Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, June 12, 2020
10:00 a.m. to 4:00 p.m.
Virtual Meeting
Telephone: **602.452.3533** Access Code: **994 842 433**

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the April 3, 2020 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and discussion of rules** **Workgroup 1: Rules 103.1 [new], Rule 104, and Rules 104.1 and 104.2 [new]** **Workgroup 2: Rules 23, 28, and 28.1 [new]** **Workgroup 3: Rules 38 and 39 [revisited], Rule 41, Rules 41.1 and 41.2 [new], Rule 44 [revisited], and Rule 47.1** **Workgroup 4: Rules 65 and 66 [revisited], 67, 68, 69, 70, 71, and 72**	 *Ms. Beckmann* *Ms. Phillis. Ms. Beringhaus* *Judge Quigley, Ms. Rosenberg, Ms. Jorquez, Mr. Turner* *Professor Atwood, Ms. Coughlin, Mr. Owsley, Judge Portley*
Item no. 4	**Roadmap** **Next meetings: July 17, August 21, September 25, October 23, November 20, December 18**	*Justice Berch*
Item no. 5	**Call to the Public** **Adjourn**	*Justice Berch*

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

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

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

Juvenile Rules Task Force

Virtual Public Meeting, April 3, 2020
(All members, guests, and staff attending telephonically)

Meeting Minutes

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

Absent: John Gilmore, Eric Meaux

Guests: Nina Preston, Chanetta Curtis, Randi Alexander, Paul Julien, Carey Turner

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the sixth — and first virtual —Task Force meeting to order at 10:00 a.m. The meeting was virtual because of the ongoing coronavirus pandemic and universal mandates for social distancing. Participants communicated during today's meeting on a telephone conference call line and by WebEx. The Chair reviewed conference call protocols, including utilizing the mute feature to reduce extraneous noise. She noted that staff posted a public meeting notice on the Task Force webpage on March 27, which included information about non-members' participation in the call to the public. The meeting packet also was posted on the Task Force webpage, which allowed anyone to view it. In addition to the agenda, draft minutes, and draft rules, the packet included (1) a version of SB 1425 that would affect CASAs, along with a House fact sheet (the bill is no longer moving because the Legislature has recessed); and (2) Arizona case research and three Court of Appeals decisions concerning the issue of ineffective assistance of counsel ("IAC") in juvenile proceedings. Ms. Beckmann also provided members with a three-page legal analysis of the IAC issue.

The Chair then referred members to draft minutes of the February 28, 2020 Task Force meeting. Members had no corrections to the draft.

Motion: A member moved to approve the February 28, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 006**

2. Report from Workgroup 3. The Chair began today's rules review with a presentation by Ms. Phillis on behalf of Workgroup 2.

Rule 27 ("subpoenas"). Ms. Phillis advised that a process server from the Office of Public Defense Services was on this portion of the conference call and would be able to answer members' questions, if any, concerning service of subpoenas. Ms. Phillis then explained that in section (a) ("generally"), the workgroup added two new sentences, one concerning the ADA requirement for reasonable accommodations, and the other regarding requests for interpreters. She noted that the court clerk will not issue a subpoena that does not contain language concerning reasonable accommodations. However, the draft language of this Rule 27 provision differed in one respect from corresponding language in Civil Rule 4, which concerns the summons; the draft juvenile rule requires that witnesses notify the court of a need for accommodation, which is unlike Civil Rule 4 that requires notice to the parties.

Under section (b) ("service"), a subpoena must be personally served. However, the court may approve service by a less restrictive method, i.e., by mail. The provision allows certified mail (not "certified or registered," as in the current rule), and if mailing is used, restricted delivery is required. Under the revised language of section (c) ("contempt"), the court can no longer issue an arrest warrant if the person to be served with a subpoena cannot be found, although that is permissible under the current rule. The draft provision requires the court to issue an order to show cause if a served witness fails to appear, although one member noted that judicial officers in Pima County occasionally issue an arrest warrant in that circumstance.

Members approved Rule 27 as presented.

3. Workgroup 3. Workgroup 3 then presented several rules.

Rule 39 ("appearance, substitution and withdrawal; responsibility of parties"). Rule 39 is lengthy, and the Chair commended the workgroup's substantial effort in preparing its draft. Judge Quigley, who presented this rule, noted that the workgroup's draft incorporates several elements of Civil Rule 5.3 ("duties of counsel and parties"). Judge Quigley reviewed several draft provisions concerning withdrawal and substitution of counsel for a parent. She noted a separate provision that would allow an attorney for a child to withdraw or substitute only by court order. Draft section (g) ("responsibility to the court") contains provisions applicable to both attorneys and self-represented litigants. The Chair then invited members to comment on the draft.

A member reported instances where a private attorney has been hired for a limited purpose, such as appearing on behalf of a relative only for a placement proceeding. Does the draft rule accommodate these situations? Members discussed whether to address this circumstance with a prefatory phrase in the rule such as, "unless the attorney has appeared for a limited purpose," but a member observed that inserting a solitary phrase on limited appearances in Rule 39 without also adding a more detailed provision on limited scope representation, such as the one in Civil Rule 5.3(c), would not be helpful.

After further discussion, members declined to include either the prefatory phrase or an analog to Civil Rule 5.3(c). (Supplemental note: See further Supreme Court Rule 42, ER 1.2(c).) Draft Rule 39(b)(3)(A) describes termination of the attorney's representation when the action is dismissed. A member inquired about the applicability of this provision to cases where a party had been dismissed but the action continued as to other parties. Members concluded that this circumstance would be covered by Rule 39(b)(3)(B), which provides for the entry of a court order terminating representation. Another member asked whether draft Rule 39 is sufficiently flexible to allow counsel to file a petition for review. Ms. Phillis responded that her office expects appointed appellate counsel to handle the matter until the appeal is resolved. A member also asked if the draft provision would allow a party to be self-represented on appeal following counsel's withdrawal, but after discussion, members did not believe that possibility required any further modifications to the draft.

A member suggested that the provisions of section (c) ("withdrawal") should require moving counsel to include, in addition to the client's physical address, the client's email address. Members agreed with the suggestion. Members then discussed the necessity of having two separate subparts in section (c): subpart (c)(2) concerning the lack of client consent where the client's location was unknown, and subpart (c)(3) concerning the lack of consent when the client's location was known. Members discussed addressing this issue by alternative phrasing or combining these subparts, and they modified the draft during the meeting; but the Chair requested the workgroup to further review these revised provisions to assure they are internally consistent and not contradictory. Another member raised an issue concerning subpart (c)(4), which addresses the withdrawal of an attorney for a child. Although members agreed that this circumstance is unique because children cannot consent to their attorneys' withdrawal, they believed that the draft did not adequately clarify the distinction between the child's and parent's situations. After discussion, members agreed to add a new first sentence to subpart (c)(4) that says, "subparts (1), (2), and (3) do not apply to attorneys for children."

Members also discussed section (d) ("attorney substitution"), subpart (2) ("within the same firm or office"). The provision is modeled on Civil Rule 5.3(a)(2)(D), but it omitted an element in the Civil Rule, specifically, that a court order approving the substitution is not required. Members added the omitted verbiage. They also removed a reference in the draft to "association" because "association" did not seem applicable in juvenile proceedings. The modified draft requires the notice of substitution to include "the email address of the attorney substituting." Some large offices have a single, central email address for receiving communications from the court to assure that notices and minute entries are not overlooked, and in that instance the notice should include the central address rather than an attorney's individual address. Judge Kreamer noted that hearings might now be scheduled on short notice, so it's important that individual counsel promptly and directly receive court notices, but members made no further changes to the provision.

Draft section (e) ("withdrawal or substitution of counsel when matter set for trial") specified the content of a motion in these circumstances, but members agreed that the formatting of this section was confusing. They agreed to address this by relocating the "ethical grounds" and "good cause" alternatives from subsequent subparts to the main body of the section. A member noted that the word "trial," which is used in section (e), is not defined in the rules, although "proceeding" is defined; and Workgroup 1 should consider adding a definition of "trial" in Rule 2. Members had no questions or comments concerning section (f) ("duty of attorney after withdrawal or substitution"), which requires the former attorney to transfer the file and to provide client contact and other information to the new lawyer or to the newly self-represented client.

Workgroup 3 will review the members' suggestions noted above and return a revised Rule 39 to the Task Force at a future meeting.

Rule 40.2 ("duties and responsibilities of attorneys who represent parents, guardians, and Indian custodians") and Rule 40.4 ("education requirements for a court-appointed attorney or guardian ad litem"). Mr. Truman presented these rules. He noted that Rule 40.2 was on the agenda only to show that the education requirements in the previous draft of that rule had been deleted and relocated in new Rule 40.4.

Various sections of Rule 40.4 repetitively refer to "an attorney and guardian ad litem." Members agreed that there should be language in section (a) ("scope") to advise that "as used in this rule, the term attorney includes a guardian ad litem," and they asked the editorial group to include this revision. Section (c) addresses "initial training," and section (d) covers "later training." In section (d), members agreed to delete as unnecessary the word "subsequent" in the introductory phrase "each subsequent year." But does "year" refer to a calendar year? Section (e) ("affidavit of completion") directs attorneys to file the annual affidavit concurrently with the affidavit required by Supreme Court Rule 45, so members agreed that the rule sufficiently explains the meaning of "year." Section (d) ("later training") said that "continuing education should include topics such as…," but members changed "should" to "may." Mr. Truman reviewed the revised list of topics, which merges what were formerly separate lists for parents' attorneys and children's counsel. Members had no further comments or suggested changes, and they approved Rule 40.4 with the above-mentioned modifications.

Rule 42 ("telephonic testimony, video conferencing"). Judge Young presented this brief rule, which allows the court to permit a telephonic appearance or telephonic testimony "on the court's own initiative or on a party's motion." Although the draft rule lacks details, Judge Young observed that its brevity also allows judges flexibility in applying it. A member then observed that this rule has heightened importance because of the pandemic. Two judge members noted that they now are doing their best to set timely telephonic hearings in lieu of in-person appearances, and they are developing a "new normal" for the current and quickly changing court environment. One member would prefer that the rule contain additional content that safeguards the rights of parties

in telephonic hearings. Another member had due process concerns that are inherent in a telephonic termination hearing. A member suggested that the rule include a provision that, if the court sets a telephonic hearing, a party seeking an in-person hearing could still move for one and have a fair opportunity to be heard on the motion; but the judges thought this would add even more motion hearings to their already congested calendars. Another member compared the provisions of draft Rule 42 to Family Law Rule 8; FLR 8 distinguishes evidentiary and non-evidentiary hearings and has more specificity about how to introduce documents during a telephonic hearing. The Chair suggested that members continue their conversation about telephonic hearings at future meetings as the pandemic evolves, and that meanwhile, the workgroup consider the provisions of FLR 8.

Rule 43 ("computing and extending time"). Judge Quigley presented this one-sentence rule. ("Unless these rules provide otherwise, time is computed, and may be extended, in accordance with Civil Rule 6.") Members had no comments or suggested changes, and they approved the rule as presented.

Rule 44 ("disclosure and discovery"). Ms. Jorquez, who presented Rule 44, noted that the workgroup's goals were to streamline the current rule and reduce its redundancy. She then reviewed each section of the draft, and a discussion followed.

In section (a) ("generally"), a member questioned whether "or confidential" was appropriate in the requirement that a party disclose all relevant information "that is not privileged or confidential." Members agreed that some information, such as a medical report, might be confidential but is nonetheless subject to disclosure, and they deleted "or confidential." Section (c) concerns the content of the initial disclosure statement. Members believed the draft more closely described the content of a pretrial statement and that it omitted necessary substance contained in the current rule. Section (d) requires a party to provide supplemental disclosure "at least 30 days" before a contested hearing. Some members thought 30 days was inadequate; for example, if the supplement identifies an expert, can the opposing party obtain rebuttal evidence in that short window before the hearing? A member thought the supplemental disclosure requirement also should apply even when a pending hearing is uncontested. Another member noted that the draft omitted an ongoing duty of disclosure, which is in current Rule 44(B)(1).

Draft section (f) ("conclusion of discovery") contained a provision that parties may supplement their list of witnesses and exhibits "no later than 10 days" before the adjudication hearing. This provision might be inconsistent with the supplemental disclosure requirement in draft section (d). And although Workgroup 3 also proposed reducing the time in section (f) to 7 days, members opposed this provision, which would allow last-minute discovery and could be especially troublesome before a severance adjudication. In section (h) ("sanctions"), the workgroup acknowledged that some of the proposed language was flowery (e.g., "Any sanction…should generally be limited to the least possible power adequate to the end proposed...") and that was deleted during the meeting. Workgroup 3 acknowledged that it might not have included all its proposed

changes in a SharePoint document, and it will present a revised version of Rule 44 at a future meeting.

Rule 47.2 ("minute entries"). Judge Quigley presented this rule, which also consists of a single sentence: "Except as the rules and requirements of juvenile appellate procedure may provide, an unsigned minute entry containing the court's findings or orders constitutes an order of the court." Members had no questions or comments regarding this provision, and they approved the draft rule as presented.

4. <u>Report from Workgroup 4.</u> Workgroup 4 presented two rules.

Rule 65 ("initial termination hearing"). A portion of Rule 65 had been presented at a previous Task Force meeting, and Professor Atwood and Ms. Coughlin continued the presentation. They noted that Mr. Withey had attended a recent workgroup meeting and reminded members of the rationale for including specific references in the draft rules to ICWA and the regulations. The workgroup agreed that the draft rules should include these references, and it also proposed an appendix to the rules that would include easy access to the verbatim text of referenced regulations. Whether an appendix would be feasible might ultimately depend on the number of regulations that are referenced in the final Task Force work product, which is yet to be determined, and the cumulative length of those regulations. The appendix might eliminate the need for Rule 50.1 ("deviation from placement preferences") and other current provisions concerning ICWA. In response to a proposed appendix, members thought the regulations could just as easily be found online. They also were concerned that the appendix would need to be regularly updated whenever there were changes to the regulations, although Mr. Withey had indicated that the regulations had not changed much, if at all, since their adoption. Additionally, pending court challenges to the ICWA regulations could impact the content or application of the regulations. Members agreed to defer further consideration of the appendix to a later time.

Elsewhere in Rule 65, Professor Atwood and Ms. Coughlin noted that the workgroup had resequenced subparts in section (c) ("procedure") so they now appear in a more logical order. They also noted that the language in subpart (c)(6)(B) ("failure to appear") is still awkward; the workgroup will continue to improve the language and present a revised version of this provision, which has counterparts in several other rules, at a future workgroup meeting. Current Rule 65 includes a brief comment; the Task Force consensus was to delete the comment.

Rule 66 ("termination adjudication hearing"). Although the workgroup had not yet completed its review of the last parts of Rule 66, Professor Atwood presented the first few sections. She noted that although section (b) contains time limits for an adjudication hearing when the action is initiated by motion, there are no time limits in this rule for setting a hearing when the action is begun by petition. The workgroup believes this dichotomy conforms to statutes and court practices and it is therefore appropriate. She

reviewed provisions in sections (c) ("burden of proof") and (d) ("burden of proof for an Indian child"). Language in section (e) ("procedure") concerning a failure to appear, like similar language in Rule 65, is still under workgroup review. Judge Armstrong noted a need for revisions to section (g) ("social study") to make it compatible with the Task Force's previous adoption of Rule 3.1(d)(4). The workgroup will complete its review of Rule 66 and present it again to the Task Force.

5. Report from Workgroup 1. Ms. Beckmann led presentations on behalf of the workgroup.

Rule 103 (new: "right to appeal"). As noted at page 7 of the February 28 Task Force meeting minutes, new Rule 103 encapsulates only sections (A) and (B) of current Rule 103. The remaining sections (C) through (G) would become Rule 103.1 and be titled "general provisions." Ms. Beckmann noted that Workgroup 1 recently modified new Rule 103 following comments and suggestions at the February 28 Task Force meeting. Section (a) ("who may appeal") was substantially unchanged. Section (b) ("final orders") had several revisions. In subpart (1), which concerns delinquencies, the workgroup revised the provisions concerning appeals from restitution orders, and those provisions are now consistent with criminal rules concerning the appealability of restitution orders. Subpart (2), which concerns appeals from other juvenile proceedings, was more controversial.

Ms. Beckmann noted the workgroup deleted a provision in the previous draft of subpart (2), which provided that a finding of continuing dependency was a separately appealable order. They removed this provision to discourage multiple successive appeals. Some members thought this provision should be added back because case law recognized the right; but other members observed that the right under case law was dicta and not dispositive, and that the right is not statutory. As a practical matter, the issue in those contexts typically does not involve the dependency finding, but more commonly it involves such things as whether services have been provided and whether the case is proceeding expeditiously. Moreover, other provisions of subpart (2) could still provide a basis for these appeals. The introductory language of subpart (2) says, "final orders include," suggesting that the list of final orders is not all-inclusive. Moreover, subpart (2)(L) allows an appeal from "any other order that is final pursuant to Arizona case law." Accordingly, members agreed to the removal of the previous provision. However, the Chair requested that the Task Force petition note this omission for the Court and explain why the provision was omitted, so the Court could then consider and decide the matter. Ms. Beckmann also noted the final order mentioned in subpart 2(E) ("an order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody"). This would address the situation in *Jessicah G.*, but it would not apply to a child's initial removal from the home because at that time, the child would not have been adjudicated dependent.

Members then approved new Rule 103.

Rule 103 and the ineffective assistance of counsel. This issue arose in conjunction with the appellate rules, including Rule 103, but it is broader and complex. Ms. Beckmann noted, and her meeting materials confirm, that during the past several years, parties have raised an increasing number of IAC issues on appeal, but there is no established mechanism for considering these claims. IAC claims can arise in two contexts.

