorneys, GALs, and counsel for parents contained overlap. Rule 40.1–(J), 40.2(G). These requirements have been consolidated in a new Rule 309 (“Education Requirements for ~~a Court-Appointed Attorneys or and GALs~~ Guardian ad Litem”). Part III, subpart 1, also contains ~~new freestanding~~ rules on a child’s rights (Rule 310) and participants’ rights (Rule 311).

Second subpart. The ~~second-next new-proposed~~ Part III subpart, concerning “proceedings and procedures,” includes a new rule on change of venue to another county (Rule 314). It also includes a new Rule 317 on motions to alter or amend a final order, which addresses an issue that arose in *Francine C. v. DCS*, 1 CA-JV 19-00366 (2020). -(See ¶ 22: “...the Juvenile Rules applicable to a dependency do not authorize a party to challenge a dependency order by filing a motion for reconsideration or clarification.”) ~~Motions-*Francine C.* involved omitted findings~~ of fact and conclusions of law, and motions under Rule 317 are limited to correcting clerical errors or addressing insufficient findings or conclusion. -Rule 318(c), which is derived from current Rule 46(E), concerns motions setting aside a final order on grounds specified in Civil Rule 60. Motions under Rule 317 or Rule 318(c), when filed within 12 days after entry of a final order, extend the time for appealing from the order. See Rule 603(a)(3) (“Effect of Certain Post-Judgment Motions on the Time for Filing a Notice of Appeal”).

Formatted: Font: Italic

New Rule 319 (“Motion for Judgement as a Matter of Law”) would allow a party other than the petitioner to move for judgment as a matter of law after the petitioner has concluded its presentation of evidence in a dependency, termination, or guardianship adjudication. A Rule 319 motion is analogous to a JMOL motion under Civil Rule 50, but the latter occurs in the context of a jury trial whereas the new juvenile rule would apply in bench trials. Current Juvenile Rule 50.1 (“Deviation from ICWA Placement Preferences”) is now Rule 321 of subpart II. There is a new ~~preliminary~~ but related rule, Rule 320 (“Placement Preferences”), which is based on A.R.S. § 8-514 and describes placement preferences for a non-Indian child.

Rule 323 (“Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings”) is a new rule that is the analog of Family Law Rule 5.1. If there are pending family and juvenile cases involving the same child, Rule 323 provides that the judge presiding over the juvenile case makes decisions regarding the children. Rule 324 (“Providing Notice of a Change in a Child’s Placement”) is also new. It requires DCS to provide timely notice to the child’s attorney and GAL of the child’s new placement address, and to provide notice of the placement, without the address, to the parent’s attorney.

Third subpart. Because removal might be the first judicial proceeding in a dependency case, Rule 327 (“court authorized removal,” formerly Rule 47.3²), was

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

moved from its current location in the subpart on general provisions to proposed subpart 3 on “Dependency Proceedings.” Current Rule 48 on filing and service of a dependency petition is now two rules: Rule 328 on the content of the petition and ancillary documents, and Rule 329 on service of those documents. Rule 329(f) is a new provision for service on an incarcerated person that is based on Family Law Rule 41(g).

Commented [BR7]: Its number, 327, doesn't make it sound like it has been moved forward much. Can we explain this more clearly? “Removal” was moved from its current position in the general provisions to the front of the subpart on dependency. Is “the front of” accurate? I think the point here is we reorganized the section to parallel the order in which proceedings usually occur. I want to make that thought come through more clearly.

Current Rule 49, titled “pre-hearing conference,” would become Rule 331 and have the more explanatory title of “preliminary protective conference.” Current Rule 50, which concerns the preliminary protective hearing, has been significantly reorganized in Rule 332. The proposed rule more clearly outlines what occurs at the preliminary protective hearing, and details the court findings and orders that are required at the conclusion of the hearing.

Proposed Rule 333 (“Contested Review of Temporary Custody”) and Rule 334 (“Initial Dependency Hearing”) permit a parent at the initial dependency hearing who had not been served prior to, and did not appear at, the preliminary protective hearing, to request a temporary custody hearing at the parent’s first court appearance. Agreement on those new provisions was not unanimous, but they were supported by a strong majority of the members. (The Task Force discussion of this issue included consideration of Division One’s opinion in DCS v. Stocking-Tate (Mark R.), 1 CA-SA 19-0001. Rules 332, 333, and 334 also involved a substantial discussion of

Second Draft: 04.05.2021

pertinent provisions of A.R.S. Title 8 and ICWA, particularly 25 C.F.R. §§ 23.113 and 23.114, which contain additional requirements for the removal of an Indian child from the family home, as well as pertinent provisions of A.R.S. Title 8.)

