Task Force on the Rules of Procedure for the Juvenile Court

Amended Meeting Agenda

Friday, July 17, 2020
10:00 a.m. to 4:00 p.m.
Virtual Meeting

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the June 12, 2020 meeting minutes**	*Justice Berch*
Item no. 3	**Standardized form of juvenile arrest warrant**	*Jerry Landau*
Item no. 4	**Workgroup reports and discussion of rules**	
	Workgroup 1: Rule 46.1 [new], Rule 30(c) [Rule 30 is a WG-2 rule]; Forms 5(a), 5(b), and 6	*Ms. Beckmann*
	Workgroup 2: Rules 19.1 and 20, Rule 28.1 [revisited]	*Judge Trebesch, Ms. Smith, Ms. Phillis*
	Workgroup 3: Rules 46 and 49	*Judge Quigley, John Gilmore*
	Workgroup 4: Rules 73, 74, 75, and 86	*Professor Atwood, Ms. Coughlin, Mr. Owsley*
Item no. 5	**Roadmap** **Next meetings: August 21, September 25, October 23, November 20, December 18**	*Justice Berch*
Item no. 6	**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, June 12, 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, Kathleen Coughlin, Maria Christina Fuentes by her proxy Steve Selover, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, Tina Mattison, Eric Meaux, Donna McQuality, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Smith, Denise Avila Taylor, Hon. Patricia Trebesch, Edward Truman by his proxy Carey Turner, Hon. Rick Williams, Hon. Anna Young

Absent: Dale Cardy, Kent Volkmer

Guests: Nina Preston, Jessica Fotinos

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

1. <u>Call to order; preliminary remarks; approval of meeting minutes.</u> The Chair called the seventh—and second virtual—Task Force meeting to order at 10:01 a.m. The May 8th meeting was cancelled, and today was the first Task Force meeting since April 3rd. However, the workgroups continued to meet; there were 13 workgroup meetings between April 3 and May 29. The Task Force has already completed its review of 39 rules, and if it completes most of the 22 rules on today's agenda, it will be about halfway through the set. Materials for today's meeting were available electronically. The materials included two recent Division One memo decisions, *Harmony F.* and *Emily B.*, that considered the right to effective assistance of counsel in termination proceedings. The materials also included a Division One order in *Leslie C.*, which involves a party's right to in-person attendance at a termination hearing.

Although participants had voice communication on a conference call line during today's meeting, Judge Kreamer raised the possibility of using video conferencing at future meetings. He and the members discussed the advantages of video (including the availability of visual cues and the Chair's enhanced ability to moderate discussions) and the drawbacks (less efficient visualization of documents and a continuing need to use SharePoint for document sharing.) Members expressed general interest in trying the use of video at a future meeting. The Chair requested staff to further investigate our use of video, and possibly to do a test-run at a workgroup meeting.

The Chair then referred members to draft minutes of the April 3, 2020 Task Force meeting. A member noted that at the top of page two, a reference in a topic title to Workgroup 3 was incorrect and should have instead referred to Workgroup 2.

Motion: A member moved to approve the April 3, 2020 meeting minutes with the aforesaid correction. The motion received a second and it passed unanimously. **JRTF 007**

The Chair advised that Workgroup 3 would begin today's reports, followed by Workgroups 1, 2, and 4.

2. **Report from Workgroup 3.** Workgroup 3 presented seven dependency rules.

Rule 38 ("assignment and appointment of an attorney; advisory attorney"). Although the Task Force approved Rule 38 at its January 24, 2020 meeting, Ms. Rosenberg informed members that Workgroup 3 added another sentence to section (c) ("appointment of an attorney or guardian ad litem for a child") during a subsequent discussion of the rule. Rule 38(c), as modified by the new, underlined sentence below, would provide:

> 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.

Judge Kreamer expressed concern that this new sentence might inhibit Maricopa's practice of appointing an attorney for a child in every case. Staff noted the use of the word "instead" in this sentence rather than the word "also," which indicates the court would appoint one or the other rather than both. A member also noted that this provision might be incompatible with A.R.S. § 8-211(I), which provides in part, "In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests." Members discussed a potential need for a legislative change to this statute. Another member added that the workgroup's proposed provision might conflict with the Arizona Code of Judicial Administration concerning the appointment of a CASA. Judge Kreamer renewed his concern that this provision might require a change in Maricopa's current practices, which function well. Judge Quigley noted that the new sentence would not affect Pima's practices for appointments, which differ from Maricopa's.

Members did not approve this modification at today's meeting. Rather, Judge Kreamer will obtain input from his bench on this provision and determine if a modified provision would be workable in Maricopa County, as well as counties statewide. Members will also revisit the use of the term "competency," which is a criminal law concept that might be inappropriately used in a dependency rule.

Rule 39 ("appearance, substitution, and withdrawal; responsibility of parties"). Judge Quigley advised that the workgroup reviewed comments made during the April 3 meeting about whether the withdrawal provisions in draft section (c) were internally consistent. The workgroup concluded that the provisions were consistent and appropriate, and they made no further revisions. However, concerning a provision in section (d) ("attorney substitution"), subpart (2) ("within the same firm or office"), the workgroup proposed replacing the previous draft provision with these sentences: "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." Members agreed with the replacement sentences and approved Rule 39 with this modification.

Rule 41 ("public attendance at hearings"). Ms. Rosenberg explained that because of the length of the current rule, members relocated some of its current provisions to new Rules 41.1 and 41.2, which are discussed below. Rule 41 required the workgroup to consider A.R.S. § 8-525 and other statutory provisions parenthetically noted at the beginning of the draft rule. Ms. Rosenberg noted that the purpose of these statutes on open hearings was to allow the media, as well as the public, to attend dependency hearings, while at the same time maintaining the confidential nature of the proceedings. (However, see A.R.S. § 8-557, which excludes the public from termination adjudication hearings.)

A.R.S. § 8-525(D) requires an admonition. The statute says, "At the beginning of a hearing that is open to the public, the court shall … (1) admonish all attendees…." Are attorneys and parties included within the phrase "all attendees?" If the hearing is closed to the public, the statute does not require the court to give the admonition. Because only the parties and their attorneys would be present at a closed hearing, then arguably the admonition should not apply to parties and their counsel when the hearing is open. Accordingly, Ms. Rosenberg asked if the word "public" should be included in draft Rule 41(f) ("admonition at public hearings"). Her proposed change is shown here in brackets: "At the beginning of a hearing that is open to the public, the court must admonish all [public] attendees as follows…." The ensuing discussion led members to draft Rule 41(a), which is new and includes a definition of "public." After concluding that participants are more akin to the public than to parties, members agreed to remove the word "participant" from section (a)'s enumeration of who was not included within the meaning of "public." Section (a) as modified would therefore define "public" as "anyone who is not a party, an attorney, or a CASA." With that change in section (a), members agreed with the insertion of the word "public" in section (f) (that is, "the court must admonish all <u>public</u> attendees.") A member further observed that this qualification in the admonition is consistent with the fundamental right of parents to discuss their cases outside the courtroom, without being restricted by the admonition. Members approved Rule 41 as modified.

Rule 41.1 ("child's rights"). Judge Quigley reiterated that the substance of this new rule was imported from provisions in current Rule 41. New Rule 41.1 includes a requirement that at any hearing after the initial hearing, if the child is not present, the court must inquire whether the child requested to attend the hearing. A member suggested that the provision clarify who the judge should direct this inquiry to, but the majority believed the court did not require that direction. Another member asked what would happen in cases involving infants, but others agreed that the court can make appropriate determinations in those situations without the need for additional specificity in the rule. Members accordingly approved Rule 41.1 as presented.

Rule 41.2 ("participants' rights"). Judge Quigley again observed that the substance of this new rule is derived from current Rule 41. However, members discussed a provision in draft Rule 41.1(a) ("right to notice") that requires the DCS to give notice to participants in cases where the DCS is a party. A.R.S. § 8-847, as well as current Rule 41, require the court to give notice, although in practice, the DCS provides notice and the draft rule conforms to that practice. A member noted that this practice is more effective because DCS often has better contact information for non-parties than the court. Another member observed that the purpose of notice is best fulfilled if the court gives notice as required by statute, and the DCS also gives notice as required by rule. Another suggested that the court can discharge its duty to give notice by requiring a party, i.e., DCS, to do so. Ms. Jorquez requested an opportunity to bring this issue to her DCS colleagues, and members deferred their approval of this rule pending her discussion.

A recurring issue in this and other rules is whether to refer to court events as "hearings" or "proceedings." It appears that Title 8 statutes as well as the draft rules utilize both terms. The choice of which term to use can vary based on the context, and until determined otherwise, these draft rules will continue to use both terms.

Rule 44 ("disclosure and discovery"). Ms. Jorquez' presentation of this rule addressed issues raised during the April 3 meeting. Since then, the workgroup substantially revised and improved the draft. The timing provisions are now more consistent, and the sections are in a more rational sequence. Ms. Jorquez noted that section (c) ("ongoing disclosure requirement") applies in both uncontested and contested proceedings, whereas section (d) concerns pretrial disclosure statements in contested cases only. The section (d) term "pretrial disclosure statements" was utilized to accommodate practices in different counties, some of which refer to "disclosure statements" and others which called the identical filing a "pretrial statement." A Workgroup 4 member advised that her workgroup used the qualifier "relevant" in a corresponding rule regarding disclosure in adoption cases; and although section (a) ("generally") refers to a duty to disclose "relevant" information, "relevant" was added to section (c) before the word "document." Workgroup 3 modified the text in draft Rule 44(g) ("sanctions") and it is no longer flowery like the previous draft.

Members had divergent opinions regarding the timing requirement in section (f) ("disclosure in contested hearings other than adjudications"). Subpart (f)(2) would require, if a contested hearing does not require a report prepared by DCS, that the parties disclose all relevant information "at least 10 days prior to the hearing or as ordered by the court." Some members favored a 5-day limit and contended that this would facilitate the parties' compliance with the rule. Other members thought 10 days was more reasonable and noted that the provision would permit the court to "order otherwise" when circumstances warranted a shorter time. On a straw poll, 12 members supported 10 days, and 7 would use 5 days. The draft will therefore specify 10 days, but the Chair requested that the rule petition flag this issue for the Court. Members approved Rule 44 as modified.