In the context of a delinquency, Ms. Beckmann said that a delinquent has a right under the Sixth Amendment to effective counsel and that the existence of that right is no longer debatable. Arizona decisional law, including *State v. Spreitz,* 202 Ariz. 1 (2002), recognizes that because criminal post-conviction proceedings usually require consideration of matters outside the record, Arizona law requires parties to initially raise IAC claims in post-conviction proceedings in the trial court, which can conduct any necessary evidentiary hearings, rather than in appellate courts, which are not fact-finding tribunals. In juvenile court, post-disposition motions for new trial are occasionally the vehicle for raising these claims, but the practice is inconsistent and uncodified. Moreover, if the trial court denies the post-disposition motion without an evidentiary hearing, and an appellate court determines that the motion had raised a colorable claim, the appellate court might remand the matter to the trial court for further proceedings, which results in further delaying the finality of a case.

In the context of a dependency or severance proceeding, appellate courts have not expressly recognized a right to the effective assistance of counsel. Ms. Beckmann noted cases such as *John M. v. ADES*, 217 Ariz. 320 (App. 2007), which disposed of the IAC claim without recognizing the right because the appellant had not shown the likelihood of a different result had trial counsel performed diligently. She also noted more general language in other cases that sidestepped addressing the right, for example, "assuming without deciding that ineffective assistance of counsel provides a basis for reversible error in a severance proceeding;"[*Theresia F. v. DCS* (2019)]; or "for the purpose of this case, we need not determine whether Arizona recognizes ineffective assistance of counsel as a separate ground for relief…" [*Shirley R. v. DES* (2018).]

Ms. Beckmann's primary premise is that the right to counsel is meaningless if counsel is ineffective. She acknowledged a variety of issues that would require resolution if the right to effective counsel is codified, including the need to appoint new counsel. Now, procedurally, appellate counsel who raise these issues are in a conundrum because they might not be able to raise the issue in the trial court, which no longer has jurisdiction, and because the appellate court is not the most effective forum for hearing the matter. She suggested one rule modification that could be helpful; she envisioned a new provision that would allow a motion in the trial court challenging the effective assistance of counsel to extend the time for filing a notice of appeal until disposition of the motion, like similar provisions in ARCAP 9. The alternative is for the appellate court to suspend the appeal and re-vest jurisdiction in the trial court. A discussion ensued, and members' comments included the following.

- During years on the bench, a Division One judge had seen only a couple IAC claims.
- Because trial counsel would not acknowledge their own ineffectiveness, the court would always need to appoint new counsel to raise these claims.
- Would a right to effective assistance of counsel extend to children's counsel? For example, would there be a remedy when counsel advocates a position contrary to the child's wishes? Would the process for hearing these claims be so protracted that the remedy would be meaningless for a child?
- Does current Rule 106 permit a self-represented party to raise IAC claims on appeal?
- Do any other jurisdictions by statute or case law recognize a right to effective counsel?
- Would it be sensible to provide a remedy for IAC in Arizona delinquency cases, where the right is more deeply rooted, without providing the remedy in dependencies and terminations?
- Would it be premature for Arizona's juvenile rules to recognize such a right in the absence of dispositive case law or a statutory amendment? Would it be going too far?

Ms. Beckmann agreed to research statutory and case law in other jurisdictions that might recognize the right to effective counsel in juvenile proceedings, and she will report back to the Task Force at a future meeting.

6. **Discussion of the COVID pandemic.** Judge Kreamer led the discussion. As noted previously in these minutes, trial courts have become increasing reliant on telephonic court hearings. If the courts are going to continue in this manner, even after the pandemic, how should the juvenile rules accommodate this change? Issues involving the delinquency rules might include (references are to current rules) Rules 11 and 12 involving the appearance of counsel and the juvenile's attendance, certainly Rule 13 concerning attendance by telephone or video, Rule 18 on speedy justice, Rule 19 on public attendance, Rule 21 on victims' rights, and Rule 27 on subpoenas. Other delinquency rules and a number of dependency rules might also require modification. Would it be easier in the future for parents to appear in dependency proceedings by telephone rather than in person? Can an evidentiary hearing be done telephonically, and if so, how? How can technology be utilized to effectively provide parties their legal rights? How will social distancing requirements affect personal appearances in the courthouse? Will courtrooms need to be reconfigured? After further discussion by the Task Force, Judge Kreamer asked members to consider these issues as they continue their revisions to the juvenile rules.

7. **Roadmap; call to the public; adjourn.** The Chair noted that there were six workgroup meetings between the February 28 and April 3 Task Force meetings, and three workgroup meetings are scheduled for the week of April 6. She encouraged the workgroups to continue to meet. Because the Task Force is approaching the halfway

point of its rules review, the Chair advised that she might soon convene the editorial group to begin its examination and editing of the draft rules. The next Task Force meeting is set for May 8, 2020, but this date is still tentative, and it might need to be reset. The subsequent Task Force meeting, on June 12, conflicted with the State Bar's annual convention, but it appears the convention will be postponed, and the Task Force will proceed with its previously scheduled June 12 meeting date.

There was no response to a call to the public.

The meeting adjourned at 3:52 p.m.

Rule 23. Detention and Probable Cause Hearing

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

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

(1) notify the juvenile of the reason for the admission and the location, date, and time of the detention hearing;

(2) notify the juvenile's parent of the reason for the admission and the location, date, time of the detention hearing, and that the hearing may proceed in the absence of the juvenile's parents if they fail to appear for the hearing;

(3) make a written record of the time and manner of notifications;

(4) advise the juvenile of the right to telephone a parent and an attorney immediately after admission to the facility; and

(5) advise the juvenile of the right to visitation, in private, with the parent and an attorney. After the initial visit, the juvenile may have visitation during normal visiting hours, or by special appointment if necessary to prepare for a hearing.

(c) Length of Detention.

(1) ***No Petition or Criminal Complaint is Filed.*** A juvenile must not be held in detention for longer than 24 hours after admission to detention unless a petition or criminal complaint has been filed.

(2) ***After a Petition or Criminal Complaint is Filed.*** Within 24 hours of the filing of a petition or criminal complaint, a juvenile must be brought before the court for a detention hearing under section (d). If a detention hearing is not held within 24 hours after the filing of the petition or criminal complaint, the juvenile must be released from the detention facility to a parent, guardian, custodian, or other responsible person. If no parent, guardian, custodian, or other responsible person can be located, the court must release the juvenile to DCS.

(d) Detention Hearing.

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

petition or complaint. Probable cause may be based upon the allegations in a police report or a citation narrative prepared by a law enforcement officer, or a properly executed affidavit or sworn testimony. ~~The affidavit may serve as the oath before a magistrate for purposes of Criminal Rule 2.4.~~

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

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

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

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

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

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

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

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

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

(f) Order for DNA Testing. An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample

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

(h) Revocation of Release; DNA Testing. The supervising juvenile probation officer or the prosecutor may file a motion to revoke the juvenile's release if there is probable cause to believe that a juvenile who the court ordered as a condition of release to provide a DNA sample pursuant to A.R.S. § 8-238, and to provide proof of compliance, has not complied with that order. The court having jurisdiction over the juvenile may issue a warrant or summons to secure the juvenile's presence in court and must proceed in accordance with the requirements of this rule and A.R.S. § 8-238.

(i) Order for DNA Testing. An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the

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

(k) Review of Detention. The court may review the detention status of a juvenile upon written motion of the juvenile, the prosecutor, or on its own. A party's motion must allege material facts not previously presented to the court. The court must hold a hearing on a motion to review detention status within 5 days after the motion is filed. The victim has the right to be heard concerning the release of the juvenile and the conditions of release, as provided by law. The court may accelerate a hearing on the motion upon written request demonstrating extraordinary circumstances and that acceleration is necessary in the interests of justice. [**Staff Note:** Should the title of this section be "review of detention" or "review of release?"]

Notes/ References

AJDS Section III A4. Juveniles may be separated from other juveniles only as a last resort when less restrictive measures are inadequate to keep them and other juveniles safe, and then only until an alternative means of keeping all juveniles safe can be arranged. During any period of separation, detention personnel shall not deny the juvenile daily large-muscle exercise, leisure activity, legally required educational programming, or special education services**.** If the separation of the juvenile from other juveniles involves segregation, the juvenile shall receive daily visits from a medical or mental health practitioner. Juveniles shall also have access to other programs and work opportunities to the extent possible. The detention administrator shall review housing and programming assignments of the juveniles to assess any threats to safety experienced by the juvenile.

ARS 8-305 F. Any detained juvenile or child who, by the juvenile's or child's conduct, endangers or evidences that the juvenile or child may endanger the safety of other detained children shall not be allowed to intermingle with any other juvenile or child in the detention center.

Advisement of right to contact parent and attorney

AJDS Section II D3. The director of juvenile court services shall implement policies and procedures to ensure access to telephone services including:

a) Advising the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission;

Detention personnel shall advise the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission to a detention facility.

Arrangements shall be made to allow confidential telephone calls with attorneys.

AJDS Section II D2

The director of juvenile court services shall implement a visitation program and policy that includes notifying parents/legal guardians of the visitation schedule upon the juvenile's admission, and a posted schedule in English and other languages necessary to meet Limited English Proficiency standards. The policy shall include the types of visitations, days and times and level of confidentiality and reasonable accommodations for unique circumstances. Visitation shall be granted balancing privacy interests with safety and security needs. Visitation rights shall include parents/ legal guardians, attorneys and spiritual leaders. Visits may include siblings, juvenile's children (with adult supervision), custodians, counselors, teachers, grandparents, and other supportive adults as determined by the probation officer and/or detention administration unless excluded by the court or other legal directive. Local policy shall establish the age of siblings eligible for visitation.

ARS 8-238. Advisory hearing; DNA

A. If a juvenile is charged with a violation of any of the following offenses and is summoned to appear at an advisory hearing, the judicial officer shall order the juvenile to report within five days to the law enforcement agency that investigated the juvenile or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction:

1. An offense listed in title 13, chapter 11.

2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411 or 13-1417.

3. A violation of section 13-1507 or 13-1508.

4. A violation of any serious offense as defined in section 13-706 that is a dangerous offense as defined in section 13-105.

B. If a juvenile does not comply with an order issued pursuant to subsection A of this section, the court shall revoke the juvenile's release.

C. The investigating law enforcement agency or its designee shall transmit the sample to the department of public safety.

D. Section 13-610, subsections H, I, J, K, M and N, are applicable to samples collected pursuant to this section.

13-610. DNA testing

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration in a county jail detention facility or is detained in a county juvenile detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county probation department shall transmit the sample to the department of public safety.

Rule 23. Detention and Probable Cause Hearing

(a) ~~Report to the Court~~Admission to Detention. Any ~~person~~ peace officer who brings a juvenile to a juvenile court detention facility, other than a juvenile who was arrested pursuant to an arrest warrant, must ~~make a report~~provide a report or documentation that supports the juvenile's admission to detention to ~~the~~ an authorized juvenile court officer in the manner prescribed by the juvenile court in each county~~, and state the reasons why the juvenile should be detained~~.

(b) ~~Admission to~~ Requirements Upon ~~Detention.~~Admission. ~~-~~Upon admission to the detention facility, the authorized juvenile court officer must do the following: ~~[**Staff Note:** Does section B apply to arrests pursuant to a warrant as well as warrantless arrests?]~~

(1) notify the juvenile of the reason for the admission and the location, date, and time of the detention hearing;

(2) notify the juvenile's parent~~, guardian, or custodian~~ of the reason for the admission and ~~inform them of~~ the location, date, ~~and~~ time of the detention hearing~~. The detention~~, and that the hearing may ~~be held without the presence~~ proceed in the absence of the juvenile's parents ~~, guardian, or custodian,~~ if ~~they cannot be located or~~ they fail to appear for the hearing;

(3) make a written record of the time and manner of ~~notification~~ notifications;~~[**Staff Note:** Does this requirement apply to (1) and (2) or just (2)?];~~

~~**(4)** determine whether the juvenile's conduct endangers or could endanger the safety of other detained juveniles and if so, restrict the juvenile's contact with other detained juveniles;~~

~~**(5)**~~**(4)** advise the juvenile of the right to telephone a parent~~, guardian, or custodian~~ and an attorney immediately after admission to the facility; and ~~[**Staff Note:** Does the court appoint an attorney for the juvenile at this hearing?]~~

~~**(6)**~~**(5)** advise the juvenile of the right to visitation, in private, with the parent~~, guardian, or custodian~~ and an attorney. After the initial visit, the juvenile may have visitation during normal visiting hours, or by special appointment if ~~required~~ necessary to prepare for a hearing~~; and~~.

~~**(7)** obtain from the arresting agency proof of compliance with A.R.S. Section 13-610(K) if the juvenile was arrested for an offense listed in A.R.S. Section 13-610(O)(3).~~

(c) Length of Detention.

(1) ***No Petition or Criminal Complaint is Filed.*** ~~If a petition alleging incorrigible or delinquent conduct or a criminal complaint has not been filed, a~~ A juvenile must not be held in detention for ~~more~~ longer than 24 hours after admission to detention unless a petition or criminal complaint has been filed.

(2) ***After a Petition or Criminal Complaint is Filed.*** Within 24 hours of the filing of a petition or criminal complaint, a~~A~~ juvenile ~~must not be held longer than 24 hours after the filing of a petition unless ordered by~~must be brought before the court ~~after~~ for a detention hearing under section (~~D~~d). If a detention hearing is not held within 24 hours after the filing of the petition or criminal complaint ~~[**Staff Note:** Does this mean that a juvenile can be held for 48 hours if a petition has been filed?]~~, the juvenile must be released from the detention facility to a parent, guardian, custodian, or other responsible person. If no parent, guardian, custodian, or other responsible person can be located, the court must release the juvenile to ~~the~~ DCS.

~~(2)~~

(d) Detention Hearing.

(1) ***Finding of Probable Cause.*** A juvenile may be detained only if there is probable cause to believe that the juvenile committed the acts alleged in the petition or complaint. Probable cause may be based upon the allegations in a police report or a citation narrative prepared by a law enforcement officer, or a properly executed affidavit or sworn testimony. ~~The affidavit may serve as the oath before a magistrate for purposes of Criminal Rule 2.4.~~

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

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

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

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

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

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

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

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

(e) **Release from Detention.** The court may release the juvenile and set terms and conditions of release. Upon release from any detention facility, the court must advise the juvenile that any violation of release conditions or the failure to appear at future proceedings could result in the issuance of a warrant for the juvenile's arrest and detention, and that the court may proceed with future hearings in the juvenile's absence. A victim may request, and the court must provide to the victim, a copy of the juvenile's terms and conditions of release, as provided by law. ~~[**Staff Note:** Shouldn't the juvenile (or the parent) also be given a copy of the T and C?]~~

~~(d)~~(f) **Order for DNA Testing.** An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample

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

~~(f)~~ **Revocation of Release; DNA Testing.** The supervising juvenile probation officer or the prosecutor may file a motion to revoke the juvenile's release if there is probable cause to believe that a juvenile who the court ordered as a condition of release to provide a DNA sample pursuant to A.R.S. § 8-238, and to provide proof of compliance, has not complied with that order. The court having jurisdiction over the juvenile ~~must [~~may~~?]~~ issue a warrant or summons to secure the juvenile's presence in court and must proceed in accordance with the requirements of this rule and A.R.S. § 8-238.

(h)

~~(g)~~(i) **Order for DNA Testing.** An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the ~~sample. [**Staff Note:** Should this section be relocated after section (E)?]~~

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

~~(i)~~(k) **Review of Detention.** The court may review the detention status of a juvenile upon written motion of the juvenile, the prosecutor, or on its own. A party's motion must allege material facts not previously presented to the court. The court must hold a hearing on a motion to review detention status within 5 days after the motion is filed. The victim has the right to be heard concerning the release of the juvenile and the conditions of release, as provided by law. The court may accelerate a hearing on the motion upon written request demonstrating extraordinary circumstances and that acceleration is necessary in the interests of justice. [**Staff Note:** Should the title of this section be "review of detention" or "review of release?"]

Notes/ References

AJDS Section III A4. Juveniles may be separated from other juveniles only as a last resort when less restrictive measures are inadequate to keep them and other juveniles safe, and then only until an alternative means of keeping all juveniles safe can be arranged. During any period of separation, detention personnel shall not deny the juvenile daily large-muscle exercise, leisure activity, legally required educational programming, or special education services**.** If the separation of the juvenile from other juveniles involves segregation, the juvenile shall receive daily visits from a medical or mental health practitioner. Juveniles shall also have access to other programs and work opportunities to the extent possible. The detention administrator shall review housing and programming assignments of the juveniles to assess any threats to safety experienced by the juvenile.

ARS 8-305 F. Any detained juvenile or child who, by the juvenile's or child's conduct, endangers or evidences that the juvenile or child may endanger the safety of other detained children shall not be allowed to intermingle with any other juvenile or child in the detention center.

Advisement of right to contact parent and attorney

AJDS Section II D3. The director of juvenile court services shall implement policies and procedures to ensure access to telephone services including:

a) Advising the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission;

Detention personnel shall advise the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission to a detention facility.

Arrangements shall be made to allow confidential telephone calls with attorneys.

AJDS Section II D2

The director of juvenile court services shall implement a visitation program and policy that includes notifying parents/legal guardians of the visitation schedule upon the juvenile's admission, and a posted schedule in English and other languages necessary to meet Limited English Proficiency standards. The policy shall include the types of visitations, days and times and level of confidentiality and reasonable accommodations for unique circumstances. Visitation shall be granted balancing privacy interests with safety and security needs. Visitation rights shall include parents/ legal guardians, attorneys and spiritual leaders. Visits may include siblings, juvenile's children (with adult supervision), custodians, counselors, teachers, grandparents, and other supportive adults as determined by the probation officer and/or detention administration unless excluded by the court or other legal directive. Local policy shall establish the age of siblings eligible for visitation.

