Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, August 21, 2020
10:00 a.m. to 4:00 p.m.
Telephonic Meeting: 602.452.3533, # **992 216 812**

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the July 17, 2020 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and discussion of rules** **Workgroup 1: Emancipation: Juvenile Rules, Part V (currently Rules 88 through 102, and as proposed, Rules 88 through 92)** **Workgroup 2: Rules 29 and 33 [now Rule 22(c)]** **Workgroup 3: Rules 41.2 and 42 (revisited), 43.1 [new], 48, 48X, 48.1** **Workgroup 3: Rules 37, 38, 40, and 40.1 (revisited)** **Workgroup 4: Rules 74 (revisited), 76, and 79.1**	 *Mr. Volkmer* *Ms. Phillis, Mr. Cardy* *Judge Quigley, Judge Young, Mr. Truman* *Mr. Owsley* *Professor Atwood, Judge Portley*
Item no. 4	**Roadmap** **Next meetings: September 25, October 23, November 20, December 4 (if necessary), December 18**	*Justice Berch*
Item no. 5	**Call to the Public** **Adjourn**	*Justice Berch*

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

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

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

Juvenile Rules Task Force

Public Meeting, July 17, 2020
(Members, guests, and staff all attending virtually)

Meeting Minutes

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong, Professor Barbara Atwood, Beth Beckmann, Beth Beringhaus, Dale Cardy, Kathleen Coughlin, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, Tina Mattison, Donna McQuality, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Smith, Hon. Patricia Trebesch, Edward Truman, Hon. Rick Williams, Hon. Anna Young

Absent: Maria Christina Fuentes, Eric Meaux, Denise Avila Taylor, Kent Volkmer

Guests: Jerry Landau, Nina Preston, Carey Turner, Shari Andersen Head, Liana Garcia

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the eighth Task Force meeting—its third consecutive virtual meeting—to order at 10:01 a.m. Participants were able to use video as well as audio during the first two hours of the meeting, but most members used only the audio and the video was discontinued for the afternoon session. The Chair advised that there had been 6 very well attended workgroup meetings since the June 12 Task Force meeting. She then reviewed materials for today's meeting. In addition to the draft June 12 meeting minutes and the rules and forms on today's agenda, the materials included (a) information concerning Mr. Landau's presentation on standardized juvenile warrants, (b) Form 4 of the current Juvenile Rules, and (c) a Division One opinion issued on June 23, 2020, *Francine C. v. DCS.*

The Chair then asked members to consider draft minutes of the June 12, 2020 Task Force meeting. There were no corrections to the draft.

Motion: A member moved to approve the June 12, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 008**

2. Standardized Juvenile Warrants. Mr. Jerry Landau, the Government Affairs Director for the Administrative Office of the Courts ("AOC"), presented this item. The AOC's Court Services Division had approached Mr. Landau about leading a workgroup to standardize juvenile arrest warrants forms if the AOC undertook such an initiative in the future. Mr. Landau has previously led a workgroup that standardized the arrest warrant forms in the Criminal Rules, and another workgroup that proposed further revisions to the warrant forms in Criminal Rule 41 (current Forms 2(a) and 2(b)). See pending rule petition R-20-0004. In conjunction with this agenda item, staff provided

members with juvenile arrest warrants from 4 counties (Mohave, Pima, Maricopa, and Yavapai), all of which were different. There were even variations in forms that were used within the same county. Mr. Landau noted that a standardized juvenile warrant form might be easier for use by stakeholders statewide, including law enforcement, because the fields of information would be phrased consistently, and the data fields would appear in uniform locations. Moreover, standardized juvenile warrant forms would be necessary if these warrants are eventually entered into an electronic database.

Mr. Landau then requested the members' input on whether standardized juvenile warrants were desirable. A member noted that juvenile arrest warrants differ from adult warrants because they might not result in the named juvenile's detention. Mr. Landau acknowledged that the word "warrant" was generic, that some counties are now using warrants in ways that did not mandate the juvenile's arrest, and that a standardization project would need to address those variations. Members had no further comments, and there appeared to be neither definitive support nor opposition for this project. Mr. Landau provided his contact information for anyone to provide additional information. Mr. Landau advised that he'll be presenting this issue to the Committee on Juvenile Courts next month. The Chair thanked Mr. Landau for his presentation.

The Chair then requested a report from Workgroup 2, followed by reports from Workgroups 4, 1, and 3.

3. <u>Report from Workgroup 2.</u>

Rule 19.1 ("mandatory judicial determinations"). Judge Trebesch presented Rule 19.1. She observed that this delinquency rule is a counterpart to dependency Rule 47.1 ("mandatory judicial determinations"), which Mr. Turner presented at the June 12 Task Force meeting. Judge Trebesch discussed the workgroup's restyling and streamlining of the rule, and how it clarified what findings were required and when they must be made. The members' ensuing discussion primarily concerned the workgroup's proposed comment to the 2022 amendment, which consisted of text relocated from introductory language of the current rule. The text might be informative for judicial officers who are unaware of the need to make the required findings, especially in the case of a delinquent who later becomes the subject of a dependency proceeding. However, the text in this comment does not provide a basis for making the required findings, and the consensus of the members was to approve the draft rule without the comment.

Rule 20 ("intercounty transfers"). Ms. Smith presented the rule. The reorganized rule focuses on three matters: transfer of a disposition hearing, post-disposition transfer of a case, and courtesy probation supervision. Each of these matters presents an issue concerning the need for the sending and receiving counties to confer regarding a transfer, and who within each county—a judicial officer, a court administrator, or a probation officer—should be holding that conference. Ms. Smith said that when the juvenile resides in another county, some counties will do a pre-disposition transfer without much in the

way of consultation. This is especially so in Pinal County, which adjoins two larger metropolitan counties. But prosecutor members in those two counties expressed a preference for retaining dispositions in their counties, i.e., the county in which the offense occurred, even when the juvenile resides in another county. Post-disposition transfers of probation supervision and courtesy transfers, on the other hand, are more routine when the juvenile lives in another county, especially when the juvenile is already on probation in another county. However, transfers are not automatic.

Members also considered situations where the sending county's attempt to initiate a consultation fails to produce a response in the receiving county; or when the court approves a request to transfer based on an anticipated change of residence, but neither the juvenile nor the juvenile's family ever moves or moves only temporarily. Judge Quigley advised that she has discussed with other stakeholders a rule for change of venue in dependency cases, and she believes issues that arise in dependency venue transfers might also arise with transfers of probation. She therefore suggested, and members agreed, that the dependency rules workgroup should have further discussions with the delinquency rules workgroup on this topic. Finally, the delinquency rules require the disposition hearing to be held within 30 days after the adjudication. It might not be practical to process a pre-disposition transfer of a detained juvenile within 30 days. One member proposed a rule amendment that would exclude time for processing the transfer. However, another member noted that such an amendment could result in a case having an undetermined date for disposition and suggested instead that the juvenile waive time for disposition when the court approves a pre-disposition transfer. Workgroup 2 will consider codifying that suggestion.

Rule 28.1 ("admission or change of plea"). Ms. Phillis presented this new rule at the June 12 Task Force meeting, and members at that time requested Workgroup 2 to review the immigration consequences in subpart (b)(2)(D) to assure that the text was appropriate for a delinquency proceeding. Ms. Phillis advised the Task Force today that the workgroup did so. The workgroup replaced "pleading guilty," "admitting guilt," or "admission of guilt" in the draft with "admitting to a delinquent act" or an appropriate variation of that phrase. In response to a question, Ms. Phillis advised that the admonition appears in the rule with quotation marks because a judicial officer customarily reads it verbatim. In section (b)(3) ("determine compliance with victim's rights"), the words beginning with "been complied with by and find that" and continuing to the end of (b)(3) were deleted as unnecessary. The provision now concludes with the words "the victim has been afforded rights provided under law." Members approved Rule 28.1 with these revisions.

4. **<u>Report from Workgroup 4.</u>** Workgroup 4 presented Rules 73, 74, 75, and 86.

Rule 73 ("Disclosure and Discovery in Contested Adoptions"). Ms. Coughlin presented Rule 73. She noted that most of its content mirrors dependency Rule 44 ("disclosure and discovery"). The titles of Rule 73 and section (c) ("pretrial disclosure statement in contested adoption") emphasize that these provisions apply in contested proceedings. Subpart (a)(4) ("ongoing disclosure requirement") confirms that the duty to disclose in these cases is ongoing. In subpart (b)(4), which requires the disclosure of witnesses, a member suggested that disclosure include a witness' email address. A member proposed changing the words "competent and potentially significant evidence" in section (d) ("sanctions") to "relevant evidence," but after noting that the former phrase was also used in Rule 44(g) ("sanctions"), members declined to make that change. Ms. Coughlin pointed out a workgroup note at the end of the draft, which suggested that this rule would be more sequential if it appeared after Rule 79 on filing a petition.