New Rule 335 was the subject of extensive discussion. This new rule requires initial and ongoing reviews for a child placed in a qualified residential treatment program (“QRTF”), as provided by the Family First Prevention Services Act. To become compliant concurrently with the effectiveness of the recent federal legislation, this new rule requires an October 1, 2021 effective date. See-Please see section 14 of this petition.

Fourth and fifth subparts. The fourth and fifth subparts of Part III respectively concern guardianship and termination proceedings. The proposed rules clarify the process when a parent fails to appear at one of these proceedings. The rules also restyle provisions regarding Indian children. There are frequent citations to specific ICWA statutes and Regulations throughout these subparts and the other Part III rules.

- **Part IV: Adoptions (Rules 401 - 418).** The Task Force bifurcated and also combined rules in current Part IV. For example, current Rule 79 (“Petition to Adopt”) has become separate Rules 410 (“Petition to Adopt”) and 411 (“Service of the Petition to Adopt and Notice of Hearing”). Conversely, two current rules

Formatted: Underline

Formatted: Underline

Commented [BR8]: Not sure how this sentence relates. We haven't said anything about Indian children or ICWA. Better to say the TF discussion was broad-ranging and extended; a description can be found at: link minutes.

Commented [BR9]: Good. Thanks.

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

(Rule 75 on “Release of Information” and Rule 86 on “Adoption Records”) would become a single rule 403 (“Confidentiality; Release of Information”).

Unlike current Rule 77 (“Certification to Adopt”), which begins with a section on “dismissal of application” ~~yet~~but does not provide for the filing of an application, proposed Rule 408 more logically begins with a new section on “application for certification.” If an application is incomplete, then in lieu of dismissing the application, the proposed rule would allow the court to permit the prospective parent to supplement the application.

As provided by Arizona case law (see [Denia L. v. DCS](#), 2 CA-JV 2019-0055), the Task Force modified the provision concerning motions to set aside an adoption judgment in Rule 407 (“Motions”), section (f) (“Motion to Set Aside Judgment”) by allowing a challenge to an allegedly void judgment at any time. Rule 414 requires that a petition to revoke consent must be filed before the adoption is finalized. A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 417 (“Setting Aside an Adoption”).

- **Part V: Emancipation (Rules 501 - 505).** There are currently 15 emancipation rules. The Task Force consolidated and reorganized many of the current provisions into only 5 emancipation rules. [The proposed rules were modified to conform to Senate Bill 1332 \(Chapter 144, Laws 2021.\)](#) Otherwise, Part V contains no notable substantive changes.

Formatted: Underline

Formatted: Underline

- **Part VI: Appeals (Rules 601-610).** The rules on appeal, which apply to both delinquency and non-delinquency appeals, have substantial changes that increase their comprehensibility and functionality.

Current Rule 103 states only that an aggrieved party may appeal from a final order of the juvenile court. It does not otherwise specify orders that are final. The proposed corresponding rule, Rule 601 (“Right to Appeal”), section (b) (“Final Orders”) now identifies orders that Arizona appellate courts have recognized as final, appealable orders. Following a list ~~of~~ [of 4 final orders in delinquency cases](#) [and 13 final orders in non-delinquency cases](#), a catch-all provision allow an appeal from “any other order that is final pursuant to Arizona case law.” [A new comment to this rule recognizes that a provision in Rule 601\(b\)\(2\)\(E\) that permits an appeal from “an order entered in a dependency removing a child who has been adjudicated dependent from a parent’s physical custody” might be inconsistent with certain Arizona case law, including a 2020 opinion by Division One, Jessica C. v. DCS.](#)

Formatted: Font: 14 pt

Rule 602 (“General Provisions”), section (b) (“Caption on the Notice of Appeal”) prescribes a caption that requires only the type of the proceeding and the child’s name; the caption need not include names of parents or other parties. The caption would state, for example, In re the Dependency of A.B., or the Delinquency of C.D. This should eliminate issues concerning the proper alignment of parties in the captions of dependency and severance appeals. Rule 602(f) (“Arizona Rules of

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

Civil Appellate Procedure”) contains ARCAP provisions identified in current Rule 103(G), with certain modifications, but in an easy-to-read list format.