ARS 8-238. Advisory hearing; DNA

A. If a juvenile is charged with a violation of any of the following offenses and is summoned to appear at an advisory hearing, the judicial officer shall order the juvenile to report within five days to the law enforcement agency that investigated the juvenile or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction:

1. An offense listed in title 13, chapter 11.

2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411 or 13-1417.

3. A violation of section 13-1507 or 13-1508.

4. A violation of any serious offense as defined in section 13-706 that is a dangerous offense as defined in section 13-105.

B. If a juvenile does not comply with an order issued pursuant to subsection A of this section, the court shall revoke the juvenile's release.

C. The investigating law enforcement agency or its designee shall transmit the sample to the department of public safety.

D. Section 13-610, subsections H, I, J, K, M and N, are applicable to samples collected pursuant to this section.

13-610. DNA testing

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration in a county jail detention facility or is detained in a county juvenile detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county probation department shall transmit the sample to the department of public safety.

Rule 28. Advisory Hearing

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

(b) Time Limits.

(1) ***For a Detained Juvenile.*** If the juvenile is detained, the advisory hearing must be held within 24 hours after the filing of the petition. If the juvenile is already detained on a prior matter and a new petition is filed, the advisory hearing on the new petition must be held within 72 hours after the new petition is filed.

(2) ***For a Juvenile Who is Not Detained.*** If the juvenile is not detained, the hearing must be held within 30 days after the filing of the petition.

(c) Procedure. At the advisory hearing:

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

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

(B) to remain silent throughout the proceeding;

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

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

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

(2) ~~***Determine Understanding of Rights.*** Determine whether the juvenile understands these constitutional rights, and whether the juvenile knowingly, intelligently and voluntarily wishes to waive those rights. [**Staff Note:** The waiver of rights is covered in subpart 4(a); a juvenile who denies the allegations does not waive these rights. Also, even a juvenile who admits the allegations does not waive the right to appointed counsel under subpart (1)(a). So this provision requires modifications.]~~

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

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

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

(6) ***Determine Release Conditions.*** The court may set conditions of release. It must advise the juvenile that a violation of the release conditions may result in a revocation of the juvenile's release and the issuance of a warrant for the juvenile's arrest, and it must provide a copy of the release conditions to the juvenile and the juvenile's parent.

(7) ***Special Release Condition.*** If the juvenile has been arrested for an offense listed in A.R.S. section 13-610(O)(3) and the juvenile has been summoned to appear at an advisory hearing, the judicial officer must order as a condition of release that the juvenile report within 5 days to the law enforcement agency that arrested the juvenile, or to the agency's designee, and submit to DNA testing, and that the juvenile provide proof of compliance at the next scheduled court proceeding. The judicial officer must advise the juvenile that a willful failure to comply with this order will result in revocation of the juvenile's release, including arrest and detention for violation of a condition of release, as provided in Rule 23 G.

(8) ~~**Making a Record.** The court must determine how a verbatim record of the adjudication hearing will be made.~~

Rule 28. Advisory Hearing

(a) Generally. After a petition alleging delinquent ~~or incorrigible~~ acts has been filed, including a petition filed under Criminal Rule 40, the court must set an advisory hearing to advise the juvenile and the juvenile's parent~~, guardian, or custodian~~ of the allegations against the juvenile~~, and to determine whether the juvenile admits or denies the allegations in the petition~~. Copies of the petition must be given to the juvenile~~,~~ and the parent, ~~guardian, or custodian,~~ and to the juvenile's counsel~~,~~ ~~representing any party~~ either in person or ~~unless the parties were served notice~~ pursuant to Rule 26. ~~[**Staff Note:** Why "counsel representing any party?" Other than the State, isn't the juvenile the only party who is represented by counsel?]~~

(b) Time Limits.

(1) ***For a Detained Juvenile.*** If the juvenile is detained, the advisory hearing must be held within 24 hours ~~of~~ after the filing of the petition. If the juvenile is already detained on a prior matter and a new petition is filed, the advisory hearing on the new petition must be held within 72 hours after the new petition is filed.

(2) ***For a Juvenile Who is Not Detained.*** If the juvenile is not detained, the hearing must ~~occur~~ be held within 30 days ~~of~~ after the filing of the petition.

(c) Procedure. At the advisory hearing ~~the court must~~:

(1) ***Advise of Rights.*** ~~Advise~~ The court must advise the juvenile and the juvenile's parent~~, guardian, or custodian~~ of the juvenile's ~~[~~constitutional~~]~~ rights, including the right~~s~~:

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

(B) to remain silent throughout the proceeding;

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

~~**(C)**~~**(D)** to confront witnesses presented by the State; ~~to call witnesses on the juvenile's behalf;~~ and

~~**(D)**~~**(E)** to call witnesses on the juvenile's behalf~~to confront witnesses presented by the State~~.

(2) ~~***Determine Understanding of Rights.*** Determine whether the juvenile understands these constitutional rights, and whether the juvenile knowingly, intelligently and voluntarily wishes to waive those rights. [**Staff Note:** The~~

~~waiver of rights is covered in subpart 4(a); a juvenile who denies the allegations does not waive these rights. Also, even a juvenile who admits the allegations does not waive the right to appointed counsel under subpart (1)(a). So this provision requires modifications.]~~

~~(3)~~ ***Allow a Victim to be Heard.*** The court must d~~D~~etermine whether the victim of the offense has requested to be ~~present~~ present and to be heard.~~and be heard if a plea agreement will be presented to the court. The court must not accept a plea agreement unless:~~

~~(A) the prosecutor advises the court that reasonable efforts were made to confer with the victim concerning the proposed plea;~~

~~(B) reasonable efforts were made to advise the victim of the plea proceeding [**Staff Note:** Who has the duty to make those efforts? If it is the prosecutor, does this duplicate the preceding provision? Alternatively. (a) and (b) could be combined] and of the victim's right to be present and to be heard; and~~

~~(C)~~**(3)** ~~the prosecutor advises the court that to the best of the prosecutor's knowledge the notice requirements were complied with and the prosecutor advises the court of the victim's position, if known, regarding the proposed plea agreement.~~

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

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

(6) ***Determine Release Conditions.*** The court may set conditions of release. It must advise the juvenile that a violation of the release conditions may result in a revocation of the juvenile's release and the issuance of a warrant for the juvenile's arrest, and it must provide a copy of the release conditions to the juvenile and the juvenile's parent.

(7) ***Special Release Condition.*** If the juvenile has been arrested for an offense listed in A.R.S. section 13-610(O)(3) and the juvenile has been summoned to appear at an advisory hearing, the judicial officer must order as a condition of release that the juvenile report within 5 days to the law enforcement agency that arrested the juvenile, or to the agency's designee, and submit to DNA testing, and that the juvenile provide proof of compliance at the next scheduled court proceeding. The judicial officer must advise the juvenile that a willful failure to comply with

this order will result in revocation of the juvenile's release, including arrest and detention for violation of a condition of release, as provided in Rule 23 G.

(8) Making a Record. ~~The court must determine how a verbatim record of the adjudication hearing will be made.~~

~~**(4)**~~

~~**(d) Admission.** If the juvenile wishes to admit to allegations, the court may accept the admission or plea if supported by a factual basis and a finding that the juvenile knowingly, intelligently and voluntarily waives the rights enumerated above. [Staff Note: See further the staff note~~ **~~Generally.~~** ~~After a petition alleging delinquent or incorrigible acts has been filed, including a petition filed under Criminal Rule 40, the court must set an advisory hearing to advise the juvenile and the juvenile's parent, guardian, or custodian of the allegations against the juvenile, and to determine whether the juvenile admits or denies the allegations in the petition. Copies of the petition must be given to the juvenile, parent, guardian, or custodian, and counsel representing any party unless the parties were served notice pursuant to Rule 26. [~~**~~Staff Note:~~** ~~Why "counsel representing any party?" Other than the State, isn't the juvenile the only party who is represented by counsel?]~~

~~**(A)** under (c)(2).] The factual basis may include evidence other than the juvenile's statements.~~

~~**(B)** *Denial.* If the juvenile denies the allegations in the petition, the court must set an adjudication hearing.~~

~~**(2)** ***Set Conditions of Release.*** Set conditions of release, if any, and advise the juvenile that any violation of the terms and conditions of release may result in the issuance of a warrant for the juvenile's arrest and detention. If the juvenile has been arrested for an offense listed in A.R.S. section 13-610(O)(3) and the juvenile has been summoned to appear at an advisory hearing, the judicial officer must order as a condition of release that the juvenile report within 5 days to the law enforcement agency that arrested the juvenile, or to the agency's designee, and submit to DNA testing, and that the juvenile provide proof of compliance at the next scheduled court proceeding. The judicial officer must advise the juvenile that a willful failure to comply with this order will result in revocation of the juvenile's release, including arrest and detention for violation of a condition of release, as provided in Rule 23 G.~~

~~**(3)** Determine how a verbatim record of the adjudication hearing will be made. [~~**~~Staff Note:~~** ~~Isn't the superior court always a court of record? If so, is this provision necessary?]~~

~~**(e) Findings and Orders.** At the conclusion of the hearing [**Staff Note:** Is the preceding phrase necessary?], the court must make findings in a minute entry or written order. If the juvenile admits the allegations in the petition, the court must find there was a valid waiver of constitutional rights and the existence of a factual basis in support of the admission.~~

~~**(f) Disposition.** Following an admission, the court must adjudicate the juvenile delinquent or incorrigible and proceed with a disposition or set a disposition hearing. The court may defer acceptance of the plea until the time of disposition. [**Staff Note:** If the court defers the plea (admission?), does it still adjudicate the juvenile delinquent, as provided in the first sentence of this section?] The juvenile is subject to court orders under the supervision of a probation officer pending the adjudication [**Staff Note:** As shown above, the current provision begins with the words, "following an admission, the court must adjudicate the juvenile delinquent…." For clarity, shouldn't this say, "following an admission, the court must find the juvenile delinquent…?"] or disposition hearing.~~

Rule 28.1. Admission or Change of Plea

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

(b) Procedure. A judicial officer must do the following when taking an admission or a plea agreement:

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

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

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

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

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

(D) immigration consequences, specifically inform the juvenile that "If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your admission or plea of guilty or no contest could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen."

(3) ***Determine Compliance with Victim's Rights***. Before accepting an admission or plea agreement, the court must question the prosecutor and determine if the victim has been afforded rights provided under law, and find that:

(A) Before requesting the negotiated plea, reasonable efforts were made to confer with the victim;

(B) Reasonable efforts were made to give the victim notice of the plea proceeding and to inform the victim that the victim has the right to be present and, if present, to be heard; and

(C) The notice requirements of A.R.S. Title 8 have been complied with to the best of the prosecutor's knowledge, and the prosecutor has informed the court of the victim's position, if known, regarding the negotiated plea

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

(1) The juvenile wishes to admit the allegation or enter into the plea agreement, and that the admission or plea is knowing, intelligent, and voluntary, and not the result of force, threats or promises.

(2) The juvenile wishes to forego the juvenile's enumerated constitutional rights.

(3) A factual basis exists to support the adjudication for each offense that the juvenile admits or to which the juvenile pleads. The factual basis may be based on the juvenile's statement to the court, a police report, or another reliable source.

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

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

~~Rule 28.1~~

~~Change of Plea~~

Rule 28.1. Admission or Change of Plea

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

(b) ~~Prior to Acceptance of an admission or plea agreement~~ **Procedure.** ~~the~~ A judicial officer must do the following ~~must occur:~~ when taking an admission or a plea agreement:

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

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

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

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

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

(D) immigration consequences, ~~and~~ specifically ~~state~~inform the juvenile that~~—~~ "If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your admission or plea ~~or admission~~ of guilty or no contest could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen."

(3) ***Determine Compliance with Victim's Rights***—. Before accepting an admission or plea agreement, the court must question the prosecutor and determine if ~~ascertain whether victim's~~the victim has been afforded rights ~~has~~ provided under law, ~~been complied with by~~ and find that: ~~whether:questioning the prosecutor~~

(A) ~~The~~ Before requesting the negotiated plea, reasonable efforts were made to confer with the victim~~notice requirements were complied with and the position of the victim regarding the plea agreement has been made known to the court;.~~

(B) Reasonable efforts were made to give the victim notice of the plea proceeding and to inform the victim that the victim has the right to be present and, if present, to be heard~~reasonable efforts were made to confer with the victim~~; and

(C) The notice requirements of A.R.S. Title 8 have been complied with to the best of the prosecutor's knowledge, and the prosecutor has informed the court of the victim's position, if known, regarding the negotiated plea~~reasonable efforts were made to inform the victim of the admission or change ofplea hearing.~~

~~***Determining Determine the Accuracy of a Plea Agreement.****Accuracy* - A plea agreement must be in writing. Before accepting the a plea agreement, the court must address the defendant juvenile and confirm the terms of the agreement, if the plea is in writing, that the written plea agreement contains all the agreement's terms, and that the defendant understands and agrees to the those terms.~~

(c) ~~**Judicial Determination**~~**Findings.** — ~~T~~Before accepting an admission or a plea agreement, the ~~Court~~ court must find all the following:

(1) The juvenile wishes to admit ~~to~~ the allegation or~~(s)~~ enter into the plea agreement, and that the admission or plea is knowing, intelligent, and voluntary, and not the result of force, threats or promises.

(2) The juvenile wishes to forego the juvenile's enumerated ~~C~~constitutional rights.

(3) A factual basis exists to support the adjudication for each offense that the juvenile admits or to which the juvenile pleads. The factual basis may be based ~~up~~ on the juvenile's statement to the court, a police report, or another reliable source.

~~**The plea is knowingly, intelligently and voluntary and not the result of force, threats or promises.**~~

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

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

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

(a) Assignment of an Attorney.

(1) ***Assignment.*** The court must assign an attorney in a dependency proceeding to persons who are entitled to representation by law, including ICWA.

(2) ***Duration.*** The assigned attorney must provide representation from notice of the assignment until the court formally appoints or otherwise relieves the assigned attorney.

(3) ***Limitation.*** The assigned attorney is not attorney of record for purposes of accepting service of process for a parent, guardian, or Indian custodian who does not appear.

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

(c) Appointment of an Attorney or Guardian Ad Litem for a Child. Children in dependency cases are presumed indigent and are entitled to a court-appointed attorney or a guardian ad litem, or both. The court must appoint an attorney for every child at the first hearing, but if the court has reason to believe that the child cannot communicate a position to an attorney because of the child's age, mental health, competency, or intellectual functioning, the court may instead appoint a guardian ad litem for the child.

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

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

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

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

(b) Attorney's Duties.

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

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

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

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

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

(C) Another attorney is substituted as attorney of record for a party. If an attorney represented the party on appeal, the issuance of an appellate mandate.

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

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

(2) ~~***No Consent: Client Location Unknown.***~~

(3) ***No Client Consent:*** ~~***Client Location Known.***~~ If the attorney does not move to withdraw under subpart (1), the attorney must move to withdraw in writing and

serve the client with the motion. The attorney also must provide a copy of the motion to the other parties' attorneys. The attorney must provide the court with the reasons for the withdrawal and the client's last known address, email address, and phone number, which the court will endorse on the minute entry. The motion must include the attorney's certification that the client has been notified in writing of the status of the case including dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions. If a client cannot be located, ~~a motion need not include the client's consent, and~~ the attorney may move to withdraw orally on the record ~~or in writing~~.

(4) ***Attorney or Guardian ad Litem for a Child.*** Subparts (1) and (2) do not apply to attorneys or guardians ad litem for children. An attorney or guardian ad litem representing a child may withdraw or substitute only by court order.

(5) ***Limited Purpose.*** An attorney or a person who intervenes for a limited purpose must file a notice of withdrawal upon resolution of the limited purpose.

(d) Attorney Substitution.

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

(2) ***Within the Same Firm or Office.*** If there is a change of attorney within the same law firm or governmental office, a notice of substitution must be filed. An order of substitution is not required. The notice must state the names of the attorneys who are the subjects of the substitution, the current address and email address of the attorney substituting, and, if applicable, the general email address for that office as shown in the heading of the notice of substitution. [ALTERNATIVE LANGUAGE PROPOSED BY ED ON 5/29/2020:] If a pending case is transferred within the same law firm or governmental office, the court must be notified of the new attorney of record, including any changes in the physical or email address. An order of substitution is not required.

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

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

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

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

(g) Responsibility to the Court.

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

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

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

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

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

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

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

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

(2) *Withdrawal.*

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

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

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

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

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

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

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

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

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

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

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

(c) Limited Scope Representation.

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 39. Attorney Appearance, Substitution and Withdrawal

(1) Attorney of Record; Duties of Counsel

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

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

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

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

(3) the court orders the termination of representation.

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

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

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

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

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

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

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

==========

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

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

(a)

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

(b)

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

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

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

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

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

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

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

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

~~c.~~ Another attorney is substituted ~~in~~ as attorney of record for a party.

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

(C) .

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

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

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

(1)

~~***No Consent:*** ***No Client Consent******Client Location Unknown: Oral Motion***~~.~~** If a client cannot be located, a motion does need not include the client's written consent, move or in writing, phone number and email,~~

(2)

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

~~(b)~~ ***Attorney or Guardian ad Litem for a Child.***

~~**(d)**~~

~~**(1)** Subsections (a) and (b) do not apply to attorneys who have been appointed counsel or as a guardian ad litem for a child.~~A~~Subparts (1)~~, (2), and~~ and (~~3~~2) do not apply to attorneys or guardians ad litem for children. An attorney or guardian ad litem representing a child may withdraw or substitute only by court order.