Because Rule 73 applies in contested adoption proceedings, a member asked when a proceeding becomes contested. Members responded that intervening in an adoption proceeding, objecting to a proceeding, or revoking parental consent could all be events that precipitate a contested adoption. To add clarity to Rule 73, members agreed that the rule should include specificity, i.e., "an adoption is contested when…." The workgroup will draft additional language, but it will be mindful of not triggering a disclosure requirement when it's not warranted. The workgroup also will consider how disclosure should be undertaken if opposition to a petition occurs at a later stage of the proceeding, for example, because of an ICWA issue that's raised belatedly.

Rule 74 ("motions"). Professor Atwood presented Rule 74. She noted that the workgroup's draft eliminated almost all the content of the current rule. The workgroup draft simply says, "Any motion in an adoption proceeding must conform to, and is subject to, the requirements of Rule 46 ['motions']." But Professor Atwood asked whether the summary judgment provisions in Rule 46 should apply to adoption proceedings; if they do not, the cross-reference in draft Rule 74 to Rule 46 would be misleading. However, at least one member believed partial summary judgment might be appropriate in an adoption. As a separate issue, A.R.S. § 8-123 permits a collateral challenge to an adoption order within one year following its entry, so motions to set aside an adoption order might not fit well within the 3-month or 6-month time limitations in Rule 46(f) ("motion to set aside a final order"). See further the discussion of Rule 46.1, infra. Workgroup 3 will present Rule 46 later today, and the Task Force deferred further consideration of Rule 74 pending that presentation.

Rule 75 (as proposed, "confidentiality; release of information") <u>and</u> Rule 86 (currently, "adoption records"). Mr. Owsley presented these two rules, which both address confidentiality of information. Current Rule 75 deals generally with release of information, but it does not detail the process, which is in Rule 86. The workgroup accordingly consolidated Rule 86 with Rule 75, and Rule 86(a) and (b) have become Rule 75 sections (b) ("request for records") and (c) ("records of Indian adoption.") Members

agreed that consolidation of these rules was appropriate. However, they noted that the provisions of section (a) ("confidentiality of adoption records") and section (b), although taken verbatim from Rule 86, merely parse the requirements of A.R.S. § 8-121. Members suggested that the rule should refer to the statutes without trying to summarize them. Another member suggested deleting the Committee Comment to Rule 75 because its references to federal statutes now appear in section (c). The Task Force returned the rule to the workgroup for consideration of these suggestions.

5. Workgroup 1. Ms. Beckmann presented a newly drafted Rule 46.1, a newly proposed Rule 30(c), and three new forms concerning appeals.

Rule 46.1 ("altering or amending a final order"). The workgroup drafted this rule to provide a mechanism for bringing potentially appealable issues to the attention of the trial court within the limited time allowed for filing a notice of appeal. A motion under Rule 46.1 would serve as a time-extending motion under draft Rule 104. The need for such a procedural rule was highlighted by Division One's June 23, 3020 opinion in *Francine C.*, particularly paragraphs 22 and 23. ("There is no explicit juvenile rule authorizing a motion for reconsideration or clarification of a dependency or termination order.") Draft Rule 46.1 hits a "sweet spot" by mitigating delays in the appellate process that often result from the filing of a post-judgment motion, and by allowing parties to promptly raise issues that are amenable to correction by the trial court, which could make an appeal unnecessary.

Ms. Beckmann then reviewed the text of the draft rule. Section (a) ("generally"), subpart 1 ("meaning of final order") provides that "final order" has the same meaning as set out in Rule 103(b). Subpart (2) is titled "grounds for altering or amending a final order." The grounds identified in subpart (2) are partly but not wholly derived from Family Law Rule ("FLR") 83 ("altering or amending a judgment.") For example, the ground that the court did not enter sufficient findings of fact or conclusions of law was derived from a Civil Rule. The ground concerning an irregularity in the proceedings synthesizes two grounds in FLR 83. Grounds contained in other rule sets that are akin to a motion for reconsideration, or that concern errors in the admission of evidence, or overlooked evidence, were excluded in draft Rule 46.1 to discourage repetitive proceedings and because they would invite delay. However, draft Rule 46.1 includes the grounds of newly discovered evidence and a clerical mistake. The draft provides that the trial court as well as a party can move to alter or amend a final order. A member asked whether the court can make a sua sponte motion under this rule after a party has filed a notice of appeal. The ensuing discussion indicated that this scenario, or any sua sponte motion under the draft rule, might cause confusion about when a party must file a notice of appeal. Ms. Beckmann then reviewed the remaining procedural sections of the draft rule, which generated additional discussion.

- Is relief available under Rule 46.1 for any order, or only a final order? Ms. Beckmann's response is that Rule 46.1 was designed to apply only to final orders.

- Can a party file motions under both Rule 46 and Rule 46.1? Rule 46 has time limits grounded in Civil Rule 60, whereas Rule 46.1 has a much shorter 10-day limitation. However, nothing in the draft precludes a party from filing motions under both rules. Members discussed the possibility of merging all or portions or these two rules but doing so might be complicated because Rule 46.1 applies only to final orders, whereas Rule 46 applies to any order. Rule 46 would also permit a motion, for example, based on newly discovered evidence under Civil Rule 60, which allows a longer time for filing the motion, whereas a party must file a motion based on newly discovered evidence under Rule 46.1 within 10 days after entry of the order. However, this duality parallels the Civil Rules, which allow motions for newly discovered evidence under the short time required by Civil Rule 59 or within the longer period allowed under Civil Rule 60. Ms. Beckmann raised the possibility of expressly characterizing motions under Rule 46 that are filed within 10 days after entry of an order as time-extending motions, which might obviate the need for a separate Rule 46.1. Members made no decision on merging Rules 46 and 46.1, but the workgroup should further consider this option.

- A.R.S. § 8-123 permits a party a full year to cure irregularities in an adoption proceeding, and that time greatly exceeds the time allowed under draft Rule 46.1. Ms. Beckmann noted that draft Rule 46.1 is a Part III rule, so it would not apply to adoptions, which are governed by Part IV of the Juvenile Rules.

- Are certain grounds in subpart (a)(2), such as newly discovered evidence, in effect providing grounds for a motion for new trial, a motion that is not allowed under the current rules? Perhaps, but the likelihood of new evidence being discovered within 10 days after entry of the final order is remote, and in circumstances when it does happen, Rule 46.1 would offer a prompt method for obtaining relief. Because a Rule 46.1 motion would be a time-extending motion, the workgroup should consider what are the most appropriate reasons for extending the time for filing a notice of appeal.

- Will some grounds, including newly discovered evidence, require an evidentiary hearing, which would unduly delay an appeal? Again, that is possible, but the requirement of raising the issue within 10 days after entry of the final order should minimize delay.

- Accident or surprise should not be available grounds for relief under Rule 46.1 because those grounds are vague and ambiguous. Members agreed with this observation and removed those grounds from the draft.

Workgroup 1 will revisit Rule 46.1 and consider today's comments and discussion. If the workgroup continues to recommend that the proposed rules include a separate Rule 46.1, it will work to assure that the rule's provisions harmonize with the provisions of Rule 46, which Workgroup 3 will present later today.

Rule 30 ("disposition") section (c) ("amended final order"). Although Rule 30 is assigned to Workgroup 2, Workgroup 1 proposed adding a new section (c) to the rule that would permit a party in a delinquency proceeding, within 10 days after entry of a final order, to move the court to amend its order to correct errors or to make additional findings. This addition is an analog of Rule 46.1, but the grounds in section (c) are much narrower. After Ms. Beckmann presented the rule, members of Workgroup 2 expressed their concerns that this new provision would require the juvenile to be personally present for a court hearing on these post-disposition motions, which could include motions to amend a restitution order, make an additional finding, or enter a modified term of probation. They thought this might be burdensome for the juvenile and generally unwieldy. Moreover, the court's findings at a delinquency disposition hearing are more limited than in a Part III proceeding, so there is less need for amending them. Members agreed that the proposed new section would not work well in the delinquency context, and it was removed from draft Rule 30.

Form 5(a) ("notice of appeal: delinquency/incorrigibility proceeding") and Form 5(b) ("notice of appeal: dependency, severance, Title 8 guardianship, adoption, emancipation proceeding"). Ms. Beckmann presented two notices of appeal, one for use in delinquency cases, and the second for appeals in other juvenile court cases. The core issue with these forms was whether to add or remove language that requires counsel to consult with the client before filing a notice. She noted that current Form 4 is a certification for counsel to file in the juvenile court when counsel is not filing a notice of appeal, but nonetheless wants to certify an inability to locate or communicate with the client. Form 4 has dubious value, and counsel almost never use it. In a delinquency case, the juvenile has the right to an *Anders*-type review, which would be foreclosed if counsel was unable to certify that he or she had consulted with the client. Ms. Beckmann accordingly recommended that Form 5(a) not include a consultation section.