Rule 47.1 ("mandatory judicial determinations"). Mr. Turner began his presentation of Rule 47.1 by noting how the draft reorganized the current sections of this rule. He also advised that some determinations specified in this rule are mandated by federal law, while others are required under Arizona law. He reviewed each section of the draft. Section (c) ("the court's first order") is commonly referred to as the "contrary to welfare order." Under section (e) ("the periodic review hearing," also known as a "report and review"), if the court has not previously made a "reasonable efforts" finding, it must do so within 60 days after removal. This is substantively the same as the current rule. During his presentation of section (h) ("12 months after removal and thereafter"), the words "be in writing" were added. Section (j) ("extended foster care finding") was added in 2019 following a legislative enactment, and this section includes a reference to the pertinent statute, A.R.S. § 8-521.02. Mr. Turner suggested adding to section (j) the words "in writing," and those two words were added after "court must determine."

Judge Kreamer inquired whether section (c) refers to an emergency order removing the child from the home, or the first order during a subsequent court hearing. In response, it was noted that subpart (c)(2) refers to an order entered "in a dependency proceeding," that is, after a dependency petition was filed. Because a dependency petition has not been filed when an emergency order is entered, there is not yet a "dependency proceeding." According, the reference in section (c) means the first court order in a pending dependency proceeding. Professor Atwood asked if Rule 47.1 should contain ICWA requirements. Mr. Turner replied that the requirements in the draft rule mirror federally mandates in any dependency proceeding, and that ICWA matters are addressed elsewhere. Finally, Judge Armstrong suggested a change in subpart (c)(2), from "60 days of the removal" to "60 days after the removal." After making that change, members approved Rule 47.1 as presented.

3. <u>Report from Workgroup 1.</u> Following up on the Task Force discussion at the April 3 meeting, Ms. Beckmann advised that she had researched whether other states recognize claims of ineffective assistance of court-appointed counsel in juvenile cases. However, because of the volume of items on today's agenda, she requested that a

discussion of her research be deferred to a future meeting. Ms. Beckmann then continued her presentation of the appellate rules, beginning with Rule 103.1.

Rule 103.1 (general provisions"). A portion of the substance of current Rule 103, sections (a) and (b), became new Rule 103 ("right to appeal"). New Rule 103 addresses who may appeal and orders that can be appealed, and members approved new Rule 103 at the April 3 meeting. New Rule 103.1 includes the remaining provisions of current Rule 103 and concerns subjects such as the form of the caption, suspension of the appeal, appointment of counsel, and applicability of the ARCAP.

Workgroup 1 concluded that provisions concerning the caption of a juvenile appeal in current Rule 103(a) don't work well in practice. The workgroup replaced those provisions with a more concise and easier to understand Rule 103.1(a) ("caption on the notice of appeal") that focus on the abbreviated name of the child who is the subject of the appeal. Rule 103.1(b) concerns the suspension of a trial court order pending the appeal. Although workgroup members agreed that the juvenile court is in the best position to determine whether its order should be stayed, A.R.S. § 8-235(B) authorizes only the appellate court to do so. Although the draft rule therefore conforms to the statute, the workgroup suggests a statutory amendment that would allow a juvenile court to stay its orders. Sections (c) ("priority of juvenile appeals") and (f) ("bond") are uncontroversial.

Section (d) ("suspension of rules") permits the appellate court to suspend a rule, except the rule regarding the time for filing a notice of appeal. Section (e) ("appointment of counsel") permits the juvenile or appellate court to appoint an attorney for a party to an appeal; the workgroup believes its draft is consistent with the process used in Pima County for making appointments from a list maintained by the Office of Court Appointed Counsel. Section (g) ("continuing juvenile court jurisdiction") permits the trial court to "proceed within its legal authority on a remaining or new issue," but it omits a provision in current Rule 103(G) that allows the trial court to grant the appellant's motion to dismiss the appeal; this was omitted because the workgroup believes that dismissal is customarily the appellate court's prerogative. A provision that Rule 103.1(g) does not authorize the juvenile court to extend the time for filing briefs, motions, and other documents in the appellate court appears at the end of draft section (g).

Section (h) ("Arizona Rules of Civil Appellate Procedure") incorporates by reference 17 specified ARCAP rules and sections of rules. The introductory words in the corresponding provision of current Rule 103(G)—that adopts the referenced ARCAP rules "to the extent that they are not inconsistent with or expressly varied by these rules"—was deleted because it causes confusion and undermines certainty. A reference in section (h) to the applicability of ARCAP 4 includes an exception for the case caption, which is governed by draft Juvenile Rule 103.1(a) discussed above. Another reference to computing deadlines notes an exception that allows the juvenile court to excuse the

untimely filing of a notice of appeal, which is explained below. Members discussed whether to incorporate ARCAP 22, which concerns motions to reconsider. Members believed that in many cases, these motions simply delay the issuance of the mandate; if there truly are errors, a party can file a petition for review. Moreover, a motion to publish, which is often filed as a Rule 22 motion, could still be filed outside the scope of Rule 22. On the other hand, the appellate court can summarily deny a motion to reconsider, which minimizes the extent of delay. Members deferred to a later time a determination about including a reference to Rule 22. With reference to ARCAP 24, which pertains to the issuance of mandates, a caveat in draft Juvenile Rule 103.1(h) allows the appellate court to immediately issue its mandate upon counsel filing an affidavit of no colorable claim under a provision currently located in Rule 106(G).

Members approved Rule 103.1 except for the issue noted above regarding the inclusion of a reference to ARCAP 22.

Rule 104 ("notice of appeal"). In addition to having a convoluted title ("Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal"), current Rule 104 is lengthy and touches on multiple subjects. The workgroup's draft focuses Rule 104 on only the notice of appeal and separates other subjects in the current rule into new, freestanding Rules 104.1 and 104.2.

Ms. Beckmann observed that subparts (1) and (2) of draft Rule 104(a) ("time for filing a notice of appeal and notice of cross-appeal") are clearer and more concise than the current provisions, and these subparts generated no questions or comments. She then explained a newly proposed subpart (3) ("effect of certain post-judgment motions on notice of appeal; amended notice of appeal"). Currently, after a notice of appeal is filed, a trial court cannot consider either a Rule 46(e) motion to set aside the judgment, or—under a rule to be drafted that will use as a starting point Juvenile Rules 52(b) and 59(d) and Family Law Rule 83—a motion to alter or amend the judgment. However, if the juvenile court could consider either of these motions, it might make the appeal moot, or limit the issues on appeal, and therefore serve judicial economy. New subpart (3) would accordingly extend the time for filing a notice of appeal or cross-appeal until the trial court has entered a final order disposing of these motions, and then allow a party to file a notice of appeal after the court enters that order. If a party had previously filed a notice of appeal, the party would notify the appellate court of the pendency of the motion, and the appellate court would suspend the appeal until it is notified of the disposition of the motion. If the juvenile court denies the motion, the draft provides that the appealing party could file an amended notice of appeal.

Subpart (a)(4) clarifies that other than as provided in (a)(3), a post-judgment motion does not extend the time for appeal. Subpart (a)(5) ("delayed appeal or cross-appeal") is the analog for current Rule 108(b), which was curiously located at the end of the appellate rules. The current provision has now been relocated in draft Rule 104 with

the other provisions concerning notices of appeal. The draft rule on delayed appeals contains a different standard than the current rule, "good cause" rather than "excusable neglect," because the latter focuses on counsel's inaction and excludes reasons that might involve client-based good cause or show another legitimate basis for allowing a delayed appeal. The draft rule, unlike the current rule, includes a provision that requires the moving party to file a notice of appeal once the court grants a motion to file a delayed appeal, a step that is occasionally overlooked. At a member's suggestion, the word "juvenile" was added to this subpart to clarify that the motion to file a delayed appeal is heard by the juvenile court, not by the appellate court.

Section (b) addresses the content of the notice of appeal. Forms for the notice of appeal currently used in Pima County allow the appealing party, who is usually represented by trial counsel rather than appellate counsel, to check a series of boxes for designating the record on appeal, but often trial counsel, out of an abundance of caution, will check every box, which is unnecessary and expensive. Ms. Beckmann will look later at revisions to these forms. Subpart (b)(4) requires a notice of appeal to include an attorney's certification confirming that counsel discussed the merits of the appeal with the client and obtained the client's authorization to file the notice. The subpart includes an elaborate process to assure the notice contains this certification. It does not allow the juvenile court to immediately strike the notice, because if the omission is later corrected and a notice is refiled, it could be untimely. But if the notice ultimately lacks the certification, the rule allows the juvenile court to direct the clerk not to process the appeal, or the appellate court to dismiss the appeal. The intent of these provisions, which are also in the current rule, is to make the filing of a notice of appeal thoughtful and deliberative, and to reduce the number of appeals that clients have no genuine interest in pursuing.

Section (c) ("distribution of the notice") is restyled and straightforward, and members had no questions or comments on this section. Members then approved Rule 104 as presented.

Rule 104.1 ("the record on appeal"). This new rule is derived from current Rule 104, sections (D) through (J). The new rule is designed, among other things, to remove from juvenile court clerks any uncertainly about what to include in the record on appeal. Draft section (a) therefore creates a "presumptive" record on appeal, which includes filed documents, admitted exhibits, and transcripts of proceedings that relate to the final order. The transcripts in the presumptive record are identified in subpart (a)(2) by referring to the pertinent hearing. These hearings generally correspond to provisions in draft Rule 103 concerning orders that are appealable. A provision at the end of subpart (a)(2) allows the appellant to exclude a transcript from the presumptive record, but as a practical matter, it's unlikely that counsel would do that.