(4)

(5) ***Limited Purpose.*** An attorney or a person who intervenes for a limited purpose must file a notice of withdrawal upon resolution of the limited purpose.

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

(d)

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

(1)

~~(b)~~ ***Within the Same Firm or Office.*** If there is a change of attorney within the same law firm or governmental office, ~~a~~ a notice of substitution must be filed. An order of substitution is not required. The notice must state the names of the attorneys who are the subjects of the substitution ~~and~~, the current address and email address of the attorney substituting, and, if applicable, the general email address for that office as shown in the heading of the notice of substitution. [ALTERNATIVE LANGUAGE PROPOSED BY ED ON 5/29/2020:] If a pending case is transferred within the same law firm or governmental office, the court must be notified of the new attorney of record, including any changes in the physical or email address. An order of substitution is not required.

(2)

~~(a) (4)~~ **Withdrawal or Substitution of Counsel When Matter Set for Trial**. The court may not permit an attorney to withdraw or substitute ~~in~~ after a matter has been set for trial, unless the court finds ethical grounds or good cause for the withdrawal. If applicable, the motion must provide~~s~~:

(e)

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

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

(f) Duty of Attorney After Withdrawal or Substitution. Within 7 days of withdrawal or substitution, other than a substitution from within the same firm or office, the

former attorney must transfer the file and provide the client's most current contact information and all disclosure to the new lawyer or to the client, if self-represented. The attorney must preserve the file if the client's whereabouts are unknown.

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

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

(1)

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

(2)

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

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

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

~~**(c)**~~

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

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

(5) Responsibility to the Court.

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

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

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

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

(3)

Notes:

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

Rule 41. Public Attendance at Hearings

(a) Definitions.

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

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

(b) Open Hearings (NOTE TO MARK: Do we use hearings or proceedings throughout the rules? Mark's response: we've been using both terms.) As required by A.R.S. § 8-525, court ~~proceedings~~ hearings concerning dependent children, permanent guardianships of children, and termination of parental rights are open to the public. This includes court ~~proceedings~~ hearings concerning child abuse, abandonment, or neglect that resulted in a fatality or near fatality subject to the requirements of the factors in section (c).

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

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

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

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

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

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

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

(d) Subsequent Proceedings.

(1) For good cause, the court may order any subsequent open ~~proceeding~~ hearing closed to the public after consideration of the factors above.

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

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

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

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

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

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

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

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

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

Rule 41.1. Child's Rights

(a) Initial Hearing. A child who is the subject of a dependency petition has the rights to attend court hearings and to speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of, and understands, these rights.

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

Rule 41.2. Participants' Rights

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

(1) participants, or

(2) any relative or pre-adoptive placement, who have been identified as a possible placement for a child who is in out of home care and under the responsibility of DCS.

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

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

(d) Duties. Participants with whom a child is placed by DCS have a continuing duty to provide DCS with a current and correct mailing address, including any address protected by court order.

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

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

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

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

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

~~**Statutes we found related to disclosure/confidentiality**:~~

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

Notes:

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

Rule 41. Public Attendance at Hearings

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

(a)

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

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

~~(b)~~ **Open Hearings (NOTE TO MARK: Do we use hearings or proceedings throughout the rules? Mark's response: we've been using both terms.)**~~.~~ As required by A.R.S. § 8-525, court ~~proceedings~~ hearings concerning dependent children, permanent guardianships of children, and termination of parental rights are open to the public. This includes court ~~proceedings~~ hearings concerning child abuse, abandonment, or neglect that resulted in a fatality or near fatality subject to the requirements of the factors in section (c).

(b)

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

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

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

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

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

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

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

(d) Subsequent Proceedings.

(1) For good cause, the court may order any subsequent open ~~proceeding~~ ~~hearing~~~~proceeding~~ hearing closed to the public after consideration of the factors above.

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

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

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

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

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

Admonition at Public Hearings.

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

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

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

Note:

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

1.

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

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

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

Closed Hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Admonition at Public Hearings.

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

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

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

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

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

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

(a) Initial Hearing. A child who is the subject of a dependency petition has the rights ~~to~~ to attend court hearings and to speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of, and understands, these rights.

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

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

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

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

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

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

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

(1) participants, or

(2) any relative or pre-adoptive placement, who have~~s~~ been identified as a possible placement for a child who is in out of home care and under the responsibility of ~~the~~ DCS.

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

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

(d) Duties. Participants with whom a child is placed by ~~the~~ DCS have a continuing duty to provide ~~the~~ DCS with a current and correct mailing address, including any address protected by court order.

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

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

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

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

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

~~Pparticipants, or~~

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

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

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

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

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

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

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

(1)

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

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

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

Rule 41.1. Child's Rights

(a) Initial Hearing. A child who is the subject of a dependency petition has the rights to attend court hearings and to speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of, and understands, these rights.

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

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

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

(a) Initial Hearing. A child who is the subject of a dependency petition has the rights to attend court hearings and to speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court must determine that the child was informed of, and understands, these rights.

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

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

Rule 41.2. Participants' Rights

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

(1) participants, or

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

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

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

(d) Duties. Participants with whom a child is placed by DCS have a continuing duty to provide DCS with a current and correct mailing address, including any address protected by court order.

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

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

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

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

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

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

(1) participants, or

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

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

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

(d) Duties. Participants with whom a child is placed by ~~the~~ DCS have a continuing duty to provide ~~the~~ DCS with a current and correct mailing address, including any address protected by court order.

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

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

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

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

Rule 44. Disclosure and Discovery

(a) Generally.

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

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

(3) *Limits on Secondary Dissemination.* A person who receives disclosure must maintain the confidentiality of the information received and must not further disclose the information unless disclosure is authorized by A.R.S. § 8-807 or court order.

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

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

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

(1) Unless the court orders otherwise, the parties must file pretrial disclosure statements containing the following information at least 30 days prior to the contested adjudication:

(A) The uncontested facts deemed material.

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

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

(D) A list of the witnesses the party intends to call at trial, including the names, addresses, e-mail addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good

cause, a party may not call a witness at trial who was not disclosed in accordance with this rule. A disclosure statement must note if a witness' testimony will be offered in the form of a deposition.

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

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

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

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

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

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

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

Rule 44.- Disclosure and Discovery-

(a) Generally.

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

~~(1)~~**(2)** *Manner of Disclosure.* A party should disclose information in the least burdensome and most cost-effective manner.

(3) *Limits on Secondary Dissemination.* A person who receives disclosure must maintain the confidentiality of the information received and must not further disclose the information unless disclosure is authorized by A.R.S. § 8-807 or court order.

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

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

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

(1) Unless the court orders otherwise, the parties must file pretrial disclosure statements containing the following information at least 30 days prior to the contested adjudication:

(A) The uncontested facts deemed material.

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

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

(D) A list of the witnesses the party intends to call at trial, including the names, addresses, e-mail addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good

cause, a party may not call a witness at trial who was not disclosed in accordance with this rule. A disclosure statement must note if a witness' testimony will be offered in the form of a deposition.

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

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

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

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

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

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

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

~~the parties must exchange disclosure statements containing the following information at least 30 days before a contested dependency, guardianship, or termination adjudication hearing:~~

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

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

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

Scope and manner of Disclosure, Generally. Generally.

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

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

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

2. reports of any social service provider;

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

1. transcripts of interviews and prior testimony;

2. probation reports;

a. photographs and video or audio recording;

a. physical evidence;

a. records of prior criminal convictions;

a. medical and psychological records and reports;

1. results of medical or other diagnostic tests; and

1. any other information relevant to the proceedings.

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

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

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

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

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

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

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

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

~~1. 1. The uncontested facts deemed material.~~

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

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

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

~~1.~~

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

~~1.~~

~~1. Time Limits for Disclosure in Termination Proceedings.~~

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

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

(d) Time Limits for Supplemental Disclosure.

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

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

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

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

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

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

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

~~1.~~

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

~~2.~~

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

Rule 47.1. Mandatory Judicial Determinations [**Staff Note:** Staff suggests that Rules 47.1 and 47.3 be relocated to Part 3 ("Dependency').]

(a) Priority. The court's first priority after a child ~~has been~~ is removed from the child's home ~~by state authority must be~~ is protecting the child from [further?] abuse or neglect.

(b) Generally. As required by this rule, the court ~~therefore~~ must make the following mandatory determinations in writing within the designated times and must state in a written order or minute entry ~~on the record~~ a factual basis for each determination.

(c) The Court's First Order.

(1) In the court's first order that authorizes or sanctions the removal of a child from the home in a dependency proceeding, which may be a temporary order that is entered upon the filing of a dependency petition, the court must determine in writing whether continuation of the child's residence in the home [~~**Staff Note:** Curious why this refers to continuation in the home if the child is being removed; should this instead be something like whether the child's residence in the home is is contrary to the child's welfare?]~~ would be contrary to the welfare of the child. The court must include a factual basis for its determination.

(2) After the child is removed from the home, the court must determine in writing if reasonable efforts were made to prevent the child's removal or if it was reasonable to make no efforts to prevent the child's removal. The court's reasonable efforts determination must also include a factual basis. If the court does not make this finding in its first order, the court must make the finding within 60 days of the removal.

(d) The Preliminary Protective Hearing and Initial Dependency Hearing. At the preliminary protective hearing and the initial dependency hearing, the court must determine whether the DCS is attempting to identify and assess placement of the child with the child's grandparent or another member of the child's extended family, including a person who has a significant relationship with the child. At the initial dependency hearing [**Workgroup Note 5/11:** should the court also make this finding at the preliminary protective hearing?], the court also must determine whether DCS is attempting to identify and assess placing the child with the child's siblings, if such placement is possible and is in the child's best interests.

(e) The Periodic Review Hearing. At the periodic review hearing, the court must determine whether:

(1) DCS has identified and assessed placement of the child with a relative or person who has a significant relationship with the child;

(2) the parent or guardian provided the court with the names, relationships, and all available contact information of persons related to the child, or who have a significant relationship with the child, or the parent or guardian informed the court that there is insufficient information available for locating a relative or person who has a significant relationship with the child; and

(3) the parent or guardian immediately ~~[immediately?][**Staff Note:** "Promptly" seems more appropriate than "immediately," although "immediately" is the word used in the current rule and in statute (see 8-842-B)]~~ informed ~~the~~ DCS of new information concerning the existence or location of a relative or person with a significant relationship with the child.

(f) 60 Days After Removal from the Home.

(1) If the court did not previously make the findings required by subpart (c)(2), then within 60 days after the child's removal from the child's home—including at any hearing held within that time—the court must determine if reasonable efforts were made to prevent removal of the child, or if it was reasonable to make no efforts to prevent the child's removal.

(2) Within 60 days after the child is removed from the child's home, if the child is not placed with a grandparent or another member of the child's extended family, including a person with a significant relationship with the child, the court must determine why such placement is not tin the best interest of the child. The petitioner has the burden of presenting evidence that such placement is not in the child's best interests at the first court hearing thereafter. [see A.R.S. § 8-829(A)(4)]

(g) 6 Months After Removal~~:~~ of a Child Less Than 3 Years of Age. ~~[**Staff Note:** Staff relocated this provision before the next section because it seems to be chronologically correct.]~~ If the child ~~is~~ was under 3 years of age at time of removal, the court must determine~~, then~~ within 6 months after the child ~~is~~ was removed from the child's home ~~the court must determine~~ whether ~~the~~ DCS made reasonable efforts to provide reunification services to the parent, and whether that parent substantially neglected or willfully refused to participate in those reunification services.

(h) 12 Months After Removal and Thereafter. Within 12 months after the child was removed from the child's home, and at least once every twelve months thereafter, the court must determine if reasonable efforts ~~have been~~ were made to finalize the existing permanency plan~~, including in-state and out-of-state placements~~. The Court's Order must contain a factual basis for its finding.

(i) The Permanency Hearing. At the permanency hearing, the court must determine ~~at the permanency hearing~~ the efforts that were made ~~in the permanency plan~~ to place the child with the child's siblings, or to provide the child with frequent visitation or contact with the child's siblings, unless the court determines that placement, visitation, or contact with all or any siblings is not possible or would be contrary to the child's or a sibling's safety or well-being.

(j) Extended Foster Care Finding. Within 120 days after DCS submits a qualified young adult's signed voluntary agreement to participate in an extended foster care program pursuant to § 8-521.02, the juvenile court must determine whether participation is in the qualified young adult's best interest. [**Note:** This language is in the current rule but is not included in West's Family Law and Rules 2020.]

Rule 47.1. Mandatory Judicial Determinations [**Staff Note:** Staff suggests that Rules 47.1 and 47.3 be relocated to Part 3 ("Dependency').]

(a) Priority~~. Generally~~. The court's first priority after a child ~~has been~~ is removed from the child's home ~~by state authority must be~~ is protecting the child from [further?] abuse or neglect.

(b) ~~Priority~~Generally. As required by this rule, the court ~~therefore~~ must make the following mandatory determinations in writing within the designated times and must state in a written order or minute entry ~~on the record~~ a factual basis for each determination.

(c) ~~In the~~The Court's First Order.

(1) ~~(1)~~ In the court's first order that authorizes or sanctions the removal of a child from the home in a dependency proceeding, which may be a temporary order that is entered upon the filing of a dependency petition, the court must determine in writing whether continuation of the child's residence in the home [~~**Staff Note:** Curious why this refers to continuation in the home if the child is being removed; should this instead be something like whether the child's residence in the home is is contrary to the child's welfare?]~~ would be contrary to the welfare of the child. The court must include a factual basis for its determination. ~~;~~

(2) After the child is removed from the home, the court must determine in writing if reasonable efforts were made to prevent the child's removal or if it was reasonable to make no efforts to prevent the child's removal. The court's reasonable efforts determination must also include a factual basis. If the court does not make this finding in its first order, the court must make the finding within 60 days of the removal.

(d) ~~At a~~ The Preliminary Protective Hearing and Initial Dependency Hearing. At the preliminary protective hearing and the initial dependency hearing, the court must determine whether the DCS is attempting to identify and assess placement of the child with the child's grandparent or another member of the child's extended family, including a person who has a significant relationship with the child. At the initial dependency hearing **[Workgroup Note 5/11:** should the court also make this finding at the preliminary protective hearing?], the court also must determine whether ~~the~~ DCS is attempting to identify and assess placing the child with the child's siblings, if such placement is possible and is in the child's best interests.

~~(d)~~(e) ~~At the~~The Periodic Review Hearing. At the periodic review hearing, the court must determine whether:

(1) ~~whether the~~ DCS has identified and assessed ~~placing~~ placement of the child with a relative or person who has a significant relationship with the child;

(2) ~~whether~~ the parent or guardian provided the court with the names, relationships, and all available contact information of persons related to the child, or who have a significant relationship with the child, or the parent or guardian informed the court that there is insufficient information available for locating a relative or person who has a significant relationship with the child; and

(3) ~~whether~~ the parent or guardian ~~promptly~~ immediately ~~[immediately?][**Staff Note:** "Promptly" seems more appropriate than "immediately," although "immediately" is the word used in the current rule and in statute (see 8-842 B)]~~ informed ~~the~~ DCS of new information concerning the existence or location of a relative or person with a significant relationship with the child.

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

(1) ~~Within~~ If the court did not previously make the findings required by subpart (c)(2), then within 60 days after the child's removal from the child's home—including at any hearing held within that time—the court must determine if reasonable efforts were made to prevent removal of the child, or if it was reasonable to make no efforts to prevent the child's removal~~, as required by subpart (c)(2) of this Rule~~.

(2) Within 60 days after the child is removed from the child's home, ~~I~~if the child is not placed with a grandparent or another member of the child's extended family, including a person with a significant relationship with the child ~~within 60 days after the child is removed from the child's home~~, the court must determine why such placement is not tin the best interest of the child. The petitioner has the burden of presenting evidence that such placement is not in the child's best interests at the first court hearing thereafter. [see A.R.S. § 8-829(A)(4)]

(g) 6 Months After Removal~~:~~ of a Child Less Than 3 Years of Age. ~~[**Staff Note:** Staff relocated this provision before the next section because it seems to be chronologically correct.]~~ If the child ~~is~~ was under 3 years of age at time of removal, the ~~Court~~ court must determine~~, then~~ within 6 months after the child ~~is~~ was removed from the child's home~~, the court must determine~~ whether ~~the~~ DCS made reasonable efforts to provide reunification services to the parent, and whether that parent substantially neglected or willfully refused to participate in those reunification services. ~~[**Staff Note:** Does this provision mean under three years old at the time of removal, or under three years old at the time of the court determination?]~~

(h) 12 Months After Removal and Thereafter. Within 12 months after the child was removed from the child's home, and at least once every twelve months thereafter, the

court must determine if reasonable efforts ~~have been~~ were made to finalize the existing permanency plan~~, including in-state and out-of-state placements~~. The Court's Order must contain a factual basis for its finding.

(i) ~~**At the**~~ **The Permanency Hearing.** At the permanency hearing, the court must determine ~~at the permanency hearing~~ the efforts that were made ~~in the permanency plan~~ to place the child with the child's siblings, or to provide the child with frequent visitation or contact with the child's siblings, unless the court determines that placement, visitation, or contact with all or any siblings is not possible or would be contrary to the child's or a sibling's safety or well-being.