There is no analog to an *Anders* review in an appeal from other juvenile cases, and the question was whether the juvenile rules should require that counsel consult with the client in those other cases before filing a notice of appeal. Ms. Beckmann presented three options: (1) that the form require counsel to certify that a consultation occurred prior to filing the notice; (2) that counsel certify an inability to contact or communicate with the client, but certify that the appeal is meritorious; or (3) that the form not contain any

certification but that the rule provide that counsel cannot file a notice without first consulting with the client. She added that Rule 104 provides a safety net in the third scenario because it would permit a delayed appeal if the client subsequently appeared and if the other requirements of that rule are satisfied. Members did not favor the filing of a notice of appeal in these cases when the client could not be located. They agreed that the notice of appeal form should include counsel's certification that he or she had in fact consulted with the client, and that counsel should not be permitted to file the notice without this certification. Workgroup 1 will need to modify Rule 104 and Forms 5(a) and 5(b) in accordance with that decision.

During the discussion of these forms, members also agreed that there was no benefit in including current Form 4 in the restyling rules. A member asked whether an appeal from a juvenile disposition under Form 5(a) includes an appeal from the adjudication, or if the adjudication is separately appealable. Ms. Beckmann advised that the adjudication issues are raiseable in the appeal from the disposition, but the workgroup will consider ways that the form can clarify this. Another member thought Form 5(b) was too complex, and that it should be simplified by removing boxes 1 through 11 and retaining only item 12, with the addition of specifying the order being appealed. However, other members disagreed, noting that this series of individual checkboxes serves to clarify for clerks and court reporters the documents and transcripts that are necessary for the record on appeal. The checkboxes should mitigate the tendency of the appealing party to request a transcript of every trial court proceeding, even when the proceeding is not pertinent to the issues on appeal.

Form 6 ("supplemental designation of the record"). This is a new form. It correlates with Rule 104.1 (the record on appeal"), and Form 6 includes cross-references to that rule. The form is designed to allow counsel, in an orderly and easily understood way, to designate additional documents, exhibits, or transcripts for inclusion in the record on appeal. Members had no questions or comments concerning the form, but the form will need to be properly formatted.

6. **Workgroup 3.** Workgroup 3 presented two rules.

Rule 46 ("motions"). Mr Gilmore presented Rule 46. There were no substantive changes in section (a) ("form"). In section (b) ("filing"), the workgroup considered but decided against adding a requirement that the moving party submit a notice of hearing with the motion. However, if there is no assigned judge, the proposed rule requires that the motion be provided to the presiding judge rather than the court administrator, which the current rule requires. Members discussed the time limits in section (c) ("response"), which is 10 days if the motion is served by mail and 5 days when served by other methods. Section (d) ("court ruling") permits the court to rule on a motion when the time for a response has expired or if no party objects, unless a rule or statute provides otherwise. The workgroup's draft of section (e) ("motion for summary judgment")

contained modified times; the motion must be filed not less than 45 days before trial (rather than 30 days under the current rule), and a response must be filed within 20 days thereafter (the current rule does not specify a time.) This new timing should avoid the necessity of the court considering the motion on the day of, or immediately before, the trial. Members again discussed the matter of the availability of summary judgment in an adoption proceeding, with one member observing that at one time, no one filed summary judgment motions in dependency cases until they realized the rules did not preclude them from doing so. (The possibility of Rule 74 continuing to include a reference to Rule 46 will abide further discussion by Workgroup 4.) If summary judgment will dispose of an adjudication in a Part III proceeding, should the rule actively encourage parties to file them? After discussion of this question, Judge Young offered to submit proposed language that addresses the matter.

Section (f) ("motion to set aside a final order") led to a discussion of whether the provision should apply to any order, or only to a "final" order. An order under Rule 59 is not a final order, so adding the word "final" to section (f) excludes consideration of a ruling that might be amenable to a motion under this section. Members also discussed whether a motion to set aside a "final order" under section (f) would be considered a time-extending motion under Rule 104. Section (f) includes references to Rule 60, and a member observed that an order denying a motion to set aside under Rule 60 would be an appealable order under Rule 103(b), so the use of "final" would be appropriate. Members discussed bifurcating Rule 46, leaving sections (a) through (d) within the rule, but creating another rule, possibly numbered 46.2, for specific motions, such as motions for summary judgment or to set aside. Although members generally approved Rule 46 sections (a) though (d), these other issues will require further discussion by Workgroup 3.

Rule 49 ("preliminary protective conference"). This is the first rule that Workgroup 3 is presenting in Part III, Subpart 3 ("dependency"). Judge Quigley presented the rule and reviewed each section, beginning with the title of the rule. The title of the current rule is "pre-hearing conference," which does not specify what conference the rule concerns. The revised title is "preliminary protective conference." Several of the edits to this draft rule were necessary to conform text to that title change. In section (d) ("procedure"), Judge Quigley added the words "parenting time" to conform to a statutory change and current terminology. The other workgroup edits to Rule 49 were primarily stylistic. Members discussed the use in section (d) of the word "must" in the phrase "must meet outside the presence of the judge," and after discussion, they declined to change that to "may." Section (e) ("use of statements") provides that statements made by parties and participants during the conference "are not protected and may be used in future proceedings." A member suggested that making those statements confidential would encourage candor during the conference, but other members disagreed and noted that this is an information-gathering process, and that to impose confidentiality would unreasonably interfere with the introduction

of pertinent evidence at the preliminary protective hearing. Members had no other questions or comments and they approved the rule as presented.

7. Roadmap; call to the public; adjourn. The Chair advised that the Editorial Group has set its first meeting for Monday, July 20, 2020. The Editorial Group will review rules on which the Task Force has reached consensus. It will work on improving the rules' syntax and grammar, and assuring consistent use of terminology, substantive and procedural consistency, and compatibility with other sets of rules and statutes. The Editorial Group's members are Justice Berch, Judge Armstrong, Judge Kreamer, Judge Quigley, Ms. Beckmann, and Mr. Meltzer.

The Chair confirmed the dates for future Task Force meetings: August 21, September 25, October 23, November 20, and December 18, 2020. At the June 12 meeting, the Chair requested staff to determine a date for adding another meeting, if one becomes necessary. Staff determined that the most feasible date is Friday, December 4, 2020. The Chair asked members to confirm with staff their availability for a meeting on December 4.

There was no response to a call to the public.

The meeting adjourned at 3:00 p.m.

Rule 22. Referral; Diversion

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

(1) the name, age, gender, and address of the juvenile named in the referral;

(2) the names and addresses, if known, of the parent, guardian, or custodian of the juvenile or the juvenile's spouse, if any;

(3) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody;

(4) a concise statement of facts – including with reasonable particularity the time, date, place, and manner of the alleged acts of the juvenile – that bring the juvenile within the court's jurisdiction, and the law or standard of conduct that the acts allegedly violated; and

(5) the signature of the person responsible for filing the referral.

(b) Record of Referral. Any authorized juvenile court personnel who receives a referral must make a record of the referral in the manner prescribed by the juvenile court in each county.

(c) Citation. A referral for any designated misdemeanor or petty offense may be made by the filing of an Arizona Traffic Ticket and Complaint, otherwise known as a citation, in lieu of a petition. Service of the citation upon the juvenile by a law enforcement officer serves as notice that the juvenile is to appear at the location, date, and time stated on the citation. Notwithstanding the filing of a citation, a juvenile who is cited may be diverted by the prosecutor pursuant to section (d).

(d) Diversion.

(1) ***Meaning.*** "Diversion" is a way of resolving a referral under A.R.S. § 8-321 without filing a petition.

(2) ***Prosecutorial Discretion.*** The prosecutor has sole discretion to divert the prosecution of a juvenile to a community-based program or to a program administered by the juvenile court.

(3) ***Notice to the Victim.*** If the juvenile is accepted into such a program, the victim must be notified as provided by A.R.S. § 8-388.

(e) Submission. If the juvenile is not eligible for diversion, the authorized juvenile court personnel must submit the referral to the prosecutor.

Rule 33. Disposition of Non-felony Offenses

Workgroup Note: The provisions of this rule have been relocated to Rule 22(c).

~~**(a) Initiation of Proceedings.** A referral for any designated non-felony offense [**Staff Note:** Why not instead say "misdemeanor?"], as provided by law, may be made by the filing of an Arizona Traffic Ticket and Complaint, otherwise known as a citation [**Staff Note:** Is "otherwise known as a citation" helpful? If not, it should be deleted.], in lieu of a petition.~~

~~**(b) Service of Citation.** Service of the citation upon the juvenile by a law enforcement official serves as notice that the juvenile is to appear at the location, date, and time stated on the citation.~~

~~**COMMITTEE COMMENT**~~

~~It was the determination of the committee that due to the number of lower courts which process non-felony offenses, statewide procedural rules would not permit individual counties the flexibility needed to dispose of such cases in the most efficient manner possible. Further, amendments made to A.R.S. 8-323, as reflected in S.B. 1024, have clarified some of the provisions which have been most troublesome for the juvenile courts.~~

Rule 29. Adjudication Hearing

(a) Generally. At an adjudication hearing, the court determines whether the juvenile committed the acts alleged in the petition.

(b) Time Limits.

(1) ***Detained Juvenile.*** The court must hold an adjudication hearing for a detained juvenile within 45 days after the advisory hearing.