Section (b) permits the appellant to promptly file a "supplemental designation of record," which can identify an exhibit that was marked and offered but not admitted into evidence, or a transcript that was not in the presumptive record but directly or indirectly resulted in the order from which the appeal is taken. Under section (c), the appellee within a short time thereafter can file a separate supplement designation. The condition for any party's supplement designation is that the designating party "reasonably believe" that the item is "necessary for proper consideration of issues likely to be raised on appeal." After the time has passed for filing a supplemental designation under sections (b) or (c), a party can file a motion in the appellate court requesting supplemental designation, with the burden becoming higher as more time passes following the appellate clerk's notice that the record is complete. The required showing initially is good cause; if the motion is file thereafter, the burden becomes extraordinary circumstances. A provision in section (f) permits the appellate court to impose sanctions under ARCAP 25 on a party who adds unnecessary items or transcripts to the presumptive record. Members approved Rule 104.1 as presented.

Rule 104.2 ("notice of non-participation"). This rule derives from current Rule 104(C)(2). Although it retains the substance of the current rule, it is more focused and comprehensible as a reorganized and free-standing rule. A member noted a conflict between draft section (a), which requires a party to file a notice of non-participation in the appellate court, and draft section (b), which requires filing of the notice in the juvenile court. Members resolved the conflict by deleting the filing location in section (a), thereby retaining in section (b) the juvenile court as the only place for filing the notice. With this correction, members approved Rule 104.2.

4. Workgroup 2. Workgroup 2 presented three rules.

Rule 23 ("detention and probable cause hearing"). Ms. Phillis noted that the workgroup revised the intake process described in this rule, so it more accurately reflects actual practices. Mr. Meaux and Ms. Smith obtained further input on the process from their respective staffs to assure the rule's accuracy. Ms. Phillis proceeded to review each section of draft Rule 23, including draft section (c) ("length of detention"), which affirms the existing 24-hour requirement for filing a petition or complaint when the juvenile has been detained.

If a detention hearing is not conducted within 24 hours after the filing of a petition or criminal complaint, then subpart (c)(2) requires that the juvenile be released to a parent or other responsible person, and if there is none, be released to DCS. Although release to DCS is allowed under the current rule in this circumstance, a member asked about the legal authority for doing so. The inquiring member noted that by statute, DCS cannot assume custody without first completing an investigation, which might ultimately determine that DCS custody is not required. Another member responded that if there was no parent or responsible person, the juvenile would be considered abandoned upon

release from detention, and other than releasing the juvenile to DCS, the only remaining alternative would be releasing the juvenile back to the street, which is unacceptable. Judge Kreamer advised that he Maricopa County bench is working with DCS and other stakeholders to informally address this. The remedy might include reporting the situation on the DCS hotline, as provided by A.R.S. §§ 8-455 and 8-456, and that would trigger a DCS investigation. To add clarity to the rule provision, Judge Kreamer proposed adding the words "to assume physical custody" in subpart (c)(2) ("if no parent or other responsible person can be located to assume physical custody, the court must release the juvenile to DCS.") On a straw poll, two members opposed this rule amendment because they believed this provision is not legislatively authorized. However, the other members approved this amendment.

Section (f) permits the court to enter a pre-adjudication order requiring DNA testing pursuant to A.R.S. § 13-610(O). The workgroup found the taking of a DNA sample before the juvenile's adjudication legally and logistically problematic. The workgroup requested the members to defer approval of section (f) until the workgroup clarifies the legal requirements or, if appropriate, suggests a legislative change. With that caveat, members approved Rule 23.

Rule 28 ("advisory hearing"). Ms. Beringhaus began the presentation of Rule 28 by noting that the change of plea provisions in current Rule 28 were relocated to a new, free-standing Rule 28.1, because a change of plea does not always occur at a Rule 28 advisory hearing. She then reviewed each section of draft Rule 28, including section (b) on time limits. The restyled rule reiterates that the advisory hearing for a detained juvenile must be held within 24 hours after the filing of the petition, but it also clarifies that if a 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 filing. Members noted that advisory hearings for detained juveniles are frequently conducted with the detention hearing (although in Yavapai County, if the detention hearing occurs on a weekend, the advisory hearing is held the following Monday.) Draft subpart (c)(6) includes a provision concerning DNA testing, and the observations Ms. Phillis made about DNA testing in her presentation of Rule 23 also apply here. Except for revisiting the DNA provision, members approved Rule 28 as presented.

Rule 28.1 ("admission or change of plea"). Ms. Phillis explained that this new rule is based on the substance of current Rule 28(C), but the workgroup also used the change of plea provisions in the criminal rules as a model this new rule. Ms. Phillis reviewed the draft. Rule 28.1(a) would allow the juvenile to enter an admission "at any pre-adjudication or adjudication hearing." Section (b) ("procedure"), subpart (2) ("advise the juvenile of rights") requires the court to advise the juvenile of immigration consequences. Members reformatted the provision by adding a period after "immigration consequences," and then describing those consequences in subsequent sentences. Members had concerns that the workgroup's draft language might be suitable for a

criminal defendant, but certain terms, such as "pleading guilty" or "admission of guilt," were not appropriate for a juvenile proceeding. The Chair requested the workgroup to make the requisite changes. Members also commented on subpart (b)(3) ("determine compliance with victim's rights"). They agreed that saying "rights provided under law" was appropriate in lieu of enumerating each right. However, they believed the phrase "right to be present and, if present, to be heard" was inaccurate, and they changed that to "right to be present and to be heard." Members will review the workgroup's revisions to the subpart on immigration consequences at a future meeting.

5. **Workgroup 4.** Workgroup 4 presented eight rules, most of which were brief or revisited.

Rule 65 ("initial termination hearing") and ***Rule 66 ("termination adjudication hearing").*** Professor Atwood explained the workgroup's recent revisions to Rule 65(f) and a parallel provision in Rule 66(g), which both concern a parent's failure to appear at a termination hearing. An issue with the workgroup's previous versions of these sections is that they required the court before proceeding to a hearing to first acknowledge that the petitioner had proven grounds upon which relief could be granted. However, determining whether those grounds were proven was the purpose of conducting a hearing. The revised language addresses this contradiction by saying that "the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (1) [that concern a parent's failure to appear] are satisfied and the petitioner or moving party can meet the burden of proof required for termination." Subsequent provisions in both rules were modified by adding specific references to federal ICWA statutes and regulations. Rule 66(h) also included a corrected reference to Rule 3.1(d)(4) concerning the social study.

A member noted that if a termination proceeding was initiated by motion, service of the motion might have been made on the parent's attorney rather than the parent, and the parent might not have personally received the requisite admonitions concerning the need to appear at court hearings. It is therefore important to assure the parent has been served with the required admonition forms before these hearings. Members then approved the changes to these two rules.

Rule 67 ("scope of rules"). Professor Atwood noted that Rule 67 is the first of the adoption rules (Part IV of the current rules.) Draft Rule 67 is brief and for the most part tracks language used in Rule 36 ("scope of rules," which is the first rule in current Part III.) Members had no questions or comments and the rule was approved as presented.

Rule 68 ("meaning of terms"). Professor Atwood noted that the definition of "parent" in section (a) ("generally") is inclusive ("parent includes…") rather than exclusive. The workgroup's draft said that "'parent' includes the birth parent whose parental rights have not been terminated, etc." but a member noted that an adoptive

parent's rights can also be terminated, so the revised draft says "includes the birth or adoptive parent, etc." The workgroup shorted the explanation of "investigative report" in section (a) because the required substance of the report is prescribed by statute. Revised section (b) on ICWA placement preferences includes cross-references to pertinent federal authority. Members approved Rule 68 as presented.

Rule 69 ("appointment, appearance, and withdrawal of counsel"). Ms. Coughlin reviewed the revisions, which for the most part conformed to the provisions of Rule 39 ("appearance, substitution, and withdrawal; responsibility of parties"). Members discussed whether a provision in current Rule 69, that the court "shall order the person to provide proof of financial resources by filing a financial questionnaire provided by the court," was directive or permissive. The workgroup concluded that although the court must inquire into the party's ability to pay, it may do so by oral questions or by requiring written information, and it used the word "may" in these provisions. A member observed that the court appoints counsel in adoption cases only infrequently. Ms. Coughlin requested the editorial group to harmonize a phrase in Rule 69(b)(1) ("personally appearing") with a corresponding phrase in Rule 39(a)(1) ("appearing personally"). Members then approved Rule 69.

Rule 70 ("appointment of guardian ad litem"). Mr. Owsley presented Rule 70. Rather than duplicating what is already contained in a dependency rule, the workgroup reduced current Rule 70 to a single sentence that says, "The court may appoint a guardian ad litem in an adoption proceeding under the standards set forth in Rule 40." Members had no questions or comments and approved the draft rule.

Rule 71 ("telephonic testimony; video conferencing"). Judge Portley advised that Workgroup 4's revisions to this rule were pending Workgroup 3's revisions to Rule 42, which concerns the same subject. Judge Quigley added that Workgroup 3's revisions to Rule 42, although still in progress, will be modeled on Family Law Rule 8.

Rule 72 ("computing and extending time"). Judge Portley noted that Rule 72 includes a reference to Civil Rule 6 and governs extensions as well as computations of time. Rule 72 is like Juvenile Rule 43, which has the identical title, but Rule 72 does not contain a cross-reference to Rule 43. Members approved Rule 72 as presented.

6. <u>Roadmap; call to the public; adjourn.</u> The Chair confirmed the dates for future Task Force meetings: July 17, August 21, September 25, October 23, November 20, and December 18, 2020. She requested staff to determine a date for adding another meeting, if one becomes necessary. The editorial group will begin its review of the approved rules shortly.

There was no response to a call to the public.

The meeting adjourned at 3:18 p.m.

JUVENILE RULES TASK FORCE

Date of Meeting:	**This agenda item is for:**	**Subject:**
July 17, 2020	[ ] Formal Action/Request [ ] Information Only [X] Other	**Standardized form of juvenile arrest warrant**

Presenter(s): Jerry Landau
Government Affairs Director, AOC

Discussion: Criminal Rule 41 contains two standardized forms* for a criminal arrest warrant, Forms 2(a) and 2(b). However, there are no corresponding, standardized forms for juvenile arrest warrants. There are significant variations in the juvenile arrest warrant forms currently used by Arizona counties, and there are even variations of forms used within a county.

Would standardized forms of juvenile arrest warrants, for statewide use, be beneficial to the superior court, law enforcement agencies, and other stakeholders? Mr. Landau will introduce this question and request members' input on whether standardization is desirable.