Although the trial court generally loses jurisdiction to rule on motions after a party files a notice of appeal, proposed Rule 603 (“Notice of Appeal”), section (a) (“Time for Filing a Notice of Appeal and Notice of Cross-Appeal”) includes 3 time-extending motions: a motion to alter or amend a final order under Rule 317, a motion under Rule 318 to set aside a final order in a dependency or termination proceeding, and a motion under Rule 407(f) to set aside a final adoption order. Although a notice of appeal from one of these final orders must be filed no later than 15 days after entry of the order, the filing of one of these motions no later than 12 days after entry of the final order extends the time for filing the notice of appeal ~~until after~~ pending the court’s disposition ~~has disposed~~ of the motion. This provision would allow a trial court to timely remedy a final order without the delay required for the appellate court to revest jurisdiction in the trial court. Rule 603(b) (“Content of the Notice of Appeal or Cross-Appeal”), subpart (4), contains the avowal of counsel currently found in Rule 104(B).

Rule 604 (“The Record on Appeal”) describes what is contained in a presumptive record on appeal. ~~These provisions identify the reporters’ transcripts of specified proceedings that preceded the final order that is the subject of the appeal.~~ The rule allows either party to designate supplement documents or transcripts for the

Formatted: Strikethrough

Second Draft: 04.05.2021

appellate record. Buried in current Rule 104(C)(2) is a provision allowing a party to file a notice advising that the party will not “participate actively” in the appeal. This untitled provision has been relocated to a freestanding Rule 605 (“Notice of Non-Participation”). The notice that the record on appeal is complete, which is untitled in current Rule 105(F), is now more visible and titled as “Notice of Completion of the Record” in Rule 606(e).

Rule 607 (“Briefing in the Court of Appeals; Transfer to the Supreme Court”) has a notable modification of an untitled provision in current Rule 106(G) that allows appellant’s counsel to file an affidavit affirming that counsel has lost contact with the client, or that there is no colorable issue for counsel to raise on appeal. This provision has been restyled and relocated in Rule 607(e) (“Notice and Avowal in Lieu of Opening Brief; Pro Se Brief”). This section differs from the current provision because it requires counsel who finds no non-frivolous issue to raise on appeal to then notify the client of that finding and advise the client of the opportunity to file a pro se brief. If the client requests to file a pro se brief, counsel must include that information in a court filing, and the court then must allow the client a specified time to file the pro se brief. The client does not have this opportunity under the current rules. If the client does not request to file a pro se brief, or if the client does not timely file a brief, this new section permits the court to accelerate its issuance of the mandate.

Formatted: Underline

Formatted: Underline

Commented [BR10]: Perfectly fine, but could be deleted to save space if necessary

Formatted: Underline

Formatted: Underline

Proposed Rule 608, which is new, has four sections derived from various provisions in the current rules: (a) Dismissal; (b) Action by the Appellate Court; (c) No Motion for Reconsideration; and (d) Motion for Publication. Rule 609 is a lengthy but essential rule on petitions for review. A party has 30 days to file a petition for review. To allow the Court of Appeals to issue its mandate without waiting a full month, a new provision requires the filing of a Notice of Intent to File a Petition for Review within 15 days after a disposition by the Court of Appeals. Rule 610, the final rule in Part VI that concerns the appellate court mandate, contains a corresponding provision ~~s on the appellate court mandate.~~

9. Forms. There are currently 6 forms that follow the concluding Juvenile Rule.

Current Forms 1, 1A, 2, and 3 are notices to a parent in, respectively, dependency, in-home intervention, guardianship, and termination actions. The Task Force ~~recognizes-recognized~~ the ~~potential~~ need to modify these forms, ~~but it has not yet proposed any changes and it is proposing revised forms.~~

Current Form 4 (“counsel’s certification of diligent search”) would be subsumed in the requirements of the juvenile appellate rules. Accordingly, the Task Force recommends abrogation of Form 4.

Current Form 5 is a sample notice of appeal. The Task Force proposes two new forms to replace Form 5. Form 5(a) would be the notice of appeal in a

Second Draft: 04.05.2021

delinquency proceeding. Form 5(b) would be the notice of appeal in any other juvenile case.

As noted above, the restyled appellate rules provide for a presumptive record on appeal and specify what would be included in the presumptive record. The Task Force proposes a new Form 6, which a party would use to make a supplemental designation of the record on appeal.

Note to the draft: Do we want the Court to adopt the new forms as part of the amended rules? We should discuss whether the forms could be approved by the Court yet not included within the rules. With appropriate wording in the rules or an Implementation Order, the forms could thereafter be modified by Administrative Directive rather than requiring the filing of another rule petition.

10. Amendments to Civil Rule 81.1. Surprisingly, there is a Civil Rule 81.1 concerning emancipations. This short and often unnoticed rule says that “these [civil] rules apply to juvenile emancipation proceedings except as provided in Part V, Rules of Procedure for Juvenile Court.” By virtue of the amendments proposed by this petition, that statement would be incorrect because the Civil Rules generally do not apply in juvenile proceedings. The Task Force accordingly requests to amend Rule 81.1 so it would instead say, “The rules that apply to juvenile emancipation proceedings are located in Part V of the Rules of Procedure for the Juvenile Court.”