(2) ***Juvenile Not Detained.*** The court must hold an adjudication hearing for a juvenile who is not detained within 60 days after the advisory hearing.

(3) ***Exceptions.*** The time limits in subparts (b)(1) and (b)(2) do not apply if a motion for transfer or a petition to revoke probation has been filed.

(4) ***Reversal of Judgment.*** If an appellate court reverses a judgment and orders an adjudication hearing, the court must hold the hearing within 60 days after the appellate court entered its order or issued its mandate.

(c) Burden of Proof. At an adjudication hearing, the State must prove the allegations in the petition beyond a reasonable doubt.

(d) Procedure. ~~The order of presentation at the adjudication hearing is similar to the trial of a criminal action before the court sitting without a jury. [**Staff Note:** This repeats draft Rule 3(b) and (c).][**Workgroup Note 6/16/2020:** TF should look again at Rule 3, especially 3(c).]~~

(1) ***Amendment to Conform to Evidence.*** Unless the juvenile consents to the amendment, the petition may be amended only to correct mistakes of fact or to remedy formal or technical defects that conform to the evidence presented at the adjudication hearing. ~~[**WG Note 6/16/20**: cross-reference Crim. Rule 13.5]~~

(2) ***Judgment of Acquittal.*** On the juvenile's motion or on its own, after the close of the evidence the court must ~~[**Staff Note:** Should this be "must" or "may?"]~~ enter a judgment of acquittal if there is no substantial evidence to support an alleged offense. ~~[**Staff Note:** Isn't a judgment of acquittal also an adjudication? See sections (A) and (E).]~~

(e) Findings and Orders. The court must make one of the following findings for each offense alleged in the petition, in writing in the form of a minute entry or order:

(1) The alleged offense was proven beyond a reasonable doubt and the juvenile is adjudicated delinquent; or

(2) The alleged offense was not proven beyond a reasonable doubt and is dismissed.

(f) Disposition. After a finding of delinquency, the court must:

(1) set a disposition hearing; and

(2) establish conditions of release or detention.

~~**COMMITTEE COMMENT**~~

~~Reference to the admissibility of statements by a juvenile has been omitted from these rules because the majority of the committee believed the issue had been adequately addressed in case law. In no way should this omission be interpreted as lessening the rights afforded the juvenile as previously set forth in Rule 7 of the Rules of Procedure for the Juvenile Court.~~

Rule 29. Adjudication Hearing

(a) Generally. At an adjudication hearing, the court determines whether the juvenile committed the acts alleged in the ~~delinquency or incorrigibility~~ petition.

(b) Time Limits.

(1) ***Detained Juvenile.*** The court must hold an adjudication hearing for a detained juvenile within 45 days after the advisory hearing. ~~[**Staff Note:** Current subparts (B)(1) and (B)(2) each contain the concluding phrase, "unless a motion for transfer or petition to revoke probation has been filed." To avoid duplication, this draft relocates these phrases into the "exceptions" of subpart (B)(3).]~~

(2) ***Juvenile Not Detained.*** The court must hold an adjudication hearing for a juvenile who is not detained within 60 days after the advisory hearing.

(3) ***Exceptions.*** The time limits in subparts (b)(1) and (b)(2) do not apply if a motion for transfer or a petition to revoke probation has been filed.

(4) ***Reversal of Judgment.*** If an appellate court reverses a judgment and orders an adjudication hearing, the court must hold the hearing within 60 days after the appellate court entered its order or issued its mandate.

(c) Burden of Proof. At an adjudication hearing, the State must prove the allegations in the petition beyond a reasonable doubt.

(d) Procedure. ~~The order of presentation of evidence at the adjudication hearing shall be as informal as the requirements of due process and fairness permit, and shall proceed generally in a manner is similar to the trial of a civil criminal action before the court sitting without a jury, except that the juvenile may not be compelled to be a witness. [**Staff Note:** This repeats draft Rule 3(b) and (c).] [**Workgroup Note 6/16/2020:** TF should look again at Rule 3, especially 3(c).]~~

(1) ***Amendment to Conform to Evidence.*** Unless the juvenile consents to the amendment, the ~~charge [**Staff Note:** the petition?]~~ petition may be amended only to correct mistakes of fact or to remedy formal or technical defects~~. The charging document [Staff Note: the petition?] is deemed amended to~~ that conform to the evidence presented at ~~any court proceeding~~ the adjudication hearing.~~ [Staff Note: At any court proceeding or at the adjudication hearing?] [**WG Note 6/16/20**: cross-reference Crim. Rule 13.5]~~

(2) ***Judgment of Acquittal.*** On the juvenile's motion or on its own, after the close of the evidence the court ~~shall~~ must ~~[**Staff Note:** Should this be "must" or "may?"]~~ enter a judgment of acquittal ~~on any alleged offense~~ if there is no substantial

evidence to support an alleged offensean adjudication. [**Staff Note:** Isn't a judgment of acquittal also an adjudication? See sections (A) and (E).]

(e) Findings and Orders. When the hearing concludes, tThe court must make one of the following findings for each offense alleged in the petition, in writing in the form of a minute entry or order:

(1) The The allegationalleged offenses in the petition werewas proven beyond a reasonable doubt and the juvenile is adjudicated delinquent or incorrigible; or

(2) The allegationalleged offenses in the petition werewas not proven beyond a reasonable doubt and the petition is dismissed.

(f) Disposition. After a finding of delinquency, the court must:

(1) set a disposition hearing;, and

(f) (2) establish conditions of release or detention. or incorrigibility and pending the disposition hearing, the juvenile is subject to court orders under the supervision of a probation officer.

COMMITTEE COMMENT

Reference to the admissibility of statements by a juvenile has been omitted from these rules because the majority of the committee believed the issue had been adequately addressed in case law. In no way should this omission be interpreted as lessening the rights afforded the juvenile as previously set forth in Rule 7 of the Rules of Procedure for the Juvenile Court.

Rule 37. Definitions

(a) "Party" means a child, parent, guardian, DCS, any petitioner, and any person, Indian tribe, or entity that the court has allowed to intervene.

(b) "Participant" includes any person permitted by the court or authorized by law to participate in the proceedings. Participants must be notified of all applicable proceedings as required by law or court order. A participant is not a party.

(c) "Child's Attorney" means an attorney who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client.

(d) "Guardian ad Litem" means an attorney appointed to protect the interests of a minor or an individual who may be incompetent or in need of protection. A Guardian ad Litem is not bound by the client's expressed preferences and does not have attorney-client privilege.

(e) Definitions Under ICWA.

(1) ***Parent.*** The term parent means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(2) ***Indian Child.*** The term Indian child means any unmarried person under the age of 18 and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe. The findings and elevated burden of proof required by the Indian Child Welfare Act does not apply until the court finds that the child is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe.

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

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

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

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

(7) ~~***Foster Care or Preadoptive Placement Preferences.*** Any child accepted for foster care or preadoptive placement shall be in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. The child shall be placed within a reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:~~

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

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

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

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

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

(a) Assignment of an Attorney.

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

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

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

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

(c) Appointment of an Attorney ~~or Guardian Ad Litem~~ for a Child. Children in dependency and termination cases are presumed indigent and are entitled to a court-appointed attorney ~~or guardian ad litem, or both. In determining which court appointments to make for the child, the court should first consider whether the child can communicate a position to an attorney because of the child's age, mental health, or intellectual functioning.~~ The appointment of a child's attorney should be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing.

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

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

Rule 40. Appointment of a Guardian Ad Litem

In addition to the appointment of an attorney, the court may also appoint a guardian ad litem ~~to protect the best interests of~~ for a child~~, a parent who is a minor, or a party~~ or an individual who may be incompetent or in need of protection. A guardian ad litem appointed under this rule must be an attorney.

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

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

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

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

One more revision to 8-522:

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

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

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

Rule 40.1. Duties and Responsibilities of an Attorney and Guardian Ad Litem for a Child

(a) Explain the Role. ~~The attorney must represent the position of the child and the guardian ad litem must advocate for what is in the best interests of the child.~~ An attorney appointed for a child must explain to the child and the child's caregivers their role as a guardian ad litem or as an attorney, and the ethical obligations associated with their role, including that the GAL has no attorney-client privilege with the child.

(1) The child's attorney shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct when the child is capable of directing the representation by expressing his or her objectives. The child's attorney shall determine whether the child has diminished capacity pursuant to E.R 1.14. In making the determination, the attorney should consult the child and may consult other individuals or entities in order to determine the child's ability to direct the representation. When a child client has diminished capacity, the child's attorney shall make a good faith effort to determine the child's needs and wishes. The attorney shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's attorney shall make a substituted judgment determination. A substituted judgment determination includes determining what the child would decide if he or she were capable of making an adequately considered decision and representing the child in accordance with that determination. The attorney should take direction from the child as the child develops the capacity to direct the attorney. The attorney shall advise the court of the determination of capacity and any subsequent change in that determination.

(2) The child's guardian ad litem shall assist the court in determining what is in the child's best interest and is not bound by the client's expressed preferences.