*Pending rule petition number R-20-0004 requests changes to current Forms 2(a) and 2(b). The proposed new forms are available for your review by going to the last two pages of the Reply: click here for the Reply.

Form 4. Counsel's Certification of Diligent Search

(May be filed with the Juvenile Court when, after a diligent search, counsel cannot locate a client and does not pursue an appeal.)

1. I, __________, am counsel for [insert party's name] in the above captioned case.

2. On __________, the juvenile court filed a signed minute entry/signed formal order that [briefly describe order]. Since that date, I have made unsuccessful but diligent efforts to contact [insert party's name] for the purpose of:
__________ a) discussing the merits of an appeal.
__________ b) retaining his/her signature on the Notice of Appeal.

3. I have made the following efforts.
__________ a. Sent a letter with proper postage affixed to the last known address of my client and:
__________ b. Ascertained through the Main Post Office in __________ that my client has not filed a forwarding address.
__________ c. Telephoned my client with no response.
__________ d. Checked with the ___ telephone company, and there is no new telephone listing on file for my client.
e. Undertaken the following additional inquiry into the whereabouts of my client:

4. I am unable to determine the whereabouts of my client.
I hereby certify that the above stated facts are true and correct.
Dated this ___ day of __________, 20 ___

Signature.
Name, address, telephone.
Counsel for ____________________

Credits

Added as Form VI Jan. 20, 2006, effective July 1, 2006. Redesignated as Form IV by Order dated Dec. 8, 2006, effective Jan. 1, 2007.

Editors' Notes

HISTORICAL NOTES

Former Form IV, as added Jan. 20, 2006, effective July 1, 2006, was repealed by Order dated Dec. 8, 2006, effective January 1, 2007. At that time, existing Form VI was redesignated as IV.
17B A. R. S. Juv. Ct. Rules of Proc., Form 4, AZ ST JUV CT Form 4
Current with amendments received through 05/1/2020.

Rule 46.1. Altering or Amending a Final Order

(a) Generally.

(1) ***Meaning of Final Order.*** The meaning of "final order" is provided in Rule 103(b).

(2) ***Grounds for Altering or Amending a Final Order.*** The court may on its own or on motion alter or amend a final order on any of the following grounds:

(A) the court did not enter sufficient findings of fact or legal conclusions as required by law;

(B) Any irregularity in the proceedings, including misconduct of the other party, that deprived the party of a fair trial;

(C) accident or surprise that could not reasonably have been prevented;

(D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;

(E) a clerical mistake, or a mistake arising from oversight or omission.

(b) Time to File a Motion; Response.

(1) ***Motion.*** A motion under this rule must be filed not later than 10 days after the entry of a final order. The juvenile court may not extend this deadline or excuse an untimely motion except on a showing of extraordinary circumstances.

(2) ***Response.*** Within 10 days after the filing of a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the non-moving party an opportunity to file a response.

(3) ***Contents of Response.*** The response must address any issues raised in the motion, unless limited by the court. The response should also address any issues that might arise if the motion is granted.

(c) Court Action. The court may deny the motion, or it may vacate a final order, take additional testimony when appropriate, and enter a new or amended order. The relief, if granted, must be limited to the question or questions found to be error, if separable. Any order granting a motion made pursuant to this rule must specify with particularity the ground or grounds for the court's order. A new order may require further proceedings and need not be a final order.

(d) Successive Motions. No party may file a motion to alter or amend an order granting or denying a motion under this rule.

Modeled on Rules Fam. Law Proc., Rule 83 and Rule 59(a), R. Civ. P., Motion for New Trial

Rule 46.1. Altering or Amending a Final Order

(a) Generally.

(a)

(1) *Meaning of Final Order.* The meaning of "final order" is provided in Rule 103(b).

(1)

(2) (2) *Grounds for Altering or Amending a Final Order.* The court may on its own or on motion alter or amend a final order on any of the following grounds:

(A) tthe court did not enter sufficient findings of fact or legal conclusions as required by law;w. [modeled on Rule 52(b), Ariz. R. Civ. P.]

(A)

(B) Any irregularity in the proceedings, including misconduct of the other party, that deprived the party of a fair trial;

(C) accident or surprise that could not reasonably have been prevented;

(D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;

(E) a clerical mistake, or a mistake arising from oversight or omission.

(b) Time to File a Motion; Response.

(1) *Motion.* A motion under this rule must be filed not later than 10 days after the entry of a final order. The juvenile court may not extend this deadline or excuse an untimely motion except on a showing of extraordinary circumstances.

(2) *Response.* Within 10 days after the filing of a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the non-moving party an opportunity to file a response.

(3) *Contents of Response.* The response must address any issues raised in the motion, unless limited by the court. The response should also address any issues that might arise if the motion is granted.

(c) Court Action. The court may deny the motion, or it may vacate a final order, take additional testimony when appropriate, and enter a new or amended order. The relief, if granted, must be limited to the question or questions found to be error, if separable. Any order granting a motion made pursuant to this rule must specify with particularity the ground or grounds for the court's order. A new order may require further proceedings and need not be a final order.

Successive Motions. No party may file a motion to alter or amend an order granting or denying a motion under this rule.

~~(A) the court did not enter sufficient findings of fact or legal conclusions as required by law. [modeled on Rule 52(b), Ariz. R. Civ. P.]~~

~~(B) any irregularity in the proceedings, including misconduct of the other party, that deprived the party of a fair trial;~~

~~(C) accident or surprise that could not reasonably have been prevented;~~

~~(D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence.~~

~~(E) a clerical mistake, or a mistake arising from oversight or omission.~~

~~(b) Time to File a Motion; Response.~~

~~(1) ***Motion.*** A motion under this rule must be filed not later than 10 days after the entry of a final order. The juvenile court may not extend this deadline or excuse an untimely motion except on a showing of extraordinary circumstances.~~

(2) ***Response.*** Within 10 days after the filing of a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the non-moving party an opportunity to file a response.

(3) ***Contents of Response.*** The response must address any issues raised in the motion, unless limited by the court. The response should also address any issues that might arise if the motion is granted.

(c) Court Action. The court may deny the motion, or it may vacate a final order, take additional testimony when appropriate, and enter a new or amended order. The relief, if granted, must be limited to the question or questions found to be error, if separable. Any order granting a motion made pursuant to this rule must specify with particularity the ground or grounds for the court's order. A new order may require further proceedings and need not be a final order.

(d) Successive Motions. No party may file a motion to alter or amend an order granting or denying a motion under this rule.

(d)

Rule 30. Disposition

(a) Disposition ~~Investigation and~~ Report. Before the disposition hearing, the court shall [**Staff Note:** Should this be "must" or "may?"] order the juvenile probation officer to conduct an investigation [**Staff Note:** Conduct an investigation of what? If this is the disposition report, could the words "conduct an investigation and" be deleted, as shown?] and submit a written report to the court with recommendations regarding the juvenile's disposition. The disposition report is confidential and must be withheld from public inspection except upon court order.

(1) ***Contents of the Report.*** The disposition report must:

(A) be submitted to the court 3 days before the disposition hearing;

(B) be made available to counsel for the parties, or to the parties if unrepresented by counsel, 3 days before the hearing; [**Staff Note:** So if the report is submitted at 4: 30 p.m. 3 days before the hearing, as allowed by (a), it must be made available to counsel the same day? This time line does not seem feasible.]

(C) include a written victim impact statement as required by law;

(D) provide the court with information regarding restitution, if the victim requests restitution;

(E) make recommendations regarding the most appropriate disposition for the juvenile; and

(F) include and mark any Rule 19(A)(2) social file records relevant to the recommendations.

(2) ***Availability of Report to the Victim.*** On request, the court must provide the victim with the following information contained in the disposition report:

(A) the juvenile's referral and detention history; [**Staff Note:** This combines 2(a) and 2(e) of the current rule.]

(B) the probation officer's case assessment and recommendations for treatment and disposition; [**Staff Note:** This combines 2(b) and 2(d) of the current rule.]

(C) the disposition and treatment recommendations. [**Staff Note:** How is this different from the preceding item?]

(D) the probation officer's recommendations for treatment and disposition; and

(E) the juvenile's detention history.

(3) ***Waiver of Report.*** If the court approves, the parties may waive the disposition report, but only if the victim did not provide a written impact statement as provided by law.

(4) ***Evaluation of Juvenile.*** Before the disposition hearing, the court may order the juvenile to submit to a physical, psychiatric, or psychological evaluation, or any combination of evaluations.

(5) ***Release of Information.*** The court may withhold from the parties any material that might be psychologically damaging to them, or that might be destructive of relationships between family members ~~of the family concerned may, in the discretion of the court, be withheld from any of the parties in question~~. [**Staff Note: "**Parties in question?"]

(6) ***Filing of Social File Information and Records in Legal File.*** The clerk must file disposition reports and any Rule 19(A)(2) social file records provided with the report and marked confidential in a segregated portion of the legal file.

(b) Disposition Hearing.

(1) ***Time Limits.***

(A) *Juvenile Who is Detained.* If the juvenile is detained, the court must hold a disposition hearing within 30 days of the adjudication.

(B) *Juvenile Who is Not Detained.* If the juvenile is not detained, the court must hold a disposition hearing within 45 days of the adjudication.

(C) *Continuance.* The court may continue a disposition hearing on a motion showing good cause or on its own. If the juvenile is detained, the disposition may be continued for more than 30 days after the date initially set for disposition, but only if the juvenile consents in open court.

(2) ***Procedure.*** When the court makes a finding that a juvenile is delinquent or incorrigible, the court shall make a disposition of the matter as provided by law or set the matter for a disposition hearing. [**Staff Note:** Is the preceding sentence necessary?] The court may assign the matter to another judge or a juvenile hearing officer. The victim has the right to be present and to address the court ~~at any disposition hearing, as provided by law~~.

(3)

(4) ***Findings and Orders***. At the close of the disposition hearing, the court must make findings in a minute entry or written order. If the disposition is probation, the order must include the conditions of probation.

(5) ***Right to Appeal.*** Following the entry of its disposition order, the court must explain to the juvenile the right to appeal and the method of appeal.