(j) Extended Foster Care Finding. Within 120 days after DCS submits a qualified young adult's signed voluntary agreement to participate in an extended foster care program pursuant to § 8-521.02, the juvenile court must determine whether participation is in the qualified young adult's best interest. [**Note:** This ~~l~~language is in the current rule but is not included in West's Family Law and Rules 2020.]

Rule 65. Initial Termination Hearing

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

(b) Time Limits.

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

(2) ***On Motion.*** If a termination of parental rights is requested by motion, the initial termination hearing must be held within 30 days after the permanency hearing, as provided by A.R.S. § 8-862(D)(2).

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

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

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

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

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

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

(A) the right to an attorney, including a court-appointed attorney if the parent, guardian, or Indian custodian is indigent;

(B) the right to trial by the court on the termination petition or motion;

(C) the rights to call witnesses and to cross examine witnesses who are called to testify by another party; and

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

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

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

(B) *Denies.* If a petition for termination was filed, the court may schedule mediation, or it may set a pretrial conference or status conference. If a motion for termination of parental rights was filed and the parent, guardian, or Indian custodian denies the allegations, the court must set the matter for an adjudication hearing within 90 days after the permanency hearing. The court may schedule a settlement conference, a pretrial conference or mediation, if appropriate.

(C) ~~Failure to Appear. If the parent, guardian, or Indian custodian fails to appear at the initial termination hearing without good cause, the court may proceed with the termination adjudication under Rule 66, based on the record and evidence presented, if the petitioner or moving party has proven grounds upon which to terminate parental rights and the court finds that the parent, guardian, or Indian custodian:~~

(i) ~~had notice of the initial termination hearing;~~

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

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

(7) ~~***Failure to Appear.***~~

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

~~i. had notice of the initial termination hearing;~~

~~ii. was properly served pursuant to Rule 64; and~~

~~iii. had been admonished regarding the consequences of failing to appear at the initial termination hearing, including a warning that the~~

~~adjudication hearing could go forward in their absence, and that failing to appear may constitute a waiver of rights and an admission of the allegations in the termination petition or motion.~~

(B) ~~At the hearing, the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (A) are satisfied and the petitioner or moving party can meet the burden of proof required for termination. The court must enter its findings and orders pursuant to Rule 66.~~

(8) Determine how a verbatim record of the termination adjudication hearing will be made. [**Staff Note:** See previous staff notes concerning the making of a record.]

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

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

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

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

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

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

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

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

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

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

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

(f) Failure to Appear.

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

(A) had notice of the initial termination hearing;
(B) as properly served pursuant to Rule 64; and

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

(2) At the hearing, the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (1) are satisfied and the petitioner or moving party can meet the burden of proof required for termination. The court must enter its findings and orders pursuant to Rule 66(i). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof as required under ICWA and as set forth in Rule 66(i)(2)(D).

Rue 66. Termination Adjudication Hearing

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

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

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

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

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

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

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

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

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

(1) beyond a reasonable doubt, including testimony from a qualified expert witness, that continued custody of an Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, in accordance with ICWA section 1912 and 25 C.F.R. 23.121 and 23.122, and

(2) by clear and convincing evidence, that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family and that those efforts have proven unsuccessful, in accordance with ICWA section 1912 and 25 C.F.R 23.121 and 23.2.

(e) Procedure. The hearing should generally proceed in a manner similar to the trial of a civil action before the court without a jury.

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

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

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

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

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

(g) Failure to Appear.

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

(A) had notice of the termination adjudication hearing;

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

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

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

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

(i) Findings and Orders by the Court. At the conclusion of the hearing, the court must do the following:

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

(2) Enter findings on whether the petitioner or moving party has met its burden of proof and, if so,

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

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

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

(D) if the child is an Indian child, make findings pursuant to the standards required under ICWA, including whether placement of the child is in accordance with ICWA §1915 and 25 C.F.R §§ 23.130 and 23.131, or whether there is good cause under 25 C.F.R. § 23.132 to deviate from the placement preferences; and

(E) set or reaffirm the dependency review hearing.

(3) If the petitioner or moving party has not met its burden of proof,

(A) deny the termination petition or motion, and

(B) order the parties to submit a revised case plan before the dependency review hearing.

Rule 67. Scope of Rules

(a) **Application.** The rules in Part IV govern procedures in adoption proceedings.

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

Staff Note: There is extensive duplication between the text of adoption Rules 67 through 76 and dependency Rules 36 through 48, as shown in the following table. Because these rules are foundational and have application to both adoption and dependency proceedings, staff suggests that members consider the consolidation of overlapping rules.

Current Dependency Rule	**Current Adoption Rule**	**Note**
36. Scope of Rules	67. Scope of Rules	
37. Definitions	68. Definitions	
38B. Appointment of Counsel 39A. Appearance	69. Appointment, Appearance, and Withdrawal of Counsel	Rule 69 does not have a substitution provision
40. Appointment of Guardian ad Litem	70. Appointment of Guardian ad Litem	
42.Telephonic Testimony, Video Conferencing	71. Telephonic Testimony, Video Conferencing	Neither rule is complete. Compare, e.g, FLR 8
43. Computation of Time	72. Computation of Time	
44. Disclosure and Discovery	73. Disclosure and Discovery	
46. Motions	74. Motions	
47. Release of Information	75. Release of Information	Rule 47 has more substance
48D. Service of Process	76. Service of Process	

[**Staff Note:** As in Subpart 1 of the dependency rules, Subpart 1 of the adoption rules contains only a single rule, which is unnecessary. Staff suggests consolidating this with Subpart 2.]

Rule 67. Scope of Rules

(a) **Application.** These rules in Part IV govern procedures in adoption matters proceedings.

(b) **Interpretation.** and The court should be interpreted interpret the rules in Part IV in a manner designed tothat protects the rights of the parties and the child's best interests of the child, and giving gives paramount consideration to the child's health and safety of the child.

Staff Note: There is extensive duplication between the text of adoption Rules 67 through 76 and dependency Rules 36 through 48, as shown in the following table. Because these rules are foundational and have application to both adoption and dependency proceedings, staff suggests that members consider the consolidation of overlapping rules.

Current Dependency Rule	Current Adoption Rule	Note
36. Scope of Rules	67. Scope of Rules	
37. Definitions	68. Definitions	
38B. Appointment of Counsel 39A. Appearance	69. Appointment, Appearance, and Withdrawal of Counsel	Rule 69 does not have a substitution provision
40. Appointment of Guardian ad Litem	70. Appointment of Guardian ad Litem	
42.Telephonic Testimony, Video Conferencing	71. Telephonic Testimony, Video Conferencing	Neither rule is complete. Compare, e.g, FLR 8
43. Computation of Time	72. Computation of Time	
44. Disclosure and Discovery	73. Disclosure and Discovery	
46. Motions	74. Motions	
47. Release of Information	75. Release of Information	Rule 47 has more substance
48D. Service of Process	76. Service of Process	

[**Staff Note:** As in Subpart 1 of the dependency rules, Subpart 1 of the adoption rules contains only a single rule, which is unnecessary. Staff suggests consolidating this with Subpart 2.]

Rule 68. Meaning of Terms

(a) Generally. For purposes of this Part:

(1) "Parent" includes the birth parent whose parental rights have not been terminated or the adoptive parent of a child for whom a final adoption decree has been issued.

(2) "Parties" include the prospective adoptive parent, the person to be adopted, the parent of the person to be adopted, any person or entity whose consent is required in order to effectuate an adoption, and any other person or entity who has been permitted by the court to intervene in the proceedings pursuant to Civil Rule 24 or ICWA.

(3) "Investigative Report" must include the following:

(A) A home study;

(B) The application for certification to adopt, accompanied by a valid fingerprint clearance card of the prospective adoptive parent(s) and a valid fingerprint clearance card for each other adult member of the household, as required by A.R.S. § 8-105(D). The application must further advise whether the applicant currently has temporary custody of the child and the expiration date of the custody order; and

(C) A check of records through the DCS Central Registry to determine whether the applicants or any adult living in the applicant's home are listed on the registry.

(b) ICWA Definitions and Placement Preferences.

(1) Definitions. In cases subject to ICWA, the terms "parent," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," and "extended family member" have the meanings shown in Rule 37. ~~***Parent.*** ~~The term parent means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.~~

~~***Indian Child.*** ~~The term Indian child means any unmarried person under the age of eighteen (18) and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe.~~

~~***Indian Child's Tribe.*** The term Indian child's tribe means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.~~

~~***Indian Custodian.*** The Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody and control has been transferred by the parent of the child.~~

~~***Indian Tribe.*** Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).~~

~~***Extended Family Member.*** The term extended family member means a person as defined by law or custom of the Indian child's tribe, or, in the absence of such law or custom, means a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, sister or brother, sister-in-law or brother-in-law, niece or nephew, first or second cousin, or step-parent.~~

(2) Preadoptive Placement Preferences. A preadoptive placement of an Indian child, must comply with ICWA and 25 C.F.R. §§ 23.131 and 23.132 and must be in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met. The child must be placed within reasonable proximity to the child's home, taking into account any special needs of the child, and preference must be given, in the absence of good cause to the contrary, to a placement with:

(A) a member of the Indian child's extended family;

(B) a foster home licensed, approved or specified by the Indian child's tribe;

(C) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(D) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(3) Adoptive Placement Preferences. An adoptive placement of an Indian child must comply with ICWA and 25 C.F.R. § 23.130 and § 23.132. If the child's tribe has not established a different order of preference, preference must be given, in the absence of good cause to the contrary, to a placement with:

(A) a member of the Indian child's extended family;

(B) other members of the Indian child's tribe; or

(C) other Indian families.

Rule 68. Meaning of Terms

(a) ~~Definitions~~Generally. For purposes of this Part:~~.~~

(1) "Parent" includes~~means~~ the birth parent whose parental rights have not been terminated or the adoptive parent of a child for whom a final adoption decree has been issued.

(2) "Parties" include the prospective adoptive parent, the person to be adopted, the parent of the person to be adopted, any person or entity whose consent is required in order to effectuate an adoption, and any other person or entity who has been permitted by the court to intervene in the proceedings pursuant to Civil Rule 24 or ICWA.

~~(b)~~ **(3)** "Investigative Report" ~~. The investigative report~~ must include the following:

~~(1)~~ (A) A home study;

~~(2)~~ (B) The application for certification to adopt, accompanied by a valid fingerprint clearance card of the prospective adoptive parent(s) and a valid fingerprint clearance card for each other adult member of the household, as required by A.R.S. § 8-105(D). ~~The prospective parent and each other adult member of the household must certify on forms that are provided for in and that are notarized whether that person is awaiting trial or has ever been convicted of any criminal offenses listed in A.R.S. § 41-1758.07, subsections B and C, in this state or similar offenses in another state or jurisdiction. The application shall identify all adult members of the applicant's household who are subject to fingerprinting . [**Staff Note:** Why should this rule repeat the detailed language of the statute?] The~~ The application ~~shall~~ must further advise whether the applicant currently has temporary custody of the child and the expiration date of the custody order; and

~~(3)~~ (C) A check of records through the DCS Central Registry to determine whether the applicants or any adult living in the applicant's home are listed on the registry.

~~(c)~~**(b) ICWA Definitions and Placement Preferences ~~under~~Under ICWA.**

(1) Definitions. In cases subject to ICWA, the terms "parent," "Indian child," "Indian child's tribe," "Indian custodian," "Indian tribe," and "extended family member~~," and "preadoptive placement preference~~" have the meanings shown in Rule 37. ~~[Staff Note: Prior Rule one follows.] ***Parent.*** The term parent means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does~~

~~not include the unwed father where paternity has not been acknowledged or established.~~

~~(2) ***Indian Child.*** The term Indian child means any unmarried person under the age of eighteen (18) and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe.~~

~~(3) ***Indian Child's Tribe.*** The term Indian child's tribe means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.~~

~~(4) ***Indian Custodian.*** The Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody and control has been transferred by the parent of the child.~~

~~(5) ***Indian Tribe.*** Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).~~

~~(6) ***Extended Family Member.*** The term extended family member means a person as defined by law or custom of the Indian child's tribe, or, in the absence of such law or custom, means a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, sister or brother, sister-in-law or brother-in-law, niece or nephew, first or second cousin, or step-parent.~~

~~(7)~~ **(2) Preadoptive ~~*or Foster Care*~~ Placement Preferences.** A~~. Any~~ preadoptive placement of an Indian child, must comply with ICWA and 25 C.F.R. §§ 23.131 and 23.132 and must~~ shall~~ be in the least restrictive setting that~~which~~ most approximates a family and in which the child's special needs, if any, may be met. The child must~~shall~~ be placed within ~~a~~ reasonable proximity to the child's home, taking into account any special needs of the child, and~~. In any foster care or preadoptive placement, a~~ preference must~~shall~~ be given, in the absence of good cause to the contrary, to a placement with:

(A) a member of the Indian child's extended family;

(B) a foster home licensed, approved or specified by the Indian child's tribe;

(C) an Indian foster home licensed or approved by an authorized non-Indian licensing authority;

(D) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

~~(8)~~ **(3) Adoptive Placement Preferences.** An~~In any~~ adoptive placement of an Indian child must comply with ICWA and 25 C.F.R. § 23.130 and § 23.132. If~~, a preference must be given, if~~ the child's tribe has not established a different order of preference, preference must be given, ~~under ICWA and~~ in the absence of good cause to the contrary, to a placement with:

~~(A)~~ **(A)** a member of the Indian child's extended family;

~~(B)~~ **(B)** other members of the Indian child's tribe; or

(C) other Indian families.

~~(C)~~

Rule 69. Appointment, Appearance, and Withdrawal of Counsel

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

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

(1) personally appearing in open court and advising the court that counsel is representing a party, or

(2) filing a written notice of appearance and providing copies to the assigned judge and all parties.

(c) Withdrawal of Counsel. Requests to withdraw as counsel must be in writing, unless otherwise authorized by the court, and provided to the parties.

Rule 70. Appointment of Guardian Ad Litem

The court may appoint a guardian ad litem in an adoption proceeding under the standards set forth in Rule 40.

Rule 70. Appointment of Guardian Ad Litem

~~**(a)** The court may appoint a guardian ad litem to protect the interest of the child. The guardian ad litem may be an attorney, volunteer special advocate, or other qualified person.~~

~~**(b)** In any proceeding where a parent, guardian, or Indian custodian is under eighteen (18) years of age, the court may appoint a guardian ad litem to protect the interests of such parent, guardian, or Indian custodian.~~

~~If the court has reason to believe a parent, guardian, or Indian custodian may be incompetent, the court shall appoint a guardian ad litem to conduct an investigation and report to the court as to whether the person might be incompetent and in need of protection. The court must conduct hearings and enter orders as it determines are necessary to protect the interests of the parent, guardian, or Indian custodian.~~

~~**(c)**~~ The court may appoint a guardian ad litem in an adoption proceeding under the standards set forth in Rule 40.

Rule 71. Telephonic Testimony, Video Conferencing

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

5/14/2020: WORKGROUP 4 WILL WAIT TO SEE WORKGROUP 3'S WORK PRODUCT ON RULE 42

Rule 72. Computing and Extending Time

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

5/14/20 Workgroup 4 Note: Cross-reference Rule 43.

Rule 72. ~~Computation of~~ Computing and Extending Time

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

5/14/20 Workgroup 4 Note: Cross-reference Rule 43.

Rule 103.1. General Provisions

(a) Caption on the Notice of Appeal. The notice of appeal must be captioned using the type of proceeding and the initials of the juvenile's name. For example, "In re Delinquency of A.B.," "In re Dependency as to C.D.," or "In re Termination of Parental Rights as to E.F."

(b) Suspension of Orders.

(1) Generally. The filing of a notice of appeal does not suspend an order of the juvenile court and execution of the order is not stayed while the appeal is pending unless the appellate court suspends the order or stays the execution. [BCB: I had thought of proposing that the juvenile court be able to do this because the appellate court is not really in the position to decide what is suitable provision for the care of a child, but 8-235(B) prohibits it: "The order of the juvenile court shall not be suspended and the execution of the order shall not be stayed pending the appeal, except that the appellate court may, by order, suspend or stay the execution of the order if suitable provision is made for the care and custody of the juvenile." **Consider proposing a change to this statute**.]

(2) Request for Stay. A party may file a motion in the appellate court requesting a stay of the order once a notice of appeal has been filed. The filing party must state in that motion whether other parties stipulate or object to staying the order while the appeal is pending. [**Workgroup Note:** consider a comment noting that this provision deviates from APCAP 7(c). Or consider a legislative amendment to ARS section 8-235(B).]

(3) Factors. In deciding whether to stay a juvenile court order, the appellate court may consider the best interests of the child, the likelihood that the order will be reversed, and any other pertinent legal or equitable matters. If the juvenile court order requires restitution, the clerk of the juvenile court will hold monies paid for restitution until the appellate court issues its mandate.

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

(d) Suspension of Rules. On its own or on a party's motion, the appellate court for good cause may suspend, supplement, or vary the requirements of any provision of Rules 103 through 108 and may substitute another appropriate order of proceeding. However, the time specified in Rule 104(a) for the filing of a notice of appeal or notice of cross-appeal may not be shortened or extended, except as provided in ~~Rule~~

~~108(B)~~ that rule. [**Staff Note:** Staff relocated the "excusable neglect" provision from Rule 108(B) to Rule 104(a).]

(e) Appointment of Counsel.

(1) ***Requirement.*** When required by law, the juvenile court or the appellate court must appoint an attorney for a party to an appeal from a final juvenile court order.

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

(3) ***Party without Appointed Counsel in the Juvenile Court.*** A party who did not have appointed counsel in the juvenile court may request appointed counsel on appeal by filing a request in the juvenile court no later than 5 days after the notice of appeal is filed. If the juvenile court denies the party's request for appointed counsel, then the party may request the appellate court to appoint counsel after an appellate case number has been assigned.