(b) Provide Information About Court Proceedings. An attorney and guardian ad litem must keep the child informed, in an age and developmentally appropriate manner, of the nature of each court proceeding, the child's right to attend hearings and speak with the judge, any benefits or consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights regarding the dependency proceeding, and must explain the outcome of each hearing to the child.

(c) Participate in the Proceeding. When appropriate, an attorney and guardian ad litem must participate in discovery, file pleadings, and subpoena witnesses. An attorney and guardian ad litem must develop a position for each hearing~~, including potential placements~~. The duties of an attorney and guardian ad litem include identifying appropriate family and professional resources for the child. The attorney and guardian ad litem must inquire of the child regarding potential placements and communicate this information to DCS and the court as appropriate.

(d) Meet with the Child. The attorney and guardian ad litem must meet in person with the child before the preliminary protective hearing, or if that is not possible, within 14 days after the preliminary protective hearing. Thereafter, the attorney and guardian ad litem must have meaningful in-person communication with the child before every substantive hearing. Substantive hearings include all preliminary protective hearings, all review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship, or termination. Upon a showing of extraordinary circumstances, a judge may modify the requirements of this section for a particular substantive hearing. ~~At each substantive hearing the attorney and the guardian ad litem must inform the court of the child's position concerning pending issues and the guardian ad litem must inform the court of what is in the child's best interests.~~ If the child is not present, the attorney or guardian ad litem must provide an explanation for the child's absence.

(e) Observe Placements. In all cases, if practicable and appropriate, an attorney and guardian ad litem should observe the child's residential environment and the child's interaction with the caregiver.

(f) Confer with Others. To meet the obligation of informed representation, an attorney and guardian ad litem must maintain appropriate contact and communications with caregivers, child safety investigators and workers, service providers, childcare providers, CASAs, relatives, and any other significant persons in the child's life.

(g) Attend Meetings. To the extent possible, a child's attorney and guardian ad litem should attend or provide input at a DCS staffing, Foster Care Review Board review, and Child and Family Team meeting.

(h) Use Support Staff. Except for the initial meeting with the child, an attorney and guardian ad litem may use appropriately trained support staff to assist in the performance of the duties listed in this rule, unless the law requires otherwise. Support staff performing these duties must adhere to this rule.

(i) Possess General Knowledge. An attorney and guardian ad litem must have knowledge of the child welfare agencies, governmental programs, and community-

based service providers and organizations serving children (e.g., behavioral health, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services, and juvenile justice). An attorney and guardian ad litem must be knowledgeable about how to access these services and advocate for appropriate services for the child.

COMMENT TO THE 2022 AMENDMENTS

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

8-221. Counsel right of juvenile, parent or guardian; waiver; appointment; reimbursement; guardian ad litem

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

B. If a juvenile, parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person or persons unless counsel for the juvenile is waived by both the juvenile and the parent or guardian.

C. Before any court appearance which may result in institutionalization or mental health hospitalization of a juvenile, the court shall appoint counsel for the juvenile if counsel has not been retained by or for the juvenile, unless counsel is waived by both the juvenile and a parent or guardian with whom the juvenile resides or resided prior to the filing of a petition. The juvenile, parent or guardian may withdraw the waiver of counsel at any time.

D. Waiver of counsel pursuant to this section is subject to the provisions of rule 6, subsection (c) of the Arizona rules of procedure for the juvenile court.

E. If a juvenile is entitled to counsel and there appears to be a conflict of interest between a juvenile and the juvenile's parent or guardian including a conflict of interest arising from payment of the fee for appointed counsel under subsection G of this section, the juvenile court may appoint an attorney for the juvenile in addition to the attorney appointed for the parent or guardian or employed by the parent or guardian.

F. The county board of supervisors may fix a reasonable sum to be paid by the county for the services of an appointed attorney.

G. If the court finds that the juvenile or the parent or guardian of a juvenile has sufficient financial resources to reimburse, at least in part, the costs of the services of an attorney appointed pursuant to this section, the court shall order the juvenile or the parent or guardian to pay to the appointed attorney or the county, through the clerk of the court, an amount that the parent or guardian is able to pay without incurring substantial hardship to the family. Failure to obey an order under this subsection is not grounds for contempt or grounds for withdrawal by the appointed attorney. An order under this section may be enforced in the manner of a civil judgment.

H. In a county where there is a public defender, the public defender may act as attorney in either:

1. A delinquency or incorrigibility proceeding when requested by the juvenile court.

2. Any other juvenile proceeding that is conducted pursuant to this title if the board of supervisors authorizes the appointment of the public defender.

I. 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. This guardian may be an attorney or a court appointed special advocate.

J. The guardian ad litem or attorney for a juvenile shall meet with the juvenile before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The guardian ad litem or attorney for the juvenile also shall meet with the juvenile before all substantive hearings. Upon a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

Rule 41.2. Participants' Rights

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

(1) the child's current out-of-home placement,

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

(3) for any periodic review hearings, any placements where the child has resided for more than 10 days during the past 6 months.

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

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

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

(e) Review Hearings. Rule 41.2 ~~does not limit~~ supplements the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings. [**7/24/20 WG-3 note:** legislation should address the issues of notice in this statute.]

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

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

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

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

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

(1) ~~participants~~ the child's current out-of-home placement, ~~or~~

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

(3) for any periodic review hearings, any placements where the child has resided for more than 10 days during the past 6 months.~~.~~

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

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

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

(e) Review Hearings. Rule 41.2 ~~does not limit~~ supplements the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings. **[7/24/20 WG-3 note:** legislation should address the issues of notice in this statute.]

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

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

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

8-847. Periodic review hearings

A. After the disposition hearing, the court shall hold periodic review hearings at least once every six months as required by federal law.

B. At a proceeding to review the disposition orders of the court, the court shall provide the following persons notice of the review and the right to participate in the proceeding:

1. The authorized agency charged with the child's care and custody.

2. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for ten days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

3. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than ten days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

4. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in section 8-107.

5. The child, if twelve years of age or older.

6. The child's relative, as defined in section 8-501, if that relative files a written notice of right of participation with the court.

7. A person permitted by the court to intervene as a party in the dependency proceeding.

8. A physical custodian of the child within the preceding six months.

9. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

10. Any other person as the court may direct.

C. At the first periodic review hearing, the court shall consider whether a parent of a child who is under three years of age has substantially neglected or wilfully refused to participate in reunification services offered by the department.

D. At any periodic review hearing, the court shall consider the health and safety of the child as a paramount concern.

E. At any periodic review hearing the court shall determine:

1. Whether the department has identified and assessed placement of the child with a relative or person who has a significant relationship with the child.

2. Whether the parent or guardian has complied with the court order pursuant to section 8-824, subsection D, paragraph 6 or section 8-842 subsection B, paragraph 1.

F. If the court finds that a child is no longer dependent, before it dismisses the proceeding the court shall provide notice of the sibling information exchange program established pursuant to section 8-543 to the following:

1. An adult who is the former dependent child in the proceeding for whom the periodic review hearing is held.

2. A parent or guardian with legal custody of the former dependent child for whom the periodic review hearing is held.

Rule 42. Telephonic Testimony, Video Conferencing, Declared Emergencies.

(a) Generally. Upon the court's own motion or motion by a party, the court may permit telephonic testimony or argument or video conferencing in any dependency, guardianship or termination of parental rights hearings. The motion must be in writing pursuant to Rule 46, unless otherwise authorized by the court. Before granting the motion, the court must consider the due process rights of any objecting party. The case-specific due process determinations must be in the form of a signed order or contained in a minute entry.

(b) Meaning of "Telephonic." When used in this rule, "telephonic" means by telephone, video conferencing, or other audio or video technology allowing two or more persons to communicate.

(c) Non-Evidentiary Proceeding. The court may allow or direct a party to appear telephonically at a non-evidentiary hearing in any dependency, guardianship, or termination of parental rights proceeding, if each person will be audible to every other person participating in the proceeding, including the judicial officer, and to the electronic recording system or court reporter, if any.

(d) Request to Testify by a Telephonic Appearance; Evidentiary Proceedings.

(1) Presumption. Unless section (f) of this rule applies, it is presumed that evidentiary proceedings will be conducted in-person.

(2) Time. A party must file a motion to have a party or witness give telephonic testimony at an in-person evidentiary proceeding in writing with the clerk and email or deliver it to the division staff of the judicial officer to which the case has been assigned. If the telephonic evidentiary proceeding is scheduled to occur on 21 days' notice or more, the objecting party must file their objection at least 14 days before the evidentiary proceeding is scheduled to occur. If the proceeding is scheduled to occur on 20 days' notice or less, the objecting party must file their objection sufficiently in advance of the proceeding to allow the judicial officer to consider it in a timely manner. The court may rule on the objection with or without a hearing.

(3) Responsible Party. The party requesting a telephonic appearance must arrange and pay the related cost, unless the court orders otherwise.