(c) Amended Final Order. On a party's motion filed no later than 10 days after the entry of a final order, the court may amend its order to correct errors or to make additional findings. This deadline may not be extended. [**Note:** Beth Beckmann suggested adding section (c) in conjunction with the provisions concerning time-extending motions in Rule 104.]

Form 5(a)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN _______ COUNTY

	)	Case No.: _______
	)	
Caption per Rule Ariz. R. Juv. P 103.1(a)	)	**NOTICE OF APPEAL**
(Example: In re Delinquency of A.B.)	)	(Delinquency/Incorrigibility Proceeding)
	)	
	)	Division _______
	)	
	)	
	)	
___________________________________	)	

NOTICE IS HEREBY GIVEN that ________________________, [name of party] appeals to the Arizona Court of Appeals from the following (check the applicable boxes and insert the date of the final orders that are the subject of the appeal):

[ ] 1. A disposition order entered on ________________, following an adjudication finding a juvenile delinquent or incorrigible, that includes an order of restitution.

[ ] 2. An order of restitution entered on ___________, after the disposition order referred to above.

[ ] 3. A disposition order entered on __________, following an order finding a juvenile violated probation.

[ ] 4. An order entered on ___________, transferring the juvenile for prosecution as an adult.

[ ] 5. An order granting or denying a motion to set aside the judgment or a motion to alter or amend the judgment.

ATTORNEY REPRESENTATION (Not applicable to a government agency)

The name of the attorney representing the juvenile in the superior court is ______. This attorney was [ ] court-appointed attorney or [ ] privately retained.

The juvenile requests that the court appoint a new attorney to represent the juvenile on appeal. [ ] Yes [ ] No

AVOWAL BY THE APPEALING PARTY'S ATTORNEY

[ ] AFTER CONSULTATION. The undersigned attorney avows that he or she has communicated with the client after entry of the order being appealed, as required by Rule 104(b)(4), discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.

[ ] WITHOUT CONSULTATION. The undersigned attorney avows that, after unsuccessful but diligent efforts to contact the client to discuss the merits of the appeal, he or she has been unable to and has not included the avowal required by Rule 104(b)(4). Undersigned's efforts include the following:

[ ] Sent a letter with proper postage affixed to the last known address of client.

[ ] Ascertained through the main post office in ____________ that client has not filed a forwarding address.

[ ] Telephoned client, with no response.

[ ] Sent a text message to client, with no response.

[ ] Sent an email to client, with no response.

[ ] Other (describe): ____

Dated this __ day of __________, 20___.

____

Signature, attorney for appellant

____

____

Name, address, telephone.

Counsel for ______________.

Form 5(b)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

	)	Case No.: _______
	)	
Caption per Rule Ariz. R. Juv. P 103.1(a)	)	**NOTICE OF APPEAL**
(Example: In re Dependency of A.B.;	)	(Dependency, Severance, Title 8
In re Severance of Rights to A.B.)	)	Guardianship, Adoption, Emancipation
	)	Proceeding)
	)	
	)	Division ______
	)	
____________________________________	)	

NOTICE IS HEREBY GIVEN that ________________________, [name of party] appeals to the Arizona Court of Appeals from the following (Check the applicable boxes and insert the date of the final orders that are the subject of the appeal):

[ ] 1. An order entered on ________________ granting a dependency petition and declaring a child dependent, or denying or dismissing a dependency petition.

[ ] 2. A disposition order entered on ___________, after a juvenile has been adjudicated dependent.

[ ] 3. An order granting or denying a motion to intervene, entered on __________.

[ ] 4. An order relieving the Department of Child Safety of its obligation to provide reunification services, entered on _____________.

[ ] 5. An order in a dependency removing a child who has been adjudicated dependent from a parent's physical custody, entered on _________________.

[ ] 6. An order terminating visitation, entered on _____________.

[ ] 7. An order granting or denying a petition or motion for termination of parental rights, entered on _____________.

[ ] 8. An order granting or denying an adoption petition, entered on _____________.

[ ] 9. An order granting or denying a Title 8 guardianship petition or motion, entered on _____________.

[ ] 10. An order granting or denying a petition for emancipation, entered on _____________.

[ ] 11. An order granting or denying a motion to set aside a final order under Rule 46(e), or a motion to alter or amend the judgment under Rule ____, entered on ______________.

[ ] 12. The order entered on _____________, which is a final, appealable order under Arizona law.

ATTORNEY REPRESENTATION (Not applicable to a government agency)

The name of the attorney representing the appealing party in the superior court is ___________________. This attorney was [ ] court appointed or [ ] retained.

The appealing party requests that a new attorney be appointed to represent the party on appeal.

[ ] Yes. [ ] No.

AVOWAL BY THE APPEALING PARTY'S ATTORNEY

[ ] AFTER CONSULTATION. The undersigned attorney avows that he or she has communicated with the client after entry of the order being appealed, as required by Rule 104(b)(4), discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.

[ ] WITHOUT CONSULTATION. The undersigned attorney avows that, after unsuccessful but diligent efforts to contact the client to discuss the merits of the appeal, he or she has been unable to and has not included the avowal required by Rule 104(b)(4). Undersigned's efforts include the following:

[ ] Sent a letter with proper postage affixed to the last known address of client.

[ ] Ascertained through the main post office in ____________ that client has not filed a forwarding address.

[ ] Telephoned client, with no response.

[ ] Sent a text message to client, with no response.

[ ] Sent an email to client, with no response.

[ ] Other (describe): ____

Dated this __ day of __________, 20___.

____

Signature, attorney for appellant

____

____

Name, address, telephone.

Counsel for ______________.

IF THIS NOTICE OF APPEAL IS FILED BY A PARTY AND NOT BY AN ATTORNEY:

____

Signature of appellant/cross-appellant

____

____

Name, address, telephone

Dated this __ day of __________, 20___.

____

Signature of appealing party

Copies of the foregoing to:

DELIVERED

DELIVERED

Form 6

Caption

In re: Dependency as to YZ Supplemental Designation of the Record

The appellant [ ] the appellee [ ] (check one of these boxes) files this Supplemental Designation of the Record under Rule 104.1 of the Rules of Procedure for the Juvenile Court.

Excluding items or transcripts (for the appellant's use only). Pursuant to Rule 104.1(a), the appellant requests the juvenile court clerk to exclude the following documents, exhibits, or transcripts from the presumptive record on appeal because the documents, exhibits, or transcripts are not necessary for the appellate court's proper consideration of the issues raised by this appeal (if none are excluded, write "none").

____

Including additional items or transcripts. In addition to the presumptive record described in Rule 104.1(a), the undersigned requests the juvenile court clerk to include in the record transmitted to the court of appeals the following items, which the undersigned reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal.

A. The following exhibit(s) that have been marked and offered but not admitted into evidence (specify each exhibit's identification number and describe the exhibit):

____

B. All or parts of the transcripts of the following designated proceedings, which are not part of the presumptive record under Rule 104.1(a) but that directly or indirectly resulted in the order from which this appeal is taken (specify the nature of the proceeding, the date of the proceeding, and the name of the court reporter, and if designating only part of a transcript, also describe the requested portion):

____

C. The following documents, which were not part of the presumptive record or marked as exhibits:

____

____

D. Other (specifically describe any other exhibit, transcript, or item not identified above):

____

The undersigned's signature is an acknowledgement that undersigned has read the sanctions provision in Rule 104.1(f).

Dated + Signed:
Certificate of Service

Rule 19.1. Mandatory Judicial Determinations~~; Determinations Required Under Title IV-E of the Social Security Act~~

[**Staff Note:** This rule seems to have some of the attributes of Rule 47.1, which concerns dependencies. Would it be appropriate to consolidate Rules 19.1 and 47.1? The subject of these two rules seems to overlap. See further rule petition No. R-19-0037, effective 08.27.2019.]

(a) Generally. When a child has been removed from the child's home by state authority in a delinquency proceeding,

(1) the court must protect the child from abuse or neglect;

(2) the court must make the mandatory determinations set out in this rule in writing within the designated times; and

(3) the court must state in a written order or minute entry a factual basis for each determination.

(b) The Court's First Order.

(1) ***Contrary to Welfare Determination.*** In the court's first order that authorizes or sanctions the removal of a child from the home in a delinquency proceeding, the court must determine in writing whether continuation of the child's residence in the child's home would be contrary to the welfare of the child. The court must include a factual basis for its determination.

(2) ***Reasonable Efforts Regarding Removal Determination.*** After the child is removed from the home, the court's first order 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 after the removal.

~~**(c) Periodic Judicial Reviews.** The court must review a case subject to this rule at least every 6 months after the disposition hearing, or as otherwise required by statute. At each review, the court must determine:~~

(1) ~~whether the juvenile is in a safe placement;~~

(2) ~~whether the placement is appropriate, and whether it is still necessary;~~

(3) ~~the extent of compliance with the case plan;~~

(4) ~~the extent of progress that has been made toward alleviating or mitigating the causes necessitating the out of home placement.~~

~~The court should also project a likely date by which the juvenile may be returned to and safely maintained in the hone or be placed for adoption or legal guardianship.~~

(c) Determination of Reasonable Efforts to Finalize a Permanency Plan. Within 12 months after the child is removed from the child's home, and at least once every 12 months thereafter, the court must determine whether reasonable efforts have been made to finalize the existing permanency plan. The court's findings must be in writing and contain a factual basis for each finding. ~~Before the time by which the judicial determination must be made, the probation department must file a report outlining the efforts made to finalize the permanency plan that is then in effect.~~

(d) Basis and Legal Effect of Title IV-E Judicial Determinations. Title IV-E judicial determinations may be based upon written or oral information received by the court. Title IV-E judicial determinations must not be given any effect in any other court proceedings.

Comment to the 2022 Amendment

The procedures in this rule must be employed where:

(a) the Juvenile Court has entered into signed agreements to obtain reimbursement under Title IV-E of the Social Security Act as implemented by the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89 (42 U.S.C. §§ 671(a)(15) through 672(a)(1)) and the implementing regulations of the Department of Health and Human Services (45 C.F.R. § 1356. 21), and

(b) a juvenile in a delinquency case is removed from his or her home or continues in a court-sanctioned placement out of the home and receives services that are eligible for federal reimbursement.