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

(g) Continuing Juvenile Court Jurisdiction. While an appeal is pending, the juvenile court may proceed within its legal authority on a remaining or new issue to the extent

(1) the appellate court has specifically authorized or directed the juvenile court to rule on the issue;

(2) the juvenile court's ruling on the issue would be in furtherance of the appeal;

(3) a statute or court rule confers continuing jurisdiction on the juvenile court; or

(4) the juvenile court's ruling on the issue would not legally or practically prevent the appellate court from granting the relief requested on appeal.

This rule does not authorize the juvenile court to extend the time for filing briefs, motions, transcripts, or other documents or items with the appellate court.

(h) Arizona Rules Civil Appellate Procedure (ARCAP). In addition to any ARCAP specifically incorporated by these rules, the following apply: :

Rule 2 (Definitions)

Rule 3(b) (Suspension of an Appeal)

Rule 4 (Filing Documents with an Appellate Court; Format; Service), except that the caption for all filings in the appellate court must be as provided in Rule 103.1(a), not as provided in ARCAP 4(a) and the related ARCAP forms.

Rule 4.1 (Paper Filing)

Rule 4.2 (Electronic Filing)

Rule 5 (Computing and Modifying Deadlines), except as provided in Rule 104(?), which permits the juvenile court to excuse the untimely filing of a notice of appeal or cross-appeal.

Rule 6 (Motions)

Rule 8(g) (Joint or Consolidated Appeals or Cross-Appeals)

Rule 9(c) (Filing of Notice of Appeal Before Entry of Judgment)

Rule 11, (d), (e) and (h) (Narrative Statement, Agreed-Upon Statement, Multiple Appeals from the Same Judgment)

Rule 17 (Supplemental Citation of Legal Authority)

Rule 18 (Oral Argument in the Court of Appeals)

Rule 20 (Notice of Decisions and Orders)

Rule 22 (Motion for Reconsideration)

Rule 24 (Appellate Court Mandates), except that the appellate court may issue its mandate immediately if the appeal is dismissed upon the filing of a notice by counsel under Rule 106(g), and the party has not filed a brief on the party's own behalf.

Rule 25 (Sanctions) except that incorporation of ARCAP 25 must not be construed to permit the imposition of sanctions against an appellant, a cross-appellant, or their counsel who files a frivolous appeal from a final order in a delinquency or transfer matter.

Rule 27 (Substitution of Parties)

Rule 28(a) through (f) (Decisions; Publication of Opinions) A party may file a motion for publication within 10 days after the filing of the decision and before a petition for review to the supreme court is filed. [BCB: Or perhaps we should not have the rule excluding juvenile cases from MRs?]

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

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

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

1. Delinquency and incorrigibility proceedings.

   A. A dDisposition order for a juvenile adjudicated incorrigible or delinquent is a final order when restitution has been included or has not been requested;

   B. separate appeal is filed and if practicableIf restitution has been requested but the disposition order does not include it and the court retains jurisdiction to enter a restitution order, the restitution order is the final order. If the juvenile court does not enter the restitution order within 30 days from the entry of the disposition order, the disposition order becomes final. [BCB: This follows Alton D., 196 Ariz. 195 (2000), which notes that the court must set a firm deadline for these things because of the need to expedite juvenile cases is strong. The court suggested 30 days.]

   C. An order entered in a probation revocation proceeding determining whether the juvenile violated probation is a final order. If the court finds the juvenile violated probation and enters a separate disposition order, the disposition order is the final order in that proceeding.

2. Other proceedings. A final order includes the following:

   D. An order order granting a dependency petition and declaring a child dependent, or dependency .

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

   F. An order entered after periodic dependency review in which the court reaffirming a prior finding that a child is dependent finds the juvenile continues to be a dependent childing.

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

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

I. An order terminating visitation.

J. Order terminating parental rights.

Order of adoption.

An order granting or denying a motion to set aside a final order.

K. Any other order determined to be final by Arizona case law. " **Rule 103.1. General Provisions**

(c) Captions on Appellate Filingsthe Notice of Appeal.

(1)(a) In an appeal in a dependency, emancipation, adoption, delinquency, incorrigibility, or transfer matter. The notice of appeal must be captioned using the type of proceeding and the initials of the juvenile's first and last first names and last initial of the minor child involvedthe type of proceeding. For example, as follows: "In re AbcdeDelinquency of A.B.," or "In re Dependency ofas to C.D.," or F." "In re Termination of Parental Rights as Tto E.F."

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

(d)(b) Suspension of Orders.

(1) Generally. The filing of a notice of appeal does not suspend an order of the juvenile court is not suspended and execution of the order is not stayed while the appeal is pending , unless the appellate court suspends the order or stays the execution. [BCB: I had thought of proposing that the juvenile court be able to do this because the appellate court is not really in the position to decide what is

suitable provision for the care of a child, but 8-235(B) prohibits it: "The order of the juvenile court shall not be suspended and the execution of the order shall not be stayed pending the appeal, except that the appellate court may, by order, suspend or stay the execution of the order if suitable provision is made for the care and custody of the juvenile." **Consider proposing a change to this statute**.]

(2) Request for sStay. ~~An appellate court order that does so must include suitable provisions for the care and custody of the child.~~ A party may file a motion in the appellate court requesting a stay of the order once a notice of appeal has been filed. The filing party must state in that motion whether other parties stipulate or object to staying the order while the appeal is pending. [**Workgroup Note:** consider a comment noting that this provision deviates from APCAP 7(c). Or consider a legislative amendment to ARS section 8-235(B).]

~~(1)~~**(3) Factors.** In deciding whether to ~~suspend or~~ stay a juvenile court order, the appellate ~~appellate~~ court may consider the best interests of the child, the likelihood that the order will be reversed, and any other pertinent legal or equitable matters. If the juvenile court order requires restitution, the clerk of the juvenile court will hold monies paid for restitution ~~will be held by the clerk of the juvenile court from which the appeal is taken until~~until ~~the appeal becomes final~~appellate court issues its mandate.

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

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

~~(g)~~**(e) Appointment of Counsel.**

(1) ***Requirement.*** When required by law, the ~~presiding judge of the~~ juvenile court or the appellate court must appoint an attorney for a party to an appeal from a final

juvenile court order. ~~[BCB: adding the appellate court accommodates the practice in div two with respect to Pima County appointments]~~

(2) ***Party with Appointed Counsel in the Juvenile Court.*** The juvenile court or the appellate court may order the attorney who had been ~~A party who had~~ appointed ~~counsel during~~ in the juvenile court proceedings ~~may continue~~ to continue representing that party ~~with his or her appointed counsel~~ on appeal ~~without further authorization~~, unless the ~~presiding judge~~juvenile court or appellate court finds that ~~a~~the party is currently able to employ counsel. ~~The~~Either court ~~presiding judge~~ may also ~~may~~ appoint substitute counsel for a party to an appeal.

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

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

(g) Continuing Juvenile Court Jurisdiction. While an appeal is pending, the juvenile court may proceed within its legal authority on a remaining or ~~a~~ new issue to the extent

(1) the appellate court has specifically authorized or directed the juvenile court to rule on the issue;

(2) the juvenile court's ruling on the issue would be in furtherance of the appeal;

(3) a statute or court rule confers continuing jurisdiction on the juvenile court; or

(4) the juvenile court's ruling on the issue would not legally or practically prevent the appellate court from granting the relief requested on appeal.~~; or (5) the issue arises from a motion to dismiss the appeal filed by the appellant [**Staff Note:** Should this be the "appellee?"] and presented to the juvenile court for ruling before the clerk has forwarded the record to the appellate court.~~

~~(i)~~ This rule does not authorize the juvenile court to extend the time for filing briefs, motions, transcripts, or other documents or items with the appellate court. ~~[**Staff Note**: Notwithstanding, Rule 108 seems to do so.]~~

~~(j)~~**(h) Arizona Rules Civil Appellate P~~.~~rocedure (ARCAP).** In addition to any ARCAP specifically incorporated by these rules, the following apply: ~~To the extent that they are not inconsistent with or expressly varied by these rules [**Staff Note:** Should any ARCAP rules be removed from this list?], the following ARCAP rules apply to appeals from final orders of the juvenile court~~:

Rule 2 (Definitions)

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

Rule 4 (Filing Documents with an Appellate Court; Format; Service), except that the caption for all filings in the appellate court must be as provided in Rule 103.1(a), not as provided in ARCAP 4(a) and the related ARCAP forms.

Rule 4.1 (Paper Filing)

Rule 4.2 (Electronic Filing)

Rule 5 (Computing and Modifying Deadlines), except as provided in Rule 104(?), which permits the juvenile court to excuse the untimely filing of a notice of appeal or cross-appeal.~~)~~

Rule 6 (Motions)

Rule 8(g) (Joint or Consolidated Appeals or Cross-Appeals)

Rule 9(c) (Filing of Notice of Appeal Before Entry of Judgment)

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

Rule 17 (Supplemental Citation of Legal Authority)

Rule 18 (Oral Argument in the Court of Appeals)

Rule 20 (Notice of Decisions and Orders)

Rule 22 (Motion for Reconsideration)

Rule 24 (Appellate Court Mandates), except that the appellate court may issue its mandate immediately if the appeal is dismissed upon the filing of a notice by counsel under Rule 106(g), and the party has not filed a brief on the party's own behalf.

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

~~Rule 26 (Voluntary Dismissal)~~

Rule 27 (Substitution of Parties)

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

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

~~Rule 104. Notice of Appeal~~**; Notice of Non-Participation**~~., the Record on Appeal~~

Rule 104. Notice of Appeal

(a) Time for Filing a Notice of Appeal and Notice of Cross-Appeal.

(1) ***Notice of Appeal.***

(A) Except as otherwise provided by this rule, a party must file a notice of appeal in the juvenile court no later than 15 days after entry of the final order from which the appeal is taken.

(B) An order is entered on the date the clerk files it, as shown by the clerk's date stamp on the filed order.

(2) ***Notice of Cross-Appeal.*** Except as otherwise provided by this rule, a party must file a notice of cross-appeal in the juvenile court not later than 10 days after the appellant filed a notice of appeal, or 15 days after entry of the final order from which the appeal is taken, whichever is later.

(3) ***Effect of Certain Post-Judgment Motions on Notice of Appeal; Amended Notice of Appeal.*** If a party files either of the following motions within 15 days after the entry of judgment, the time to file a notice of appeal under (a)(1) or cross-appeal under (a)(2) is extended for all parties and begins to run from the entry of a signed written order disposing of the last such motion:

(A) A motion under Rule 46(e) to set aside the judgment.

(B) A motion to alter or amend the judgment. [**Note**: Consider creating a new juvenile rule to address altering or amending the judgment, modeled on Civil Rule 52(h) or 59(d)]

(C) If a party has filed a notice of appeal before timely filing one of these motions, or files a notice of appeal while the motion is pending, then after the appellate court assigns a case number under Rule 105(a), the appellant must promptly notify the appellate court of the pending motion. Upon receipt of that notice, the appellate court will [must?] [note: "will" is used later in this subpart] suspend the appeal until the last motion is decided. The appellant must promptly notify the appellate court when the juvenile court has decided the motion. The appellate court will then reinstate the appeal as of the entry of the order disposing of the last motion. A party intending to appeal the juvenile court's ruling on such a motion must file a notice of appeal or cross-appeal, or an amended notice of appeal or cross-appeal, within the time prescribed in (a)(1) or (a)(2) as measured from the entry of the order disposing of the last motion.

(4) ***Other Post-Judgment Motions.*** Other than as provided in (a)(3), the filing of any post-judgment motion that concerns the order from which the appeal is taken does not extend the time for filing a notice of appeal or cross-appeal. Once a proper notice of appeal is filed, the juvenile court is divested of jurisdiction to address such motions, unless the appellate court suspends the appeal and re-vests in the juvenile court the jurisdiction to rule on the motion. If jurisdiction to address the motion is re-vested, an aggrieved party who challenges the juvenile court's ruling on the motion must file a new or amended notice of appeal as provided in (a)(1) or (a)(2).

(5) ***Delayed Appeal or Cross-Appeal.*** If a party fails to file a timely notice of appeal or cross-appeal and the juvenile court finds good cause for the failure, the court must allow the appeal or cross-appeal to proceed.

(A) To obtain relief under this rule, a party must file a motion in the juvenile court that shows good cause for the failure.

(B) If the juvenile court enters an order granting the motion, the party must file the delayed notice of appeal or cross-appeal no later than 7 days after entry of the order permitting it.

(C) If a party files an untimely notice of appeal or cross-appeal before the juvenile court enters an order permitting a delayed appeal or cross-appeal, and the appeal remains pending when the court enters its order granting relief under this rule, the appellate court must treat the untimely notice as if it had been timely filed.

(b) Content of the Notice of Appeal. The notice of appeal or notice of cross-appeal must be in substantially the same form as form 5 and must include the following: [BCB: I was thinking we could create a form for this and adopt the forms Judge Quigley has been providing. We could then incorporate the contents of the form.]

(1) the party filing the notice;

(2) the final order or portion of the order the party is appealing;

(3) whether the party was represented by appointed counsel in the juvenile court when the final order was entered, unless the party filing the notice is a government agency; and

(4) if the notice of appeal or cross-appeal is filed by an attorney, it must be in substantially the same form as form 5, and must include the following statement: "By signing and filing this notice of appeal, undersigned counsel avows that counsel communicated with the client after entry of the order being appealed,

discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal." If the attorney for a party files a notice of appeal or cross-appeal that does not contain the required statement, or an explanation why it was not included, the clerk must refer the notice of appeal or cross-appeal to the juvenile court judge assigned to the case. After reviewing the notice of appeal or cross-appeal, the assigned judge must issue an order informing the attorney and the appellant or cross-appellant that the notice does not comply with this rule and permit counsel to file an amended notice of appeal or cross-appeal no later than 5 days after the order is entered. If a proper notice of appeal or cross-appeal is not filed within that period, the court must strike the notice of appeal or cross-appeal and direct the clerk not to process it under Rules 104, 104.1 and 105. If the appellate court receives a notice of appeal or cross-appeal that does not comply with this rule and the juvenile court has taken no action on it, the appellate court must give counsel for the appellant or cross-appellant a reasonable opportunity to file an amended notice and if a compliant notice of appeal is not filed, the court must dismiss the appeal or cross-appeal.

(c) Distribution of the Notice. Unless otherwise provided, no later than two business days after the filing of a notice of appeal or cross-appeal, the juvenile court clerk must distribute copies of the notice to:

(1) all parties;

(2) each certified court reporter who reported any juvenile court proceeding that is part of the presumptive record as described in Rule 104.1(a) or the court's designated transcript coordinator, if the record was made by electronic or other means; and

(3) the appellate court clerk. The juvenile court clerk must include with the copy of the notice served on the appellate court clerk a copy of the order from which the appeal is taken and the names of the persons to whom the clerk distributed a copy of the notice of appeal or cross-appeal.

~~Rule 104. Notice of Appeal~~; Notice of Non-Participation.~~, the Record on Appeal~~

Rule 104. Notice of Appeal

~~(a) Rule 104. Notice of Appeal; Notice of Non-Participation., the Record on Appeal~~

Time for Filing a Notice of Appeal and Notice of Cross-Appeal.~~.~~

(1) ~~*Time for Filing a*~~ *Notice of Appeal.*

(A) Except as otherwise provided by this rule, ~~A~~ a party must file a notice of appeal ~~with the clerk n~~in the juvenile court no later than 15 days after entry of the final order from which the appeal is taken.~~,~~

~~(1)~~(B) ~~except as otherwise provided by this rule. that is the subject of the appeal.~~ An order is entered ~~Entry of an order occurs~~ on the date the clerk files it, as shown by the clerk's date stamp on the filed order ~~or as otherwise documented in the clerk's official records~~. ~~[staff suggested adding to Rule 7 the equivalent of civil rule 5.1(a) and (b) and then this preceding sentence can be removed]~~ ~~A final order may be in the form of a signed minute entry or a separate written order. [BCB: If the WG thinks this is useful, we should move it to Rule 103 and definition of final order]~~

(2) ***Notice of Cross-Appeal.*** Except as otherwise provided by this rule, ~~To cross-appeal a final order, a~~a~~A~~ ~~A~~ party must file a notice of cross-appeal ~~with the clerk~~in the juvenile court not later than 10 days after the appellant~~'s~~ files~~ding of~~ a ~~after the~~ notice of appeal, ~~was filed~~or 15 days after entry of the final order from which the appeal is taken, whichever is later. ~~[BCB: I'm taking this from ARCAP 9(b).~~

(3) ***Effect of Certain Post-Judgment Motions*** ~~*To Set Aside Judgment or Motion for New Trial*~~ ***on Notice of Appeal; Amended Notice of Appeal.*** If a party files either of the following motions within 15 days after the entry of judgment, the time to file a notice of appeal under (a)(1) or cross-appeal under (a)(2) ~~begins to run from~~is extended for all parties and begins to run from the entry of a signed written order disposing of the last such motion:

~~M~~A motion under Rule 46(e) to set aside ~~a~~ the judgment ~~under Rule 46(e) filed not later than 15 days after entry of judgment. (BCB: We would put the 15-day restriction it as ARCAP 9 does for Rule 60 motions filed within that period. For all others, party needs to seek stay of appeal and revesting of jurisdiction in trial court).~~

(A) ~~Motion for new trial based on ineffective assistance of counsel under Rule 46( ) or Rule ____ [BCB: This would require a new rule, perhaps two, one in the general section of rules applicable to dependencies and severances, which means it could be in Rule 46, and another new rule in the delinquency section.]~~

(B) ~~Alternative to B or in addition to: M~~A motion to alter or amend the judgment ~~filed not later than 15 days of the entry of judgment~~. [**Note**: Consider creating a new juvenile rule to address altering or amending the judgment, modeled on Civil Rule 52(h) or 59(d)]

(C) If a party has filed ~~files~~ a notice of appeal before timely filing one of these motions, or files a notice of appeal while the motion is pending, then ~~the appellant must promptly notify the appellate court of the pending motion when~~after the appellate court assigns a case number under Rule 105(a),~~.~~ the appellant must promptly notify the appellate court of the pending motion. Upon receipt of that notice, the appellate court ~~will~~will [must?] [note: "will" is used later in this subpart] suspend the appeal until the last motion is decided. The appellant must promptly notify the appellate court when the juvenile court has decided the motion. The appellate court will then ~~be~~ reinstate the appeal as of the entry of the order disposing of the last motion. A party intending to appeal the juvenile court's ruling on such a motion must file a notice of appeal or cross-appeal, or an amended notice of appeal or cross-appeal, within the time prescribed in ~~subparts~~ (a)(1) or (a)(2) as measured from the entry of the order disposing of the last motion.