Formatted: Underline

Formatted: Underline

Commented [BR11]: If 4 is abrogated, should these be renumbered? Should they contain “6” numbers to correspond to the Part VI rules on appeals? (I don’t think so . . .)

Commented [BR12]: May become form 5

Commented [BR13]: Yes, please include this on the TF agenda for the 5th. I agree we don’t want the court to have to approve forms themselves.

Formatted: Underline

Formatted: Underline

11. Pre-filing Comments. Task Force workgroups continued to meet throughout January 2021, and the Task Force reconvened on February 5, 2021. On February 17, 2021, the Task Force sent its 240-page draft set of rules, with an invitation to comment, to the following organizations and individuals:

- Children’s Action Alliance
- Arizona Center for Law in the Public Interest
- Arizona Council of Human Service Providers
- Governor’s Legal Staff
- Arizona Public Defender Association
- Arizona Court of Appeals, Division One and Division Two
- State Bar of Arizona Juvenile Law Section
- Committee on Superior Court
- Committee on Juvenile Court
- Rita Meiser (a fellow of the American Academy of Adoption Attorneys)

The Task Force received ~~several~~ 20 thoughtful and extensive written pre-filing comments, which necessitated the Task Force’s second request to extend the filing date for this rule petition. Members discussed many of those pre-filing comments at its March 5, 2021 meeting and made appropriate changes to its ~~initial~~ draft. However, the volume and scope of those comments also required further review by Task Force workgroups, which conducted 9 meetings over the ensuing month. The Editorial Group ~~also~~ met ~~after the March~~ again on April 5 meeting to discuss workgroup recommendations and to further review the draft rules and ~~a~~ draft rule petition. The Editorial Group then met after the April 5 Task Force meeting to finalize the Task Force work product.

Formatted: Justified, Indent: First line: 0.5"

Formatted: Underline

Formatted: Underline

12. Request for a Bifurcated Comment Period and Consideration of this

Petition at the December 2021 Rules Agenda. ~~The prefiling stakeholder comment period was only two weeks. Furthermore, the Court’s consideration of this petition at its August 2021 Rules Agenda would necessitate a public comment period of about two months, i.e., April and May 2021, to allow sufficient time for Petitioner to file a Reply in June. Given the volume number and complexity of the proposed rules, the belated April filing this petition, and the desirability of having further public comments, Petitioner requests the Court to consider this petition at its December 2021 rules agenda, rather than at its customary summer rules agenda. these two limited comment intervals may not be adequate.~~

~~On the other hand, the Court’s consideration of this petition on its December Rules Agenda would allow an extended time for comments and a bifurcated comment period. Petitioner believes the Court could open this petition for comments for two months (April and May 2021), then allow the Task Force to reconvene in June and file an amended petition in July. The amended petition could be followed by a reasonable comment period, with Petitioner’s Reply due in the fall. Here is a the proposed schedule proposed by Petitioner’s second motion for an extension of time:~~

~~First round of eComments due: July 23, 2021~~

~~Amended petition due:~~

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

~~Second round of comments due:~~

Petitioner's Reply due: September 30, 2021

If the Court adopts this schedule, including consideration of this petition in December, Petitioner proposes that the effective date of the newly adopted rules be deferred until July 1, 2022. Because of the extensive changes proposed by these rules, it would be desirable to have time for stakeholder training and familiarization with the new rules. This later effective date would facilitate judicial and attorney education during the first six months of 2022. [**Note to the draft:** Do we want to discuss proposed statutory amendments here?]

13. Request for Early Adoption of Rule 335. Proposed Rule 335 (“Qualified Residential Treatment Programs; Judicial Review”) is an exception to the delayed effective date discussed in the preceding section. For Arizona to be compliant with the Family First Prevention Services Act, Rule 335 should be adopted with an effective date of October 1, 2021.

For Rule 335 to have an October 1, 2021 effective date, the Court should consider this proposed Rule at its August 2021 Rules Agenda. New Juvenile Rule 335 would be effective for 9 months before the effective date of the remaining rules. However, Rule 335 would have a number that is incompatible with the numbering scheme of the current Juvenile Rules, which would continue to be effective until July 1, 2022. Petitioner therefore proposes that the rule be assigned a temporary number

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

of Rule 52.1, as it follows, in both the current (Rule 52) and proposed (Rule 334) rules, the rule on the “Initial Dependency Hearing.” On July 1, 2022, Rule 52.1 would revert to rule number 335.