Rule 19.1. Mandatory Judicial Determinations~~; Determinations Required Under Title IV-E of the Social Security Act~~

[**Staff Note:** This rule seems to have some of the attributes of Rule 47.1, which concerns dependencies. Would it be appropriate to consolidate Rules 19.1 and 47.1? The subject of these two rules seems to overlap. See further rule petition No. R-19-0037, effective 08.27.2019.]

~~[**Staff Note:** The organization of this rule does not follow typical conventions. If this rule is retained, it should be reformatted by lettered and numbered sections and subparts.]~~

(a) ~~If a child has been removed from the child's home by state authority in a delinquency proceeding, the court must make protecting the child from abuse or neglect the first priority. [**Staff Note:** The "first priority" or "a priority?" Is the safety of a victim a lower priority?]~~ **Generally.** When a child has been removed from the child's home by state authority in a delinquency proceeding,

(1) the court must protect the child from abuse or neglect;

(2) the court must make the mandatory determinations set out in this rule in writing within the designated times; and

(3) the court must state in a written order or minute entry a factual basis for each determination.

~~**In the court's first order that sanctions the removal of a child, the court must determine whether continuation of the child's residence in the home [Staff Note: The child has already been removed, so should this be, "return of the child to the home?"] would be contrary to the child's welfare.**~~**(b) The Court's First Order.**

(1) ***Contrary to Welfare Determination.*** In the court's first order that authorizes or sanctions the removal of a child from the home in a delinquency proceeding, the court must determine in writing whether continuation of the child's residence in the child's home would be contrary to the welfare of the child. The court must include a factual basis for its determination.

(2) ***Reasonable Efforts Regarding Removal Determination.*** After the child is removed from the home, the court's first order 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 after the removal.

Notwithstanding the foregoing, the procedures in this rule must be employed where:

(c) the Juvenile Court has entered into signed agreements to obtain reimbursement under Title IV-E of the Social Security Act as implemented by the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89 (42 U.S.C. §§ 671(a)(15) through 672(a)(1)) and the implementing regulations of the Department of Health and Human Services (45 C.F.R. § 1356. 21), and

(d) a juvenile in a delinquency case is removed from his or her home or continues in a court-sanctioned placement out of the home and receives services that are eligible for federal reimbursement. [**Staff Note:** Subpart (b) seems to duplicate previous provisions of the rule. Also, the intended purpose of the phrase "notwithstanding the foregoing" is not particularly clear. Would the meaning of the rule be different, or clarified, if those words were removed?]

(1) ***Priority upon Removal from Juvenile's Home.*** If a juvenile is removed from his or her home in a delinquency proceeding, the court must make protecting the juvenile from abuse or neglect the first priority.

(2) ***Contrary to the Welfare Determination.*** In the first order that sanctions removal of a juvenile from the juvenile's home, the court must include a determination as to whether continuation of the juvenile's residence in the home would be contrary to the juvenile's welfare. This determination must be based upon case specific information described in the court order, signed by the judge.

(3) ***Judicial Determination of Reasonable Efforts to Prevent a Juvenile's Removal from the Home.*** Within 60 days after the juvenile was removed from the juvenile's home, the court must determine whether reasonable efforts were made to prevent removal of the juvenile, or whether it was reasonable to make no efforts.

(4) *(c)* **Periodic Judicial Reviews.** The court must review the a case subject to this rule at least every 6 months after the disposition hearing, or as otherwise required by statute. At each review, the court must determine:

> **(1)** whether the juvenile is in a safe placement;
>
> **(2)** whether the placement is appropriate, and whether it is still necessary;
>
> **(3)** the extent of compliance with the case plan;
>
> **(4)** the extent of progress that has been made toward alleviating or mitigating the causes necessitating the out of home placement.

The court should also project a likely date by which the juvenile may be returned to and safely maintained in the hone or be placed for adoption or legal guardianship.

(c) Judicial Determination Determination of Reasonable Efforts to Finalize a Permanency Plan. Within 12 months after the juvenile child is removed from the juvenile's child's home, and at least once every 12 months thereafter, the court must determine whether reasonable efforts have been made to finalize the existing permanency plan. The court's findings must be in writing and contain a factual basis for each finding. Before the time by which the judicial determination must be made, the The probation department must file a report outlining the efforts made to finalize the permanency plan that is then in effect before the time by which the judicial determination must be made.

(d) Basis and Legal Effect of Title IV-E Judicial Determinations. Title IV-E judicial determinations may be based upon written or oral information received by the court. Title IV-E judicial determinations must [may?] not be given any effect in any other court proceedings.

Comment to the 2022 Amendment

the The procedures in this rule must be employed where:

(e)(a) the Juvenile Court has entered into signed agreements to obtain reimbursement under Title IV-E of the Social Security Act as implemented by the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89 (42 U.S.C. §§ 671(a)(15) through 672(a)(1)) and the implementing regulations of the Department of Health and Human Services (45 C.F.R. § 1356. 21), and

(f)(b) a juvenile in a delinquency case is removed from his or her home or continues in a court-sanctioned placement out of the home and receives services that are eligible for federal reimbursement. [**Staff Note:** Subpart (b) seems to duplicate previous provisions of the rule. Also, the intended purpose of the phrase "notwithstanding the foregoing" is not particularly clear. Would the meaning of the rule be different, or clarified, if those words were removed?]

Rule 20. Intercounty Transfers

[**Staff Note:** See Criminal Rule 27.2 for a model. Like Juvenile Rule 20, Criminal Rule 27.2 includes provisions for courtesy transfers and the transfer of probation jurisdiction. Staff deferred edits to Rule 20 pending Task Force or workgroup consideration of the already restyled criminal rule.]

(a) Transfer of Disposition Hearing.

(1) The court may order the transfer of a disposition hearing to the county of the juvenile's residence if the parties agree. The agreement must ensure that the victim of the offense has had the opportunity to be heard and agrees to the transfer. [The presiding juvenile judge or the judge's designee in the sending county must also ~~consult~~ confer with, and obtain the consent of, the presiding juvenile judge or designee in the receiving county before entry of the order.] The sending county must send a copy of the transfer order to the receiving county.

(2) Within 10 days after entry of the transfer order, the court clerk in the sending county must forward a certified copy of the legal file, together with a transmittal letter, to the court clerk in the receiving county . Upon receipt, the transmittal letter must be signed by court clerk in the receiving county and returned to the court clerk in the sending county.

(3) Within 10 days after entry of the transfer order, the probation department in the sending county must send copies of the social file and any other pertinent information to the probation department in the receiving county

(4) The court in the receiving county must set a timely disposition hearing under Rule 30 and include the court in the sending county on the notice of hearing. [**Workgroup Note: 6/16/2020:** Consider excluding time for the time it takes to transfer the case.]

(b) Post-Disposition Transfer of the Case.

(1) After disposition, the court may order the transfer of a case from the county in which the disposition occurred to the county of the juvenile's residence if:

(A) the juvenile and the juvenile's parent reside or will reside [alternative: are expected to reside] outside the county of original jurisdiction;

(B) provision is made for the victim to be heard; and

(C) the court in the receiving county consents to the transfer.

(2) The court may order the transfer of a case upon request of the probation department, or upon a request or petition from a party. The court may set a hearing on the request or petition.

(3) If the court orders transfer, the clerk of the court in the county of original jurisdiction must forward a certified copy of the legal file, together with a transmittal letter, to the clerk of the court in the receiving county within 10 days of the order of transfer. Upon receipt, the transmittal letter must be signed by the clerk in the receiving county and returned to the clerk in the county of original jurisdiction.

(4) The county probation department transferring the case must send copies of the social file and any other pertinent information to the director of court services in the receiving county for processing.

(5) The juvenile probation officer must request the court to conduct a review hearing to affirm or modify the terms and conditions of supervision to include the payment of fees and restitution. Upon granting a transfer of probation supervision, the court in the receiving county assumes jurisdiction of the case.

(c) Courtesy Probation Supervision.

(1) "Courtesy probation supervision" means the transfer of the probationer's supervision to another county. In a case with courtesy probation supervision, the sending court retains jurisdiction over the probationer and is responsible for the collection of fees, restitution, and any violations of probation.

(2) The court may authorize a juvenile placed on probation to reside in another county upon verification that the juvenile probation department in the receiving county can provide courtesy probation supervision in accordance with the terms and conditions originally imposed upon the juvenile.

(3) If the receiving county is unable to ensure that the terms and conditions of probation can be supervised as ordered, the court in the sending county may, after a hearing, amend the terms and conditions of probation to permit transfer.

(d) Residential Placements. This rule does not apply to out of county residential placements.

Rule 20. Intercounty Transfers

[**Staff Note:** See Criminal Rule 27.2 for a model. Like Juvenile Rule 20, Criminal Rule 27.2 includes provisions for courtesy transfers and the transfer of probation jurisdiction. Staff deferred edits to Rule 20 pending Task Force or workgroup consideration of the already restyled criminal rule.]

~~**(a) Eligibility.**~~

~~**(1)** The court may authorize the transfer of a disposition hearing to the county of the juvenile's residence if the parties and the receiving courtnty agree. This agreement must ensure that the victim of the offense has had the opportunity to be heard, declines to be present at the hearing and agrees to the transfer.~~

~~**(2)** The court may authorize the transfer of a case from the county in which the disposition occurred to the county of the juvenile's residence under probation supervision in accordance with this rule.~~

~~**(b)**~~**(a) Transfer of Disposition Hearing.**

(1) The court may order the transfer of a disposition hearing to the county of the juvenile's residence if the parties agree. The agreement must ensure that the victim of the offense has had the opportunity to be heard and agrees to the transfer. [The presiding juvenile judge or the judge's designee in the sending county must also ~~consult~~ confer with, and obtain the consent of, the presiding juvenile judge or designee in the receiving county before entry of the order.] The sending county must send a copy of the transfer order to the receiving county.