(e) Introducing Documents During Telephonic Testimony. To introduce exhibits through a party or witness who testifies telephonically:

(1) the party calling the witness must make a good faith effort to contact the opposing parties to identify and provide exhibits that will be used during the witness's testimony;

(2) the exhibits must be provided in advance to the party or witness through counsel, as applicable, by noon on the court day before the evidentiary proceeding is scheduled to occur;

(3) the party who introduces the exhibits must affirm that they are accurate copies of the exhibits provided to the party or witness who is appearing telephonically; must follow the clerk's procedures for submitting exhibits; and must email them to the division staff of the judicial officer to which the case has been assigned by noon on the court day before the evidentiary proceeding is scheduled to occur; and

(4) if a party seeks to examine or cross-examine a witness regarding a previously introduced exhibit that has not yet been provided to the testifying witness, the court must allow the party a reasonable opportunity to provide an accurate copy of the exhibit to the witness who is appearing telephonically, including granting a recess or continuance if necessary.

(f) Evidentiary Proceedings During Declared Emergencies. When the risks associated with a public health or other emergency declared by the Governor cause restriction of physical access to court facilities, evidentiary proceedings will presumptively be conducted by telephone, by video conferencing, or by other available audio and video technology.

(1) Objections: How Made, When Made.

(A) How to Object to a Telephonic Evidentiary Proceeding. A party objecting to the telephonic conduct of an evidentiary proceeding must file the objection in writing with the clerk and email or deliver it to the division staff of the judicial officer to which the case has been assigned.

(B) When to Object to a Telephonic Evidentiary Proceeding. If the telephonic evidentiary proceeding is scheduled to occur on 21 days' notice or more, the objecting party must file their objection at least 14 days before the evidentiary proceeding is scheduled to occur. If the proceeding is scheduled to occur on 20 days' notice or less, the objecting party must file their objection sufficiently in advance of the proceeding to allow the judicial officer to consider it in a timely manner. The court may rule on the objection with or without a hearing.

(2) Case-Specific Due Process Determinations. The court may overrule an objection to a telephonic evidentiary proceeding and deny a request for an in-person proceeding only after making a case-specific determination that the objecting party's rights to due process will be satisfied by the telephonic evidentiary proceeding. To overrule the objection and to demonstrate that due process will be satisfied, the court must specifically find that the telephonic evidentiary proceeding will not substantially prejudice any party, and that each person will be audible and visible to every other person participating in the proceeding, including the judicial officer, and to the electronic recording system or court reporter, if any. This case-specific due process determination may involve providing for certain witnesses to testify telephonically, even though the proceeding will primarily be in-person. The case-specific due process determination must be in the form of a signed order or contained in a minute entry and must address the following factors showing that, as applicable:

(A) an in-person evidentiary proceeding cannot reasonably be held, given the ongoing, declared public health or other emergency;

(B) one or more witnesses are unable to appear in-person at an evidentiary proceeding, given the ongoing, declared public health or other emergency;

(C) the court can accommodate the objecting party by providing them with full access to the evidentiary proceeding by video conferencing, or other audio and video technology;

(D) the objecting party is able to effectively and timely communicate confidentially with their counsel during the proceeding as needed; and

(E) the court must admonish witnesses and attendees in open court that the telephonic evidentiary proceeding will proceed in a manner similar to the trial of a civil action before the court sitting without a jury.

Rule 43.1. Change of Venue

(a) Generally. On its own motion, a party's motion, or by joint motion of all parties, the court may transfer the venue of a dependency, termination, or guardianship proceeding to a different county.

(b) Factors. The court must consider the following factors before ordering a change of venue:

(1) Whether it would serve the convenience of the parties and witnesses.

(2) Whether it would preserve the orderly administration of the case.

(3) The positions of the parties.

(4) Any other factor that promotes the interests of justice.

(c) Procedure in the Sending County.

(1) The court in the sending county must set a hearing before ordering a change of venue. The parties must attend the hearing.

(2) Before the hearing, the court in the sending county must contact the court in the receiving county and obtain a date, time, and location for the first court proceeding in the receiving county. Both counties must informally confirm that the first court proceeding in the receiving county is conditioned on the sending court ordering a change of venue.

(3) If, at the hearing, the sending court orders a change of venue, it must on the record advise the parents of the next court date and time, the courthouse location in the receiving county, and the consequences of failing to appear for the next court date. The courtroom clerk must ensure that the date and time of the next hearing, as well as the courthouse address, are included in the sending court's minute entry, and must provide a copy of the minute entry to the presiding juvenile judge in the receiving county.

(4) Within 10 days after entry of an order changing venue, 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.

(5) If the sending court denies a change of venue, it must within 10 days request the court in the receiving county to vacate the conditional hearing date.

(d) Procedure in the Receiving County.

(1) Upon receipt of an order changing venue, the receiving county must assign the matter a new case number.

(2) Upon receipt of the order and when necessary, the court in the receiving county must appoint new counsel. New counsel must appear in the new case number as counsel of record pursuant to Rule 39. The receiving court must endorse the parties' former counsel on its order or minute entry appointing new counsel.

(3) If the receiving court appoints new counsel, counsel in the sending county must withdraw as provided in Rule 39. Counsel in the sending county must share all files, other communications and client contact information with new counsel in the receiving county within 14 days of receipt of the notice of appointment of new counsel. This sharing of information does not waive the attorney-client privilege or confidentiality claims.

(e) Request Pending Hearing. If an initial, adjudication, or publication hearing is pending in the sending county when a party moves to transfer venue, the court may:

(1) deny the motion without prejudice;

(2) defer action on the request pending a conclusion of the initial, adjudication, or publication hearing; or

(3) grant the motion effective on a specified date after the initial, adjudication or publication hearing.

Rule 43.1. Change of Venue

(a) Generally. On its own motion, a party's motion, or by ~~stipulation~~ joint motion of all parties, the court may transfer the venue of a dependency, termination, or guardianship proceeding to a different county.

(b) Factors. The court must consider the following factors before ordering a change of venue:

(1) Whether it would serve the convenience of the parties and witnesses.

(2) Whether it would preserve the orderly administration of the case.

(3) The positions of the parties.

(4) Any other factor that promotes the interests of justice.

(c) Procedure in the Sending County.

(1) The court in the sending county must set a hearing before ordering a change of venue. The parties must attend the hearing.

(2) Before the hearing, the court in the sending county must contact the court in the receiving county and obtain a date ~~and judicial assignment~~ , time, and location for the first court proceeding in the receiving county. Both counties must informally confirm that the ~~date and judicial assignment is~~ first court proceeding in the receiving county is conditioned on the sending court ordering a change of venue.

(3) If, at the hearing, the sending court orders a change of venue, it must on the record advise the parents of the next court date and time, the courthouse location in the receiving county, ~~the name of the new judge assigned to the case;~~ and the consequences of failing to appear for the next court date. The courtroom clerk must ensure that the date and time of the next hearing, as well as the ~~name of the newly assigned judge and~~ courthouse address, are included in the sending court's minute entry, and must provide a copy of the minute entry to the ~~new~~ presiding juvenile judge in the receiving county.~~.~~

(4) Within 10 days after entry of an order changing venue, 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.

(5) If the sending court denies a change of venue, it must within 10 days request the court in the receiving county to vacate the conditional hearing date.

(d) Procedure in the Receiving County.

(1) Upon receipt of an order changing venue, the receiving county must assign the matter a new case number.

(2) Upon receipt of the order and when necessary, the court in the receiving county must appoint new counsel. New counsel must appear in the new case number as counsel of record pursuant to Rule 39. The receiving court must endorse the parties' former counsel on its order or minute entry appointing new counsel.

(3) If the receiving court appoints new counsel, counsel in the sending county must withdraw as provided in Rule 39. Counsel in the sending county must share all files, other communications and client contact information with new counsel in the receiving county within 14~~XX~~ days of receipt of the notice of appointment of new counsel. This sharing of information does not waive the attorney-client privilege or confidentiality claims.

~~(3)~~

(e) ~~(e)~~ Request Pending ~~Adjudication~~Hearing. If an initial, adjudication, or publication hearing is pending in the sending county when a party moves to transfer venue, the court may:

(1) ~~(1)~~ deny the motion without prejudice;~~.~~

(2) ~~(2)~~ defer action on the request pending a conclusion of the initial, adjudication, or publication hearing;~~,~~ or

(3) ~~(3)~~ grant the motion effective on a specified date after the initial, adjudication or publication hearing.

Rule 48. Petition, temporary orders and findings, notice of preliminary protective hearing, amended petition

[Staff Note: This is a lengthy rule. Staff suggests dividing it into two rules: one concerning the petition, temporary orders, and notice (Rule 48 of the draft); and the other (Rule 48.X) on service.]

(a) Form and Content of a Petition.

(1) ***Generally.*** A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child.

(2) ***Verification.*** A petition ~~may be~~ must be verified and contain a concise statement of facts to support the conclusion that the child is dependent. ~~A petition that requests temporary orders must be under oath.~~

(3) ***Form.*** A petition must include the information described in A.R.S. § 8-841(B) & (C) ~~petition on behalf of a dependent child must be generally [**Staff Note:** Why "generally?" Although this word is in the current rule, should it be "substantially?"~~

(4) ***Caption.*** The petition must be captioned, "In the Matter of _____ a person under the age of 18 years." A petition seeking in-home intervention must include in the caption the words "In-home intervention requested" in parentheses below the words "Dependency Petition."