(4) ~~***Other Post-Judgment Motions.***~~ ~~T~~Other than as provided in (a)(3), the filing of any ~~other~~ post-judgment motion that ~~challenges~~concerns the order from which the appeal is taken~~,~~ does not extend the time for filing a notice of appeal or cross-appeal. Once a proper notice of appeal is filed, the juvenile court is divested of jurisdiction to address such motions, unless the appellate court suspends the appeal and re-vests in the juvenile court the jurisdiction ~~in the juvenile court~~ to rule on the motion. If jurisdiction to address the motion is re-vested ~~in the juvenile court~~, an aggrieved party who challenges ~~a~~the juvenile court's ~~subsequent~~ ruling on the motion ~~on the motion~~ must file a new or amended notice of appeal as provided in ~~subparts~~ (a)(1) or (a)(2).

(5) ***Delayed Appeal or Cross-Appeal.*** ~~***Excusable Neglect.***~~ If a party ~~y's~~ fails~~ure~~ to file a timely notice of appeal or cross-appeal and the juvenile court finds good cause for the failure~~,~~ ~~was the result of excusable neglect,~~ the court ~~presiding~~

~~juvenile court judge on motion may~~ excuse the untimeliness and ~~must~~ must allow the appeal or cross-appeal to proceed. ~~[**Staff Note:** This provision was derived from the last sentence of current Rule 108(B). But see staff's note in Rule 108.]~~

(A) To obtain relief under this rule, a party must file a motion in the juvenile court that shows good cause for the failure.

(B) If the juvenile court enters an order granting the ~~request~~ motion, the party must file the delayed notice of appeal or cross-appeal no later than 7 days after entry of the order permitting it.

If a party files an untimely notice of appeal or cross-appeal before the juvenile court enters an order permitting a delayed appeal or cross-appeal, and the appeal remains pending when the court enters its order granting relief under this rule, the appellate court must treat the untimely notice as if it had been timely filed.

(C)

(b) Content of the Notice of Appeal. The notice of appeal or notice of cross-appeal must be in substantially the same form as form 5 and must include the following: [BCB: I was thinking we could create a form for this and adopt the forms Judge Quigley has been providing~~, which I will get to you before we discuss this rule~~. We could then incorporate the contents of the form. ~~Otherwise, they are specified below~~]

~~(3)~~**(1)** ~~i~~It ~~must specify~~ the party ~~taking the appeal or cross-appeal~~filing the notice;

~~(4)~~**(2)** ~~i~~It ~~must designate~~ the final order or portion of the order the party is appealing~~part thereof appealed from; and~~;

~~If the party wishes to add or remove items from the presumptive record under Rule 104(e), the party must include a designation of the record under Rule 104(f), specifying the documents, transcripts or other items to be added to the record or deleted from it. [BCB: Perhaps we need to permit an objection?]~~

(3) ~~if~~ Unless ~~the party filing the notice is not a government agency, the notice it must state~~ whether the party was represented ~~proceeding with~~by appointed counsel in the juvenile court when the final order was entered, unless the party filing the notice is a government agency; and~~.~~

~~(5)~~

~~(6)~~**(4)** ~~When i~~If the notice of appeal or cross-appeal is filed by an attorney ~~on behalf of the the appellant or cross-appellant, is represented by counsel, the notice of appeal or cross-appeal also~~ it must be in ~~contain~~ substantially the same

form as form 5.~~.~~, and must include ~~including~~ the following statement: "By signing and filing this notice of appeal, undersigned counsel avows that ~~[he/she]~~ counsel ~~[**Staff Note:** Prefer the gender-neutral word "counsel" here]~~ communicated with the client after entry of the ~~judgment~~ order ~~[**Staff Note:** The word "order" is used throughout the appeals rules rather than "judgment"]~~ being appealed, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal." If the attorney ~~counsel~~ for a party files a notice of appeal or cross-appeal that does not contain the required statement, or an explanation why it was not included, the clerk must refer the notice of appeal or cross-appeal to the ~~assigned~~ juvenile court judge assigned to the case. After reviewing the ~~referral~~notice of appeal or cross-appeal, the assigned judge must issue an order informing the attorney~~counsel~~ and the appellant or cross-appellant that the notice does not comply with this rule and permit counsel to file an amended notice of appeal or cross-appeal no later than 5 days after the order is entered. If a proper notice of appeal or cross-appeal is not filed within that period, the court must strike ~~must promptly issue an order striking~~ the notice of appeal or cross-appeal and direct~~ing~~ the clerk not to process it under Rules 104, 104.1 and 105. If the appellate court receives a notice of appeal or cross-appeal that does not comply with this rule and the juvenile court has taken no action on it, the appellate court must give counsel for the appellant or cross-appellant a reasonable opportunity to file an amended notice and if a compliant notice of appeal is not filed, the court must dismiss the appeal or cross-appeal.

(c) Distribution of the Notice. ~~Within t~~Unless otherwise provided, ~~N~~no later than two business days after the filing of a notice of appeal or cross-appeal, the juvenile court clerk must ~~serve~~ distribute ~~[**Staff Note:** Restyling nomenclature is that parties serve documents, and the clerk distributes them]~~ copies of the notice to:

~~(7)~~(1) all parties~~; or their counsel;~~

(2) each certified court reporter who reported any juvenile court proceeding that is part of the ~~certified transcript~~presumptive record as described in ~~subpart (E~~e)~~(2)~~Rule 104.1(a) ~~or~~ or the court's designated transcript coordinator, if the record was made by electronic or other means~~, and if additional transcripts are designated in a supplemental designation of record, then immediately upon the filing of the designation, in the notice under subpart (f), or the court's designated transcript coordinator, if the record was made by electronic or other means~~; and

~~(8)~~(3) ~~, and on~~ the ~~Court of Appeals~~appellate court clerk. The juvenile court clerk must include with the copy of the notice served on the appellate court clerk a copy of the order from which the appeal is taken~~,~~ and the names of the persons to whom the clerk ~~sent~~distributed a copy of the notice of appeal or cross-appeal.

Notice of Non-Participation.

(9) No later than 10 calendar days after the clerk has served copies of the notice of appeal or cross-appeal under section (Cc), any party to the case or any party's fiduciary, which includes a personal representative, Title 14 guardian, conservator or trustee,fiduciary [**Staff Note:** This is the first time the word "fiduciary" appears in the juvenile rules. See staff's note in Rule 32; BCB: I took the definition in Rule 2(j) and plugged it in here. Maybe we can then just take it out of the definitions in Rule 2] who has appeared in the proceeding on behalf of a party may file with the clerk a notice of non-participation stating that the party or fiduciary does not intend to participate actively in the appeal, and instead adopts and agrees in advance to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are specifically identified in the notice. The party or fiduciary filing a notice of non-participation must serve a copy of the notice on all persons on whom service was made under section (Cc). A notice of non-participation may not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or cross-petition for review.

By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal.

(10)

NOTE TO WG 1; HOW ABOUT A NEW RULE: 104.1

Rule 104.1. The Record on Appeal.

Presumptive Record on Appeal. The presumptive record on appeal consists of documents filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:.

(11) ***Documents and Exhibits.*** The presumptive record on appeal includes the following documents:

(A) AIncludes all filings with the clerk (including petitions, Petitions, motions, minute entries, orders, exhibit lists) and other items filed in the juvenile court before and including and including the filing of the notice or amended notice

of appeal or cross-appeal.; a certified copy of all pleadings, orders, and other documents filed with the clerk;.

(B) tThe originals of all documentary exhibits [**Staff Note:** Could this provision use the word "documents" instead of "documentary exhibits?" If they were not exhibits they would not have been "introduced into evidence"] of manageable size introduced into evidence.; and

AIncludes all exhibits admitted into evidence, including Aany reports or other evidence the juvenile court has considered and admitted into evidence under Rule 3.1(d), but does not include described in subpart (C).

(C) documents and other items added pursuant to sections (F) and (G). Notwithstanding the preceding provisions of Rule 104(E)(1), tThe presumptive record on appeal shallmMust not include any document or other item deleted pursuant to Rule 104.1(bfF) or any item of a size, bulk or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply... [**Staff Note:** This last sentence is redundant to section (F).]

(12) ***Transcripts.*** .The record on appeal includes transcripts of the following proceedings: TThehe presumptive record in each of the following types of appeals includes the transcripts respectively specified below: on appeal includes the following transcripts.

When an appeal is taken f *From in a delinquency or incorrigibility adjudication, appeal, the transcript includes:* transcripts of the adjudication and disposition hearings and any separate restitution hearing.;

(A) *F When an appeal is taken from a probation violation proceeding, the transcript includes:* transcripts of the contested violation hearing or the admission hearing and the disposition hearing.

(B) *WhenFrom an appeal is taken from in an order transfertransferring a juvenile for prosecution as an adult, :appealorder,* transcripts of the transcript includes the probable cause and public safety transfer phases of the transfer hearing.;[BCB: Rule 34 calls this phase the Public Safety Determination]

WhenFrom an appeal is taken from in an order adjudicating a child dependent or dismissing a dependency petitionmatter, the transcript includes : transcripts of the contested dependencyhearing or hearings that generated the order. If the notice of appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing. report and review, or other hearing that generated the order being appealed;

When an appealFrom is taken from an order granting or denying a motion to intervene, the transcript :includes transcripts of the hearing or hearings hearing on the motion.

(C) *When an appeal is taken fFrom an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation,:* transcripts of the transcript includes the hearing or hearings that resulted in that order.

(D) *When an appeal is taken fFrom in an order establishing or denying a guardianship or proceeding to an order granting or denying a motion or petition to terminateion of parental rights: (severance) appeal,* transcripts of the transcript includes the contested guardianship, or termination, or other hearing that generated the order being appealed.; and

WhenFrom an appeal is taken from in an order granting or denying an adoption petitionappeal, the transcript includes: transcripts of any hearing on the validity of a parent's consent to adoption and any finalthe adoption hearing.

When an appeal is taken fFrom an order granting or denying a petition for emancipation: transcripts of n, the transcript includes the hearing orany hearings on the petition.

When an appeal is taken fFrom an order granting or denying a motion to set aside a final order under Rule 46(e) or a motion to alter or amend a final order): transcripts of , the transcript includes any hearing on the motion.

F When an appeal is taken from any other final order, the record includes the transcript of: transcripts of any hearing that resulted in that order.

(E) Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

(F) (b)

Notwithstanding the preceding provisions of Rule 104(eE)(2), tThe certified transcript must not include any proceeding or portion thereof that the appealing party states in the notice of appeal or cross-appeal that the party wishes to excluded from the presumptive record.d pursuant to Rule 104(Ff). [**Staff Note:** This sentence is redundant to section (F).]

(G) When an appeal is taken from any other final order, the record includes the transcript of any hearing that resulted in that order.

Appellant's Additional DesignationSupplementing of the Presumptive Record by Appellant's Supplemental Designation.

The record may be supplemented to add items listed in the designation of record portion of the party's notice of appeal or cross-appeal. The supplemental record may include the following: No later than five 5 days after filing thea notice of appeal, the appellant may file "file with the clerk aappellant's "supplemental designation of record"" requestingthat requests that the juvenile court clerk to to include in the record to be transmitted to the court of appeals, the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal::

(A) add to the record on appeal specifically identified documents not included in section (E)(1), including such items as sStudies, reports, or medical or psychological evaluations, or compilations of such studies, reports, or evaluations, prepared as required by statute, court rule, or order for the juvenile court's use in the proceedings thatAny exhibit that has been marked and, offered but not admitted into evidence.; and

(13) (B) the court did not admit into evidence under Rule 3.1(d)(6) or are not otherwise part of the presumptive record, but directly or indirectly resulted in the order from which the appeal is takendirectly or indirectly resulted in the order from which the appeal is taken and are not otherwise part of the record; or

(14) delete from the record specifically identified items otherwise automatically included in the record on appeal under section (E)(1).The All or part of the transcript of any designated proceeding or part thereof that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

Appellant's additional designation of the record may also request one or more certified court reporters or the court's designated transcript coordinator, if the record was made by electronic or other means, to prepare the transcript of any designated proceeding or part thereof not automatically included, or to exclude from the transcript any portion thereof otherwise automatically included.

The appellant must serve the additional supplemental designation of record on all parties, on each court reporter who reported a designated portion of the proceedings, and as applicable, on the court's designated transcript coordinator. , if applicable. The certified transcript on appeal must not include any proceeding or portion thereofof any proceeding excluded from the presumptive record pursuant to a supplemental designation of record underunder sections (b) or (cthis subpart).

(c) Appellee's Supplementalt al Designation of the Record. No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk a "appellee's supplemental designation of record" for any items not included in sections section (Eea) or deleted by appellant under section (Ffb) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. The appellee must serve the supplemental designation as provided in section (fbF).

(d)

Supplementing the Record Byby Motion. After the time for filing a supplemental designation under section (b) or (c) has passed, a party may move torequest to supplement the record only by motion filed in the appellate court after the Rbch.

Within 7 days. Notice of Appeal has been filed. Except as otherwise provided by Furle 104.1(f) and (g) this rule, after the notice of appeal or cross-appeal has been filed but nNo later than 7 days after the appellate clerk sends thea notice under Rule 105(e) that the record on appeal is complete, a party may file a motion that to supplement the record in the appellate court and requests to addadding to the record on appeal only those items the party reasonably believes are necessary for proper consideration of issues the party intends to raise on appeal by filing a motion to supplement the record in the appellate court. The motion must

moving party must show good cause for seeking to supplement the record; and

must state in the motion whether other partiesies consent or object to the proposed supplementation of the record, or explain why the moving party was unable to contact the other parties before filing the motion.

After 7 days. If a party files a motion under this subpartsection later more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must establish the portions of the record requestedshow that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's untimely motion to supplement the record filed after the

clerk has issued the notice under Rule 105(e) unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1)before thenpreviously, and that the party has established that the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

(e) Disputes, Omissions, and Misstatements. The parties must submit to the juvenile court any dispute about whether the record [accurately includes] discloses what actually occurred in the juvenile court to the juvenilethat court, which will resolve the dispute. If anything that is material to any party is omitted from or misstated in the record, the parties may add to or correct it the record by a court- approved stipulation. Alternatively, the juvenile court, either before or after the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

(f) Sanctions. If a A party must not requests adding thatadding to the presumptive record any item or transcript be added to the presumptive record that that is not is not essential necessary to for proper consideration of deciding the issues on appeal, t. The appellate court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103(Gg), for any infraction of this rule.

Rule 104.2 Notice of Non-Participation.

(a) Generally. Any party to the case or a party's fiduciary, which includes a personal representative, Title 14 guardian, conservator or trustee, [Staff Note: This is the first time the word "fiduciary" appears in the juvenile rules. See staff's note in Rule 2; BCB: I took the definition in Rule 2(j) and plugged it in her; Maybe we can then just take it out of the definitions in Rule 2] who has appeared in the proceedings on behalf of a party, may file with the appellate court clerk a notice of non-participation stating that the party or fiduciary does not intend to participate actively in the appeal, and adopts and agrees to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are identified in the notice.

(b) Time for filing. A notice of non-participation may be filed in the juvenile court no later than 10 calendar days after the juvenile court clerk has served copies of the notice of appeal or cross-appeal under Rule 104(c). Otherwise, a notice of non-participation must be filed in the appellate court. A party or fiduciary filing a

notice of non-participation must serve a copy of the notice on all persons on whom service was made under that provision.

(c) Effect of filing. By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal. A notice of non-participation must not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or a cross-petition for review.

The court reporter or reporters or authorized transcribers shall prepare the original certified transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule promptly upon receiving a notice of appeal filed by a governmental entity or a notice of appeal stating that the appellant was proceeding with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed. [Staff Note: Staff did not make any changes to the current provision because it is not clear what it's trying to convey.]

Arrangement for Costs. An appellant without appointed counsel – no later than 5 days after filing a notice of appeal, or 5 days after the court has denied the appellant's request for appointed counsel – must make arrangements with the court reporter or authorized transcriber to pay for the transcript. The court reporter or authorized transcriber must immediately give written notice to the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time. When satisfactory payment arrangements are made, the court reporter or authorized transcriber must promptly prepare the certified original transcript. An appellant who is not proceeding with appointed counsel must pay for all portions of the record on appeal the appellant has designated or requested, and for those portions of the record on appeal that are required under section (E) and that were not deleted by another party.[BCB: I think this belongs in Rule 105, which addresses the preparation of the [transcript.] An appellant who is not proceeding with appointed counsel must pay for all portions of the record on appeal the

~~appellant has designated or requested, and for those portions of the record on appeal that are required under section (E) and that were not deleted by another party.[BCB: I think this belongs in Rule 105, which addresses the preparation of the [transcript.]~~

Rule 104.1. The Record on Appeal.