(2) Within 10 days after entry of the transfer order, t~~T~~he court clerk ~~of the court~~ in the sending county ~~of original jurisdiction shall~~must forward a certified copy of the legal file, together with a transmittal letter, to the court clerk ~~of the court~~ in the receiving county ~~within ten (10) days of the order of transfer~~. Upon receipt, the transmittal letter ~~shall~~ must be signed by court clerk ~~of the court~~ in the receiving county and returned to the court clerk ~~of the court~~ in the sending county ~~of original jurisdiction~~.

~~**(1)**~~ Within 10 days after entry of the transfer order, t

(3) ~~Upon agreement of all parties to the transfer of a case for disposition, t~~he ~~county~~ probation department in the sending county~~transferring the case~~ ~~shall~~ must send copies of the social file and any other pertinent information to the ~~director of court services~~probation department in the receiving county ~~at least fourteen (14) days prior to the disposition hearing~~

(4) .The court in the receiving county must set a timely disposition hearing under Rule 30 and include the court in the sending county on the notice of hearing. [**Workgroup Note: 6/16/2020:** Consider excluding time for the time it takes to transfer the case.]

(2)

(c) Courtesy Probation Supervision.

(1) The court may authorize a juvenile placed on probation to reside in another county upon verification that the court in the receiving county can provide courtesy probation supervision in accordance with the terms and conditions originally imposed upon the juvenile.

(2) If the receiving county is unable to ensure that the terms and conditions of probation can be supervised as ordered, the court in the sending county may, after a hearing, amend the terms and conditions of probation to permit transfer.

(d)(b) Post-Disposition Transfer of Probationthe Case.

(1) TAfter disposition, the court may authorize order the transfer of a case from the county in which the disposition occurred to the county of the juvenile's residence if:

(1) under probation supervision in accordance with this rule.

(A) If the juvenile and the juvenile's parentis expected to continue to reside or will reside [alternative: are expected to reside] outside the county of original jurisdiction for more than one hundred and twenty (120) days, the court may order a transfer of probation supervision to the county in which the juvenile and parent, guardian or legal custodian reside;.

(B) provision is made for the victim to be heard; and

(C) the court in the receiving county consents to the transfer.

(2) The court may order the transfer of a case upon request of the probation department, or upon a request or petition from a party. The court may set a hearing on the request or petition.

(2)

(3) TIf the court orders transfer, the clerk of the court in the county of original jurisdiction shall must forward a certified copy of the legal file, together with a transmittal letter, to the clerk of the court in the receiving county within ten (10)10 days of the order of transfer. Upon receipt, the transmittal letter shall

must be signed by the clerk ~~of the court~~ in the receiving county and returned to the clerk ~~of the court~~ in the county of original jurisdiction.

(4) The county probation department transferring the case ~~shall~~ must send copies of the social file and any other pertinent information to the director of court services in the receiving county for processing.

(5) The juvenile probation officer ~~shall~~ must request ~~that~~ the court to conduct a review hearing to affirm ~~and/or~~or modify the terms and conditions of supervision to include the payment of fees and restitution. Upon granting a transfer of probation supervision, the court ~~of~~ in the receiving county ~~shall~~ assumes jurisdiction of the case.

(c) Courtesy Probation Supervision.

(1) "Courtesy probation supervision" means the transfer of the probationer's supervision to another county. In a case with courtesy probation supervision, the sending court retains jurisdiction over the probationer and is responsible for the collection of fees, restitution, and any violations of probation.

(2) The court may authorize a juvenile placed on probation to reside in another county upon verification that the juvenile probation department in the receiving county can provide courtesy probation supervision in accordance with the terms and conditions originally imposed upon the juvenile.

(3) If the receiving county is unable to ensure that the terms and conditions of probation can be supervised as ordered, the court in the sending county may, after a hearing, amend the terms and conditions of probation to permit transfer.

~~**(5)**~~

~~(e)~~**(d) Residential Placements.** This rule does not apply to out of county residential placements.

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 juvenile 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. The court must specifically inform the juvenile that "If you are not a citizen of the United States, admitting to a delinquent act or entering a no contest plea may affect your immigration status. Your admission to a delinquent act or plea of 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:

(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 juvenile 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. The court must s~~a~~pecifically ~~state~~inform the juvenile that~~—~~ "If you are not a citizen of the United States, ~~pleading guilty or no contest~~ admitting to a delinquent act or entering a no contest plea may affect your immigration status. ~~Admitting guilt~~~~Your admission or plea may result in deportation even if the charge is later dismissed.~~ Your admission to a delinquent act or plea ~~or admission of guilty or~~ of 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'sthe victim has been afforded rights has provided under law, been complied with by and find that: whether:questioning the prosecutor

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

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 heardreasonable efforts were made to confer with the victim; and

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 DeterminationFindings. — TBefore 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 Cconstitutional 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 46. Motions

(a) Form. Motions must be in writing, unless otherwise authorized by the court, and state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.

(b) Filing. A motion must be filed with the clerk. A copy of the motion ~~and a notice of hearing if the matter is contested~~ must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding juvenile judge or that judge's designee. The filing party must serve all other parties with a copy of the motion by mail, hand delivery, fax, or electronic means.

(c) Response. If the moving party serves the motion by hand delivery, fax, or electronic means, a response to a motion must be filed within 5 days of service [**WG Note 5/29/2020:** Save the preceding sentence for a new general rule on service of filed documents. Refer to WG-1 for a general rule on service and time computation.] If the motion is served by mail, a response is due within 10 days of service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.

(d) Court Ruling. Except as these rules or statutes provide otherwise, after the time for a response has expired or if no party objects, the court may rule on the motion with or without a hearing ~~if the motion states there is no objection or the time for filing an objection has expired~~.

(e) Motion for Summary Judgment. A motion for summary judgment must conform to the requirements in Civil Rule 56, except that the motion must be filed not less than 45 days before adjudication. An opposing party must file a response within 20 days after the filing of the motion. The court may modify the time for filing the motion and response.

(f) Motion to Set Aside an ~~Final~~ Order. A motion to set aside an ~~final~~ order,~~-signed by the Court and filed with the Clerk~~ ~~[~~**~~Staff Note:~~** ~~If it is used in these rules, should "judgment" be a defined term? Rule 103(A) uses the phrase "final order] rendered by the court~~ must conform to the requirements of Civil Rule 60(b)-(d), ~~except~~ and ~~that~~ be filed within 6 months of the ~~final~~ order ~~or proceeding~~ unless the moving party alleges grounds under Rule 60(b)(1), (2) or (3), in which case the motion must be filed within 3 months of the ~~final~~ order.

(g) Motion to Continue. A motion to continue must be made in good faith and must state ~~with specificity~~ the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court may grant a motion to continue ~~only~~ for good cause.

Rule 46. Motions

(a) Form. Motions must be in writing, unless otherwise authorized by the court, and set forth state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.

(b) Filing. A motion must be filed with the clerk. A copy of the motion and a notice of hearing if the matter is contested must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the court administrator presiding juvenile judge or that judge's designee. A The filing party must serve all other parties must be served with a copy of the motion by mail, hand delivery, fax, or by electronic means.

(c) **Response.** If the moving party serves the motion by hand delivery, fax, or electronic means, Aa response to a motion must be filed within 5 days of service of the motion by hand delivery, fax, or by electronic means. Service is deemed complete upon receipt if served by hand delivery, fax or by electronic means. **[WG Note 5/29/2020:** Save the preceding sentence for a new general rule on service of filed documents. Refer to WG-1 for a general rule on service and time computation.] If the motion is served by mail, a response is due within 10 days of service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order. The

(c)**(d) Court Ruling.** Except as these rules or statutes provide otherwise, court after the time for a response has expired or if no party objects, the court may rule on the motion with or without a hearing [**Staff Note:** The current rule does not include a provision for requesting a hearing or oral argument on a motion], if the motion states there is no objection or the time for filing an objection has expired. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.

(d)**(e) Motion for Summary Judgment.** A motion for summary judgment must conform to the requirements set forth in Civil Rule 56, except that the motion must be filed not less than 30 45 days before trial adjudicationor within the time set by the court. An opposing party must file a response within 20 days after the filing of the motion. The court may modify the time for filing the motion and response.

(e)(f) **Motion to Set Aside an Final Order.** A motion to set aside an final order, signed by the Court and filed with the Clerk [**Staff Note:** If it is used in these rules, should "judgment" be a defined term? Rule 103(A) uses the phrase "final order] rendered by the court must conform to the requirements of Civil Rule 60(b)-(d), except and that the motion must be filed within 6 months of the final order or proceeding unless the moving party alleges grounds under Rule 60(b)(1), (2) or (3), in which case the motion must be filed within 3 months of the final order.

(f)(g) **Motion to Continue.** A motion to continue must be made in good faith and must state with specificity the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court will may grant a motion to continue only on a showing offor good cause or by agreement of the parties..

Rule 49. Preliminary Protective Conference

(a) Generally. A -preliminary protective conference is held before the preliminary protective hearing. The conference facilitates the resolution of issues in a non-adversarial manner.

(b) Appointment of a Facilitator. The court must appoint a facilitator before the start of the preliminary protective conference. The facilitator may not be a party or the representative of a party to the proceeding. The facilitator must encourage all those attending the conference to participate, communicate, and identify areas on which the parties can agree. [**Staff Note:** The draft reverses the sequence of this provision and the following provision in the current rule.]

(c) Attendance. Persons who are authorized by ~~law~~ A.R.S. § 8-824 (B) to attend a preliminary protective hearing ~~[**Staff Note:** Rule 50 does not specify who may attend a PPH, so this begs the question of who may attend~~ may attend a preliminary protective conference. The court may impose reasonable restrictions upon those in attendance if restrictions are required by the physical limitations of the facility, to maintain order and decorum, or to ensure the ability of the parties to fully participate in the conference.

(d) Procedure. The facilitator, parties, and participants must meet outside the presence of a judge to try to reach agreement on the custody and placement of the child, visitation, and the services to be provided to the child and family. The parties will proceed to the preliminary protective hearing when the conference concludes.

(e) Use of Statements. Statements made by parties and participants during the conference are not protected and may be used in future proceedings.

Rule 49. Pre-Preliminary Protective Hearing Conference [Staff Note: Staff added before "hearing" the words "pre-preliminary protective".]