(b) Temporary Orders and Findings. If the petition establishes that the interests of the child require immediate action, the court may enter an order that makes the child a temporary ward of the court and may enter orders that address the physical custody of the child pending the preliminary protective hearing. The court also may enter temporary orders ~~that are~~ as necessary for the child's safety and welfare and must make determinations required by Rule 47.1 and other findings required by law.

(c) Setting a Preliminary Protective Hearing. The court must set a preliminary protective hearing not less than 5 nor more than 7 days after the child is taken into custody, excluding weekends and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party, or for other good cause, the court may grant one continuance that does not exceed 5 days.

(d) Notice of the Preliminary Protective Hearing. In addition to information required by 8-841 (E), a notice of hearing must inform the parent, guardian, or Indian custodian:

(1) that a failure to appear at the preliminary protective hearing without good cause may result in a finding that the parent, guardian, or Indian custodian has waived their legal rights and is deemed to have admitted the allegations in the petition;

(2) that the hearing may proceed in their absence and may result in an adjudication of dependency, the termination of their parental rights, or the establishment of a permanent guardianship; and

(3) of their right to request that the hearing be closed to the public.

(e) Amended Petition. At least ~~30~~ 20 days before trial, the petitioner may move for a court order permitting amendments to a petition. If the request is made less than ~~30~~ 20 days before trial, the petitioner must show good cause for the timing. Leave to amend must be freely given when justice requires. The motion must include the proposed amended petition. An amended petition must be served under Civil Rule 5(c).

Rule 48. Petition, temporary orders and findings, notice of preliminary protective hearing, amended petition

[Staff Note: This is a lengthy rule. Staff suggests dividing it into two rules: one concerning the petition, temporary orders, and notice (Rule 48 of the draft); and the other (Rule 48.X) on service.]

(a) Form and Content of a Petition.

(1) ***Generally.*** A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child.

(2) ~~***Oath***~~ ***Verification.*** A petition ~~may be~~ must be verified~~/under oath~~ and contain a concise statement of facts to support the conclusion that the child is dependent. ~~A petition that requests temporary orders must be under oath.~~

~~**(3)**~~ ***Form.*** A petition must include the information described in A.R.S. § 8-841(B)~~,~~ & (C) ~~(C)petition on behalf of a dependent child must be generally [**Staff Note:** Why "generally?" Although this word is in the current rule, should it be "substantially?" I think generally it may have been used because of private petitioners and their unfamiliarity with the legal process. I like the staff's suggested language.)] in the form and contain the information required by law. [**Staff Note:** Does the preceding sentence provide any practical guidance? Staff suggests that the sentence instead say, whether there is reason to know the child is an Indian child as defined by ICWA. [**Staff Note:** If this section is modified to include the above statutory reference, the preceding sentence can be deleted.]~~

(3)

(4) ***Caption.*** The petition must be captioned, "In the Matter of _____ a person under the age of 18 years." A petition seeking in-home intervention must include in the caption the words "In-home intervention requested" in parentheses below the words "Dependency Petition."

(b) Temporary Orders and Findings. If the petition establishes that the interests of the child require immediate action, the court may enter an order that makes the child a temporary ward of the court and may enter orders that address the physical custody of the child pending the preliminary protective hearing. The court also may enter temporary orders ~~that are~~ as necessary for the child's safety and welfare and must make determinations required by Rule 47.1 and other findings required by law. ~~[**Staff Note:** Should the rule add here, "the petition establishes that"? Otherwise, on what does the court base its findings?] [Do not believe we need the language suggested by the staff note.]~~

~~(c)~~

~~(d)~~(c) **Setting a Preliminary Protective Hearing**. The court must set a preliminary protective hearing not less than 5 nor more than 7 days after the child is taken into custody, excluding weekends and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party, or for other good cause, the court may grant one continuance that does not exceed 5 days.

~~(e) [**Staff Note:** The current rule does not include a time reference; this was taken from A.R.S. § 8-824(A). Also, the current rule includes the setting of a hearing with the provision on temporary orders, but staff believes the setting of a hearing is a different topic and therefore adds this new section. Notwithstanding a phrase in the preceding sentence ("after the child is taken into custody"), these provisions do not explicitly provide that a preliminary protective hearing is not necessary for an in-home intervention.][**Agreed**]~~

(d) **Notice of the Preliminary Protective Hearing.** In addition to information required by 8-841 (E) ~~law [**Staff Note:** Again, what practical guidance does the foregoing phrase provide?]~~, a notice of hearing must inform the parent, guardian, or Indian custodian: ~~that~~

(1) ~~(1)~~ that a failure to appear at the ~~[~~preliminary protective~~?]~~ hearing without good cause may result in a finding that the parent, guardian, or Indian custodian has waived their legal rights and is deemed to have admitted the allegations in the petition;~~. The notice must state that~~

(2) ~~(2)~~ that the hearing may proceed in their absence and may result in an adjudication of dependency, the termination of their parental rights, or the establishment of a permanent guardianship~~. The notice of hearing must also advise of~~; and

~~(f)~~(3) ~~(3)~~ ~~of~~ their right to request that the hearing be closed to the public.

~~(g)~~(e) **Amended Petition.** At least ~~30~~ ~~20~~ 20 days before trial, the ~~Petitioner~~ petitioner may move for a court order permitting amendments to a petition. If the request is made less than ~~30~~ 20 days before trial, the petitioner must show good cause for the timing. Leave to amend must be freely given when justice requires. The motion must include the proposed amended petition. ~~If the request is made less than 30~~ 20 ~~20 days before trial, the Petitioner must show good cause for the amendment. [**Staff~~

~~**Note:** The current rule implies that good cause is not a requirement for amending more than 30 days before trial, i.e., that the petition can be amended as a matter of course. Is that correct?] An amended petition must be served under section (E).~~ An amended petition ~~that adds allegations against a parent that were not included in the original petition~~ must be served under Civil Rule 5(c).~~.~~

Rule 48.1. In-home Intervention

(a) Generally. In-home intervention allows a child to stay in the home after the filing of a dependency petition, while remaining under the supervision of DCS and the court and subject to criteria established in A.R.S. § 8-891 and subpart (b)(2).

(b) Procedure. The petitioner may request in-home intervention in the dependency petition. Regardless of whether the petitioner made the request in the dependency petition, the court may order in-home intervention if the court makes all the findings required by subpart (b)(2).

(1) ***Hearing.*** The court may consider in-home intervention at any time prior to the dependency adjudication. At a hearing when in-home intervention is considered, the court must ask whether the parent, guardian, or Indian custodian agrees to in-home intervention and to participate in services. In open court, the court must provide Form 1A, request that the parent, guardian, or Indian custodian return the signed form, and note on the record that the form was provided. If the parent, guardian, or Indian custodian does not agree to in-home intervention, the court may allow the petitioner to file an amended dependency petition.

(2) ***Findings.*** Before ordering in-home intervention, the court must find all the following:

(A) The child has not been removed from the home pursuant to Article 9, Chapter 4, Title 8 of the Arizona Revised Statutes.

(B) In-home intervention appears likely to resolve the risk issues described in subpart (2)(D).

(C) The parent, guardian, or Indian custodian agrees to a case plan and participation in services.

(D) One of the following conditions exist:

(i) the child is at risk of harm because the parent, guardian, or Indian custodian is unable or unwilling to provide food, clothing, shelter or medical care; or

(ii) the parent, guardian, or Indian custodian is unable to provide proper care, control and supervision of the child.

(3) ***Orders.*** The in-home intervention order may include a training or treatment plan for the parent, guardian, or Indian custodian and the child. The order must include a specific time for completion of in-home intervention, which may not exceed one year without the court's review and approval. The petitioner must file a status report with recommendations at least two weeks before the review

hearing. The court must dismiss the dependency petition if the time for completing in-home intervention has expired without a court extension or a dependency adjudication hearing has not been set.

(4) ***Non-compliance.*** If the parent, guardian, or Indian custodian violates the in-home intervention order, the court may take whatever steps it deems necessary to obtain compliance, or it may rescind the order and set a dependency adjudication hearing. The court may allow the petitioner to file an amended dependency petition. If the court orders removal, the court must make the determinations required by Rule 47.1.