14. Conclusion. The Task Force makes the following requests:

(a) that the Court abrogate the current Juvenile Rules and, in their place, adopt the proposed new Juvenile Rules shown in Appendix A.

(b) that ~~the Court order that~~ the newly adopted rules become effective on July 1, 2022, with the exception noted in the next request;

(c) that the Court adopt Rule 335 on an expedited basis, with an effective date of October 1, 2021 and with the temporary rule number 52.1; and that on July 1, 2022, Rule 52.1 revert to Rule number 335, with no changes to its title or content;

(d) ~~that the Court adopt/approve [we need to explain what we are requesting regarding the forms; see the note in section 9 above]~~

Commented [BR14]: Discuss with TF. Do we have exemplar language from the probate rules?

(e) that the Court adopt the proposed amendments to Civil Rule 81, as shown in Appendix C, with an effective date of July 1, 2022; and

(f) that the Court open this petition for ~~two rounds of~~ public comments, with an opportunity for Petitioner to ~~thereafter~~ file ~~an Amended Petition after the first round of comments and~~ a Reply ~~after the second round of comments~~, as provided in the schedule set out in section 12 of this petition

RESPECTFULLY SUBMITTED this ~~30th~~ 28th day of ~~March~~ April 2021.

Formatted: Underline

Formatted: Underline

By _____
Rebecca White Berch (Justice, ret.)
Chair, Juvenile Rules Task Force

Attachment:
Task Force Membership

Formatted: Line spacing: single

Hon. Rebecca W. Berch, Chief Justice (ret.), Task Force Chair

Formatted: Font: Bold

Randi Alexander, DCS, successor to Magdalena Jorquez, DCS

Formatted: Font: Bold

Hon. Mark Armstrong, Superior Court of Arizona, Maricopa County (ret.)

Formatted: Font: Bold

Professor Barbara Atwood, University of Arizona College of Law

Formatted: Font: Bold

Beth Beckmann, Court of Appeals, Division 2

Formatted: Font: Bold

Beth Beringhaus, Maricopa County Attorney's Office

Formatted: Font: Bold

Dale Cardy, Pima County Attorney's Office

Formatted: Font: Bold

Kathleen Coughlin, Pima County Legal Defender's Office

Formatted: Font: Bold

Maria C. Fuentes/Steve Selover, Governor's Office of Youth, Faith, and Family

Formatted: Font: Bold

John Gilmore, Attorney at Law, Tucson

Formatted: Font: Bold

Hon. Joseph Kreamer, Superior Court of Arizona, Maricopa County

Formatted: Font: Bold

Tina Mattison, Pima County Juvenile Court Center

Formatted: Font: Bold

Donna McQuality, Clerk of Superior Court, Yavapai County

Formatted: Font: Bold

Second Draft: 04.05.2021

Formatted: Underline

Formatted: Underline

Eric Meaux, Superior Court of Arizona, Maricopa County

Formatted: Font: Bold

William Owsley, Office of the Legal Advocate, Maricopa County

Formatted: Font: Bold

Christina Phillis, Maricopa County Office of Public Defense Services

Formatted: Font: Bold

Hon. Maurice Portley, Court of Appeals, Division 1 (ret.)

Formatted: Font: Bold

Hon. Kathleen Quigley, Superior Court of Arizona, Pima County

Formatted: Font: Bold

Beth Rosenberg, Children’s Action Alliance (ret.)

Formatted: Font: Bold

Denise Smith, Pinal County Juvenile Court Services

Formatted: Font: Bold

Denise Avila Taylor, Attorney at Law, Yuma

Formatted: Font: Bold

Hon. Patricia Trebesch, Superior Court of Arizona, Yavapai County (ret.)

Formatted: Font: Bold

Edward Truman, Office of the Attorney General

Formatted: Font: Bold

Kent Volkmer, Pinal County Attorney

Formatted: Font: Bold

Hon. Rick Williams, Superior Court of Arizona, Mohave County

Formatted: Font: Bold

Hon. Anna Young, Superior Court of Arizona, Yavapai County

Formatted: Font: Bold

Acknowledgments:

Hon. Randy Warner, Superior Court of Arizona, Maricopa County

Hon. Sara Agne, Superior Court of Arizona, Maricopa County

Rita Meiser, Attorney at Law, Phoenix

Carey Turner, Office of the Attorney General

Chanetta Curtis, DCS

David Withey and Nina Preston, AOC Legal

Staff:

Mark Meltzer and Angela Pennington, AOC Court Services Division

Formatted: Left, Line spacing: single