(a) Generally. A pre-preliminary protective hearing conference is held before the preliminary protective hearing. The conference facilitates the resolution of issues in a non-adversarial manner.

(b) Appointment of a Facilitator. The court must appoint a facilitator before the start of the pre-preliminary protective hearing conference. The facilitator may not be a party or the representative of a party to the proceeding. The facilitator must encourage all those attending the conference to participate, communicate, and identify areas on which the parties can agree. [**Staff Note:** The draft reverses the sequence of this provision and the following provision in the current rule.]

(c) Attendance. Persons who are authorized by law A.R.S. § 8-824 (B) to attend a preliminary protective hearing [**Staff Note:** Rule 50 does not specify who may attend a PPH, so this begs the question of who may attend] may attend a pre-preliminary protective hearing conference. The court may impose reasonable restrictions upon those in attendance if restrictions are required by the physical limitations of the facility, to maintain order and decorum, or to ensure the ability of the parties to fully participate in the conference.

(d) Procedure. The facilitator, parties, and participants may must meet outside the presence of a judge in an effortto try to reach agreement on the custody and placement of the child, visitation, and the services to be provided available to the child and family. The parties will proceed to the preliminary protective hearing when the pre-hearing conference concludes or when a temporary custody hearing is requested.

(e) Use of Statements. Statements made by parties and participants during a pre-hearing the conference are not protected and may be used in future proceedings. [**Staff Note:** Is the pre-hearing conference on the record? If not, how are the statements preserved for future use? - No, not on the record and not preserved.]

Rule 73. Disclosure and Discovery in Contested Adoptions

(a) Generally.

(1) *Duty to Disclose.* In a contested adoption, 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 statute or court order.

(4) *Ongoing Disclosure Requirement.* Unless the court orders otherwise, any relevant document received 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.

(b) Pretrial Disclosure Statement in Contested Adoption. Unless otherwise ordered by the court, the parties must disclose to each other and the court, in the form of a pretrial disclosure statement, the following information at least 30 days prior to a contested hearing:

(1) the uncontested facts deemed material;

(2) the contested issues of fact and law which may be material or applicable;

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

(4) the witnesses the party intends to call at trial, including their names, addresses and telephone numbers, and in addition, a description of the substance of each witness' expected testimony. No witness may be called at trial other than those disclosed in accordance with this rule, except for good cause shown. The pretrial disclosure statement must note witnesses whose testimony will be offered in the form of a deposition; and

(5) a list of and copies of all exhibits which 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 and the specific grounds for each objection and provide a copy of the notice to all parties and the court within ten (10) days of receipt of the list of exhibits. Specific objections or grounds not listed in the disclosure statement are

deemed waived, unless otherwise ordered by the court. No exhibits may be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

(c) 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.

(d) 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 67 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

Workgroup Note 6/8/20: It would be more sequential if this rule appeared after the rule on filing a petition (Rule 79).

Rule 73. Disclosure and Discovery in Contested Adoptions

(a) Generally.

(1) *Duty to Disclose.* In a contested adoption, 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 statute or court order.

(4) *Ongoing Disclosure Requirement.* Unless the court orders otherwise, any relevant document received 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.

(a) Scope of Disclosure. Disclosure shall 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;

(3) Foster Care Review Board and Court Appointed Special Advocate reports;

(4) transcripts of interviews and prior testimony;

(5) probation reports;

(6) photographs;

(7) physical evidence;

(8) electronically stored information;

(9) records of prior criminal convictions

(10) medical and psychological records and reports;

(11) results of medical or other diagnostic tests; and

(12) any other information relevant to the proceedings.

(b) ~~**Time Limits for**~~ **Pretrial Disclosure Statement in Contested Adoption.** Unless otherwise ordered by the court, the parties ~~shall~~ must disclose to each other and the court, in the form of a pretrial disclosure statement, the following information at least 30 days prior to a contested hearing:

(1) the uncontested facts deemed material;

(2) the contested issues of fact and law which may be material or applicable;

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

(4) ~~a list of~~ the witnesses ~~which~~ the party intends to call at trial, ~~which shall include~~including their names, addresses and telephone numbers, and in ~~of the witnesses in~~ addition~~, to~~ a description of the substance of ~~the~~ each witness' expected testimony. No witness ~~shall~~ may be called at trial other than those disclosed in accordance with this rule, except for good cause shown. ~~Witnesses~~ The pretrial disclosure statement must note witnesses whose testimony will be offered in the form of a deposition ~~shall be noted~~; and

(5) a list of and copies of all exhibits which the party intends to use at trial. If a party objects to the admission of an exhibit, the party ~~shall~~ must file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court within ten (10) days of receipt of the list of exhibits. Specific objections or grounds not listed in the disclosure statement ~~shall be~~are deemed waived, unless otherwise ordered by the court. No exhibits ~~shall~~ may be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

(c) 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. ~~The parties may utilize methods of discovery as set forth in Rules 26-37, Ariz. R. Civ. P., upon the agreement of the parties. Absent such agreement, the party seeking to utilize such methods of discovery shall file a motion with the court requesting authorization to proceed and shall set forth the reasons why such methods are necessary.~~

(d) 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 67 and should not exclude competent and potentially significant evidence that bears on the child's best interests.~~Upon motion of~~

~~a party or the court's own motion, the court may impose sanctions upon a party who fails to disclose information in its possession which is subject to disclosure or fails to disclose such 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 as deemed appropriate. Any sanction imposed should be in accordance with the intent of these rules, as set forth in Rule 67.~~

Workgroup Note 6/8/20: It would be more sequential if this rule appeared after the rule on filing a petition (Rule 79).

~~**(d)**~~

Rule 74. Motions

Any motion in an adoption proceeding must conform to, and is subject to, the requirements of Rule 46.

WG Note 6/22/20: A summary judgment provision, formerly Rule 74(D), was deleted in 2007. What is the effect of this deletion? Are SJ motions still permitted in adoption proceedings? If SJ motions are not permitted, the above language might need to be modified.

Rule 74. Motions

[**Alternative to sections (a) through (e) below**.] Any motion in an adoption proceeding must conform to, and is subject to, the requirements of Rule 46.

WG Note 6/22/20: A summary judgment provision, formerly Rule 74(D), was deleted in 2007. What is the effect of this deletion? Are SJ motions still permitted in adoption proceedings? If SJ motions are not permitted, the above language might need to be modified.

[Can a party file a summary judgment motion in an adoption proceeding. See deletion to section (c) below.]

(a) Filing. All motions shall be filed the clerk of the court and copies provided to the assigned judge at the time of filing. If no judge has been assigned to the matter, a copy of the motion shall be provided to the court administrator. All parties shall be served copies by mail, hand delivery, fax or by electronic means.

(b) Response. All responses to a motion shall be filed within five (5) days of service of the motion by hand delivered, fax or by electronic means. Service shall be deemed completed upon receipt if served by hand delivery, fax or by electronic means. If the motion is served by mail, a response is due within ten (10) days of service by mail. No reply shall be filed unless authorized by the court. The court may rule on the motion, with or without a hearing, if the motion states there is no objection, no responding party or the time for filing an objection has expired. For cause shown, the court may at any time, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period, or as extended by prior order.

(c) [Deleted eff. Jan. 1, 2007.]

(d) Motion to Set Aside Judgment. A motion to set aside a judgment rendered by the court shall conform to the requirements of Rule 60(b)-(d), Ariz. R. Civ. P., except that the motion shall be filed within one (1) year of the final judgment, order or proceeding unless the moving party alleges grounds pursuant to Rule 60(b) (1), (2) or (3), in which case the motion shall be filed within six (6) months.

(e) Motion to Continue. Any motion to continue shall be made in good faith and shall state with specificity the reasons for the continuance. The party requesting the continuance shall advise the court of impending expiration of time limits. Motions to continue shall only be granted only upon a showing of good cause.

Rule 75. Confidentiality; Release of Information [WG Note 6/22/20: Rule 86(b) and (c) were relocated as Rules 75(b) and (c). The workgroup suggests moving Rule 75 to a newly renumbered rule, earlier in the adoption set, because of its introductory nature.]

(a) Confidentiality of Adoption Records. All adoption records are confidential and must be withheld from public inspection [**WG note 6/22/20:** Is a definition of "public" necessary?] unless authorized by law, rule, court order, or as provided in section (c).

(b) Request for Records. Unless otherwise provided by law, individuals must file a request with the juvenile court presiding judge or the presiding judge's designee to inspect adoption records. Requests must state the information being sought and reasons why the requestor needs the information. The court may release identifying information about the adoptee or birth parent when:

(1) the file contains a notarized statement granting consent under A.R.S. § 8-121(E); or

(2) the requestor establishes a compelling need for disclosure.

(c) Records of Indian Adoption. Under 25 U.S.C. § 1917, upon a request filed with the court by an Indian individual who has reached the age of 18 and who was the subject of an adoptive placement, the court that entered the final adoption decree must inform the individual of the tribal affiliation, if any, of the individual's biological parents and provide other information as may be necessary to protect any rights flowing from the individual's tribal relationship. If the biological parent executed a notarized statement requesting anonymity, information pertaining to the biological parent must be redacted prior to release. The state court must also comply with the requirements of 25 U.S.C. 1951.

COMMITTEE COMMENT

If a request for information is received pertaining to an Indian child or that child's biological family, the Indian Child Welfare Act at 25 U.S.C. 1917 and 1951 should be consulted.

Rule 75. Confidentiality; Release of Information [WG Note 6/22/20: Rule 86(b) and (c) were relocated as Rules 75(b) and (c). The workgroup suggests moving Rule 75 to a newly renumbered rule, earlier in the adoption set, because of its introductory nature.]

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COMMITTEE COMMENT

If a request for information is received pertaining to an Indian child or that child's biological family, the Indian Child Welfare Act at 25 U.S.C. 1917 and 1951 should be consulted.

~~Workgroup Note 6/8/20: consider consolidating Rules 75 and 86.~~

~~Nina will also check on the history of these rules.~~

Rule 86. Adoption Records [WG note 6/22: these provisions were relocated as Rule 75(b) and (c).]

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