(a) Presumptive Record on Appeal. The presumptive record on appeal consists of documents filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:

(1) ***Documents and Exhibits.*** The presumptive record on appeal

(A) Includes all filings with the clerk (including petitions, motions, minute entries, orders, exhibit lists) before and including the filing of the notice or amended notice of appeal or cross-appeal.

(B) Includes all exhibits admitted into evidence, including any reports or other evidence the juvenile court has considered and admitted into evidence under Rule 3.1, but does not include described in subpart (C).

(C) Must not include any document or other item deleted pursuant to Rule 104.1(b) or any item of a size, bulk or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply.

(2) ***Transcripts.*** The presumptive record in each of the following types of appeals includes the transcripts respectively specified below:

(A) *From a delinquency or incorrigibility adjudication:* transcripts of the adjudication and disposition hearings and any separate restitution hearing.

(B) *From a probation violation proceeding:* transcripts of the contested violation hearing or the admission hearing and the disposition hearing.

(C) *From an order transferring a juvenile for prosecution as an adult:* transcripts of the probable cause and public-safety phases of the transfer hearing.[BCB: Rule 34 calls this phase the Public Safety Determination]

(D) *From an order adjudicating a child dependent or dismissing a dependency petition:* transcripts of the hearing or hearings that generated the order. If the notice of appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing.

(E) *From an order granting or denying a motion to intervene:* transcripts of the hearing on the motion.

(F) *From an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation:* transcripts of the hearing or hearings that resulted in that order.

(G) *From an order establishing or denying a guardianship or an order granting or denying a motion or petition to terminate parental rights:* transcripts of the contested guardianship, termination, or other hearing that generated the order being appealed.

(H) *From an order granting or denying an adoption petition:* transcripts of any hearing on the validity of a parent's consent to adoption and the adoption hearing.

(I) *From an order granting or denying a petition for emancipation:* transcripts of any hearings on the petition.

(J) *From an order granting or denying a motion to set aside a final order under Rule 46(e) or a motion to alter or amend a final order:* transcripts of any hearing on the motion.

(K) *From any other final order:* transcripts of any hearing that resulted in that order.

Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

(b) (b) **Appellant's Supplemental Designation.**

(1) No later than 5 days after filing a notice of appeal, the appellant may file "appellant's supplemental designation of record" that requests the juvenile court clerk to include in the record transmitted to the court of appeals the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:

(A) Any exhibit that has been marked and offered but not admitted into evidence; and

(B) All or part of the transcript of any designated proceeding that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

(2) The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

(3) The appellant must serve the supplemental designation of record on all parties, on each court reporter who reported a designated proceedings, and as applicable, on the court's transcript coordinator. The certified transcript on appeal must not include any proceeding or portion of any proceeding excluded from the presumptive record under this subpart.

(c) (c) Appellee's Supplemental Designation. No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk "appellee's supplemental designation of record" for any items not included in section (a) or deleted by appellant under section (b) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. The appellee must serve the supplemental designation as provided in section (b).

(d) (d) Supplementing the Record by Motion. After the time for filing a supplemental designation under section (b) or (c) has passed, a party may request to supplement the record only by motion filed in the appellate court.

(1) *Within 7 days.* No later than 7 days after the appellate clerk sends a notice under Rule 105(e) that the record on appeal is complete, a party may file a motion that requests adding to the record on appeal items the party reasonably believes are necessary for proper consideration of issues the party intends to raise on appeal. The motion must

(A) show good cause for seeking to supplement the record; and

(B) state whether other parties consent or object to the proposed supplementation of the record or explain why the moving party was unable to contact the other parties before filing the motion.

(2) *After 7 days.* If a party files a motion under this section more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must show that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's untimely motion to supplement the record unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1), and the party has established the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

(e) (e) Disputes, Omissions, and Misstatements. The parties must submit to the juvenile court any dispute about whether the record [accurately includes] what occurred in that court, which will resolve the dispute. If anything material is omitted from or misstated in the record, the parties may add to or correct the record by a court-approved stipulation. Alternatively, the juvenile court, before the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

(f) **(f) Sanctions.** If a party requests adding to the presumptive record any item or transcript that is not necessary for proper consideration of the issues on appeal, the appellate court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103(g).

~~(a)~~ ~~NOTE TO WG 1; HOW ABOUT A NEW RULE: 104.1~~

Rule 104.1. The Record on Appeal.

~~(b)~~**(a) Presumptive Record on Appeal.** The presumptive record on appeal consists of documents ~~-~~filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:~~.~~

(1) ***Documents and Exhibits.*** The presumptive record on appeal ~~includes the following documents:~~

(A) ~~A~~Includes all filings with the clerk (including petitions, ~~Petitions,~~ motions, minute entries, orders, exhibit lists) ~~and other items filed in the juvenile court~~ before and including ~~and including~~ the filing of the notice or amended notice of appeal or cross-appeal.~~;~~ ~~a certified copy of all pleadings, orders, and other documents filed with the clerk;~~.

~~**(B)** tThe originals of all documentary exhibits [**Staff Note:** Could this provision use the word "documents" instead of "documentary exhibits?" If they were not exhibits they would not have been "introduced into evidence"] of manageable size introduced into evidence.; and~~

(B) ~~A~~Includes all exhibits admitted into evidence, including ~~A~~any reports or other evidence the juvenile court has considered and admitted into evidence under Rule 3.1~~(d)~~, but does not include described in subpart (C).

(C) ~~documents and other items added pursuant to sections (F) and (G). Notwithstanding the preceding provisions of Rule 104(E)(1), tThe presumptive record on appeal shallm~~Must not include any document or other item deleted pursuant to Rule 104.1(b~~f~~F) or any item of a size, bulk or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply.~~.~~ ~~[**Staff Note:** This last sentence is redundant to section (F).]~~

(2) ***Transcripts.*** ~~.The record on appeal includes transcripts of the following proceedings:~~ T~~The~~he presumptive record in each of the following types of appeals includes the transcripts respectively specified below:~~ on appeal includes the following transcripts.~~

(A) ~~When an appeal is taken f~~ *From ~~in~~ a delinquency or incorrigibility adjudication~~, appeal, the transcript includes~~:* ~~-~~transcripts of the adjudication and disposition hearings and any separate restitution hearing.~~;~~

~~(A)~~**(B)** *~~F When an appeal is taken f~~From a probation violation proceeding~~, the transcript includes~~:* transcripts of the contested violation hearing or the admission hearing and the disposition hearing.

~~(B)~~**(C)** *~~When~~From ~~an appeal is taken from in~~ an order ~~transfer~~transferring a juvenile for prosecution as an adult~~, :~~ :~~appeal~~order,* transcripts of ~~the transcript includes~~ the probable cause and public-safety ~~transfer~~ phases of the transfer hearing.~~:~~[BCB: Rule 34 calls this phase the Public Safety Determination]

(D) *~~When~~From ~~an appeal is taken from in~~ an order adjudicating a child dependent or dismissing a dependency petition~~matter, the transcript includes :~~* transcripts of the ~~contested dependency~~hearing or hearings that generated the order. If the notice of appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing. ~~report and review, or other hearing that generated the order being appealed;~~

(E) *~~When an appeal~~From ~~is taken from~~ an order granting or denying a motion to intervene~~, the transcript :includes~~* transcripts of the ~~hearing or hearings~~ hearing on the motion.

~~(C)~~**(F)** *~~When an appeal is taken f~~From an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation~~,~~:* transcripts of the ~~transcript includes the~~ hearing or hearings that resulted in that order.

~~(D)~~**(G)** *~~When an appeal is taken f~~From ~~in~~ an order establishing or denying a guardianship or ~~proceeding to~~ an order granting or denying a motion or petition to terminate~~eeion of~~ parental rights~~: (severance) appeal,~~ transcripts of ~~the transcript includes~~ the contested guardianship, ~~or~~ termination, or other hearing that generated the order being appealed.~~; and~~

(H) *~~When~~From ~~an appeal is taken from in~~ an order granting or denying an adoption petition~~appeal, the transcript includes:~~* transcripts of any hearing on the validity of a parent's consent to adoption and ~~any final~~the adoption hearing.

(I) *~~When an appeal is taken f~~From an order granting or denying a petition for emancipation:* transcripts of ~~n, the transcript includes the hearing or~~any hearings on the petition.

(J) ~~*When an appeal is taken f*~~*From an order granting or denying a motion to set aside a final order under Rule 46(e) or a motion to alter or amend a final order*~~)~~*:* transcripts of ~~, the transcript includes~~ any hearing on the motion.

(K) ~~*F When an appeal is taken f*~~*from any other final order*~~*, the record includes the transcript of*~~*:* transcripts of any hearing that resulted in that order.

~~**(E)**~~ Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

~~**(F)**~~ ~~(b)~~

~~Notwithstanding the preceding provisions of Rule 104(eE)(2), tThe certified transcript must not include any proceeding or portion thereof that the appealing party states in the notice of appeal or cross-appeal that the party wishes to excluded from the presumptive record.d pursuant to Rule 104(Ff). [**Staff Note:** This sentence is redundant to section (F).]~~

~~**(G)** When an appeal is taken from any other final order, the record includes the transcript of any hearing that resulted in that order.~~

(b) ~~Appellant's Additional Designation~~Supplementing ~~of the Presumptive Record by~~ Appellant's Supplemental Designation.

~~**(c)**~~**(1)** ~~The record may be supplemented to add items listed in the designation of record portion of the party's notice of appeal or cross-appeal. The supplemental record may include the following:~~ No later than ~~five~~ 5 days after filing ~~the~~a notice of appeal, the appellant may file "~~file with the clerk a~~appellant's "supplemental designation of record"" ~~requesting~~that requests ~~that~~ the juvenile court clerk to ~~to~~ include in the record ~~to be~~ transmitted to the court of appeals~~,~~ the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:~~:~~

(A) ~~add to the record on appeal specifically identified documents not included in section (E)(1), including such items as sStudies, reports, or medical or psychological evaluations, or compilations of such studies, reports, or evaluations, prepared as required by statute, court rule, or order for the juvenile court's use in the proceedings that~~Any exhibit that has been marked and~~,~~ offered but not admitted into evidence~~.~~; and

~~(1)~~ **~~(B) the court did not admit into evidence under Rule 3.1(d)(6) or are not otherwise part of the presumptive record, but directly or indirectly resulted in the order from which the appeal is taken~~**~~directly or indirectly~~

~~**resulted in the order from which the appeal is taken and are not otherwise part of the record;** or~~

~~**(2)** delete from the record specifically identified items otherwise automatically included in the record on appeal under section (E)(1).~~ The ~~All or part of the transcript of any designated proceeding or part thereof~~ that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

(1) The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

~~Appellant's additional designation of the record may also request one or more certified court reporters or the court's designated transcript coordinator, if the record was made by electronic or other means, to prepare the transcript of any designated proceeding or part thereof not automatically included, or to exclude from the transcript any portion thereof otherwise automatically included.~~

(2) The appellant must serve the ~~additional~~ supplemental designation of record on all parties, on each court reporter who reported a designated ~~portion of the~~ proceedings, and as applicable, on the court's ~~designated~~ transcript coordinator. ~~, if applicable.~~ The certified transcript on appeal must not include any proceeding or portion ~~thereof~~of any proceeding excluded from the presumptive record ~~pursuant to a supplemental designation of record under~~under ~~sections (b) or (c~~this subpart~~)~~.

(c) (c) Appellee's Supplemental ~~al~~ Designation ~~of the Record~~. No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk ~~a~~ "appellee's supplemental designation of record" for any items not included in ~~sections~~ section (~~E~~ea) or deleted by appellant under section (~~F~~fb) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. ~~-~~The appellee must serve the supplemental designation as provided in section (~~f~~b~~F~~).

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

(d) Supplementing the Record ~~By~~by Motion. After the time for filing a supplemental designation under section (b) or (c) has passed, a party may ~~move to~~request to supplement the record only by motion filed in the appellate court ~~after the Rbch~~.

(1) *Within 7 days.* ~~Notice of Appeal has been filed. Except as otherwise provided by Furle 104.1(f) and (g) this rule, after the notice of appeal or cross-appeal has been filed but n~~No later than 7 days after the appellate clerk sends ~~the~~a notice under Rule 105(e) that the record on appeal is complete, a party may file a

motion that ~~to supplement the record in the appellate court and~~ requests ~~to~~ ~~add~~adding to the record on appeal ~~only those~~ items the party reasonably believes are necessary for proper consideration of issues the party intends to raise on appeal ~~by filing a motion to supplement the record in the appellate court~~. The motion must

(A) ~~moving party must~~ show good cause for seeking to supplement the record; and

(B) ~~must~~ state ~~in the motion~~ whether other parti~~es~~ies consent or object to the proposed supplementation of the record~~,~~ or explain why the moving party was unable to contact the other parties before filing the motion.

(2) *After 7 days.* If a party files a motion under this ~~subpart~~section ~~later~~ more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must ~~establish the portions of the record requested~~show that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's untimely motion to supplement the record ~~filed after the clerk has issued the notice under Rule 105(e)~~ unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1)~~before then~~previously, and ~~that~~ the party has established ~~that~~ the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

(e) (e) Disputes, Omissions, and Misstatements. The parties must submit to the juvenile court any dispute about whether the record [accurately includes] ~~discloses~~ what ~~actually~~ occurred in ~~the juvenile court to the juvenile~~that court, which will resolve the dispute. If anything ~~that is~~ material ~~to any party~~ is omitted from or misstated in the record, the parties may add to or correct ~~it~~ the record by a court-approved stipulation. Alternatively, the juvenile court, ~~either~~ before ~~or after~~ the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected~~,~~ and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

(f) (f) Sanctions. If a ~~A~~ party ~~must not~~ request~~s~~ ~~adding that~~adding to the presumptive record any item or transcript ~~be added to the presumptive record that~~ that is not ~~is not essential~~ necessary ~~to~~ for proper consideration of ~~deciding~~ the issues on appeal, t~~. T~~he appellate court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103(~~G~~g)~~, for any infraction of this rule~~.

Rule 104.2 Notice of Non-Participation

(a) **Generally.** Any party to the case or a party's fiduciary, which includes a personal representative, Title 14 guardian, conservator or trustee, [**Staff Note:** This is the first time the word "fiduciary" appears in the juvenile rules. See staff's note in Rule 2; BCB: I took the definition in Rule 2(j) and plugged it in her; Maybe we can then just take it out of the definitions in Rule 2] who has appeared in the proceedings on behalf of a party, may file with the appellate court clerk a notice of non-participation stating that the party or fiduciary does not intend to participate actively in the appeal, and adopts and agrees to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are identified in the notice.

(b) **Time for filing.** A notice of non-participation may be filed in the juvenile court no later than 10 calendar days after the juvenile court clerk has served copies of the notice of appeal or cross-appeal under Rule 104(c). Otherwise, a notice of non-participation must be filed in the appellate court. A party or fiduciary filing a notice of non-participation must serve a copy of the notice on all persons on whom service was made under that provision.

(c) **Effect of filing.** By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal. A notice of non-participation must not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or a cross-petition for review.

Rule 104.2 ~~-~~Notice of Non-Participation~~.~~

(a) **Generally.** Any party to the case or a party's fiduciary, which includes a personal representative, Title 14 guardian, conservator or trustee, [**Staff Note:** This is the first time the word "fiduciary" appears in the juvenile rules. See staff's note in Rule 2; BCB: I took the definition in Rule 2(j) and plugged it in her; Maybe we can then just take it out of the definitions in Rule 2] who has appeared in the proceedings on behalf of a party, may file with the appellate court clerk a notice of non-participation stating that the party or fiduciary does not intend to participate actively in the appeal, and adopts and agrees to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are identified in the notice.

(b) **Time for filing.** A notice of non-participation may be filed in the juvenile court no later than 10 calendar days after the juvenile court clerk has served copies of the notice of appeal or cross-appeal under Rule 104(c). Otherwise, a notice of non-participation must be filed in the appellate court. A party or fiduciary filing a notice of non-participation must serve a copy of the notice on all persons on whom service was made under that provision.

(c) **Effect of filing.** By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal. A notice of non-participation must not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or a cross-petition for review.

~~**(a)** The court reporter or reporters or authorized transcribers shall prepare the original certified transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule promptly upon receiving a notice of appeal filed by a governmental entity or a notice of appeal stating that the appellant was proceeding with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed. [**Staff Note:** Staff did not make any changes to the current provision because it is not clear what it's trying to convey.]~~

~~**(b) Arrangement for Costs.** An appellant without appointed counsel no later than 5 days after filing a notice of appeal, or 5 days after the court has denied the appellant's~~

~~request for appointed counsel — must make arrangements with the court reporter or authorized transcriber to pay for the transcript. The court reporter or authorized transcriber must immediately give written notice to the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time. When satisfactory payment arrangements are made, the court reporter or authorized transcriber must promptly prepare the certified original transcript. An appellant who is not proceeding with appointed counsel must pay for all portions of the record on appeal the appellant has designated or requested, and for those portions of the record on appeal that are required under section (E) and that were not deleted by another party.[BCB: I think this belongs in Rule 105, which addresses the preparation of the [transcript.]~~ ~~An appellant who is not proceeding with appointed counsel must pay for all portions of the record on appeal the appellant has designated or requested, and for those portions of the record on appeal that are required under section (E) and that were not deleted by another party.[BCB: I think this belongs in Rule 105, which addresses the preparation of the [transcript.]~~