Rule 48.1. In-home Intervention

(a) Generally. In-home intervention allows a child to stay in the home after the filing ~~of a~~of a dependency petition ~~was filed~~, while remaining under the supervision of ~~the~~ DCS and the court and subject to criteria established in A.R.S. § 8-891 and subpart (b)(2). ~~by law.~~

(b) Procedure. The petitioner ~~must~~ may request in-home intervention in the dependency petition. Regardless of whether the petitioner made the request in the dependency petition, the court may order in-home intervention if the court makes all the findings required by subpart (b)(2). ~~(C)(2). [**Sentence to be moved and reworded:** A court that orders in-home intervention may require the parent, guardian, or Indian custodian to sign and return a copy of Form 1A and note on the record that the form was provided.]~~

(1) ***Hearing.*** The court may ~~set a hearing to~~ consider in-home intervention at any time prior to the dependency adjudication. ~~[**Staff Note:** Does the hearing have a specific name? Is it an initial dependency hearing? Or is it a hearing that is not described in another rule?]~~ At ~~the~~ a ~~initial~~ hearing ~~on~~ when in-home intervention is considered, the court must ask whether the parent, guardian, or Indian custodian agrees to in-home intervention and to participate in services. In open court, the court must provide Form 1A, request that the parent, guardian, or Indian custodian return the signed form, and note on the record that the form was provided. If the parent, guardian, or Indian custodian does not agree to in-home intervention, the court may ~~order~~ allow the petitioner to file an amended dependency petition. ~~[**Staff Note:** Something seems to be missing at the end of this sentence, e.g., an amended petition requesting that the child be removed from the home?]~~

(2) ***Findings.*** Before ordering in-home intervention, the court must find all the following:

(A) The child has not been removed from the home pursuant to Article 9, Chapter 4, Title 8 of the Arizona Revised Statutes.

(B) In-home intervention appears likely to resolve the risk issues described in subpart (2)(~~d~~D). ~~paragraph 4. [**Staff Note:** What risk issues in subpart 4 is this provision referencing? Does it intend to refer to subpart (2)(d)?]~~

(C) The parent, guardian, or Indian custodian agrees to a case plan and participation in services.

(D) One of the following conditions exist:

(i) the child is at risk of harm because the parent, guardian, or Indian custodian is unable or unwilling to provide food, clothing, shelter or medical care; or

(ii) the parent, guardian, or Indian custodian is unable to provide proper ~~[parental?]~~ care, control and supervision of the child.

(3) ***Orders.*** The in-home intervention order may include a training or treatment plan for the parent, guardian, or Indian custodian and the child. The order must include a specific time for completion of in-home intervention, which may not exceed one year without the court's review and approval. ~~Unless the petition is dismissed, t~~ The petitioner must file a status report with recommendations at least two weeks before the review hearing. ~~mandated one-year deadline. [**Staff Note:** If the specific time in the order is less than one year, must the Petitioner submit a status report at least two weeks before the deadline?]~~ The court must dismiss the dependency petition if the time for completing in-home intervention has expired without a court extension or a dependency adjudication hearing has not been set.

(4) ***Non-compliance.*** If the parent, guardian, or Indian custodian violates the in-home intervention order, the court may take whatever steps it deems necessary to obtain compliance, or it may rescind the order and set a dependency adjudication hearing. ~~If the parent, guardian, or Indian custodian contests removal of the child, the court must order the petitioner to file an amended petition. Upon~~ The court may allow the petitioner to file an amended dependency petition. If the court orders removal, the court must make the determinations required by Rule 47.1.

Rule 48.X. Service of the Dependency Petition, Temporary Orders, and Notice of Hearing

(a) Service under Civil Rules 4(f), 4.1, and 4.2. The Petitioner must serve copies of the petition, a notice of the preliminary protective hearing, and temporary orders on a parent, guardian, or Indian custodian in the manner provided by Civil Rules 4(f), 4.1, or 4.2. However, for dependency proceedings, Civil Rules 4.1 and 4.2 are deemed modified as follows:

(1) ***No summons.*** References to service of summons are inapplicable because no summons is issued.

(2) ***Petitioner and Respondent.*** References to "plaintiff" mean the petitioner. References to "defendant" mean the respondent.

(b) Time for Completing Service. Service of process must be completed not less than 5 days before the court hearing, except

(1) service of the petition and temporary orders may occur at the preliminary protective hearing, or

(2) if the parent, guardian, or Indian custodian signs an acceptance of service.

(c) Service within Arizona. Service of process on a parent, guardian, or custodian within Arizona must be completed pursuant to Civil Rule 4.1, section (d) Service of Summons Upon Individuals. However, when warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g) Service of Summons Upon Incompetent Person, (k) Alternative or Substituted Service, or (l) Service by Publication and Return.

(d) Service within Arizona but Outside the County. When the petitioner knows the address of a parent, guardian, or Indian custodian who resides outside the county where the petition is pending, the petitioner may serve the parent, guardian, or Indian custodian by mailing a copy of the petition, notice of hearing, and temporary order through the postal office or a national courier service, with a return receipt. When the post office or national courier service has returned the signed receipt, the petitioner must file with the clerk an affidavit stating:

(1) the circumstances warranting the utilization of service by mail;

(2) that copies of the petition, notice of hearing and temporary orders were mailed to the person being served;

(3) that the copies were in fact received by the person to be served as evidenced by the receipt, a copy of which must be attached to the affidavit; and

(4) the date of receipt by the party being served and the date the receipt was received by the sender.

The affidavit is prima facie evidence of personal service of the petition, notice of hearing, and temporary orders, and service is deemed complete from the date of receipt by the party being served, provided that such completion is no less than 5 days before the hearing and that the affidavit required by this section has been filed prior to or at the time of hearing.

(e) Service Outside Arizona. Service outside the state must be completed pursuant to Civil Rule 4.2, sections (a) Extraterritorial Jurisdiction and Personal Service Out of State, (b) Direct Service, (c) Service by Mail and Return, (f) Service by Publication and Return, (i) Service Upon Individuals in a Foreign Country, or (j) Service Upon Minors and Incompetent Persons in a Foreign Country.

(f) Service on an Incarcerated Person. A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service, with the return or confirmation of service completed by an official of the jail, prison or correctional facility. The signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. In addition, the petitioner must send copies of the documents being served to the inmate by first class mail.

(g) Serving a Conservator for a Minor. If a conservator has been appointed for the child, the conservator must be served pursuant to Civil Rule 4.1.

(h) Service under ICWA.

(1) If the petition alleges or the court has reason to know the child at issue is an Indian child as defined by ICWA, then in addition to service of process as required by these rules, the petitioner must notify the parent, Indian custodian, and child's tribe or tribes as ICWA requires. The petitioner must provide notice by registered or certified mail with a return receipt requested.

(2) If the identity or location of the parent or Indian custodian cannot be determined, the petitioner must give notice to the Secretary of the Interior by certified mail with a return receipt requested. The Secretary of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

(3) The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The

court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

(i) Waiver under ICWA. The parent, Indian custodian, or the child's tribe may waive the 10-day notice requirement, pursuant to ICWA and to allow the preliminary protective hearing to proceed within the time limit provided by state law.

(j) Amended petitions. [**Staff Note:** As reorganized, this section was relocated in the previous rule.]

COMMENT

The committee concluded that a provision permitting the parent, Indian custodian or the child's tribe to waive the 10 day notice requirement does not conflict with ICWA and reflects current practice in some counties. Inclusion of the waiver provision allows timely disposition of cases without interfering with the rights afforded the parent, Indian custodian or the tribe under ICWA. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113 the 10-day notice requirement does not apply.

[Staff Note: Family Law Rule 41(m) now requires advance court approval for service by publication. Should the juvenile rules include a similar provision? See further Juvenile Rule 52(D)(2), which appears to require judicial approval for service by publication.]

Rule 48.X. Service of the Dependency Petition, Temporary Orders, and Notice of Hearing

(a) Service under Civil Rules 4(f), 4.1, and 4.2. The Petitioner must serve copies of the petition, a notice of ~~[~~the preliminary protective~~]~~ hearing, and temporary orders on a parent, guardian, or Indian custodian in the manner provided by Civil Rules 4(f), 4.1, or 4.2. However, for dependency proceedings, Civil Rules 4.1 and 4.2 are deemed modified as follows:

(1) ***No summons.*** References to service of summons are inapplicable because no summons is issued.

(2) ***Petitioner and Respondent.*** References to "plaintiff" mean the petitioner. References to "defendant" mean the respondent.

(b) Time for Completing Service. Service of process must be completed not less than 5 days before the court hearing, except ~~[**Staff Note:** What is the purpose of requiring service 5 days before the hearing if service can be accomplished at the hearing? And if the hearing must be set within 5 days after the filing of a petition, how can service be completed 5 days before the hearing?This applies more specifically to private petitions where the PP5 may be set 21 days out from filing.]~~

(1) service of the petition and temporary orders may occur at the preliminary protective hearing, or

(2) if the parent, guardian, or Indian custodian ~~`~~signs~~-~~ an acceptance of service.

~~**(3)** [**Staff Note**: The FLR (see Rule 39(b)) uses only the term "acceptance," and not "waiver" of service].~~

(c) Service within Arizona. ~~[**Staff Note:** This provision is located midway through the current rule on service. Staff relocated it closer to the beginning.]~~Service of process on a parent, guardian, or custodian within Arizona must be completed pursuant to Civil Rule 4.1, section (d) Service of Summons Upon Individuals. However, when warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g) Service of Summons Upon Incompetent Person, (~~m~~k) Alternative or Substituted Service, or (~~n~~l) Service by Publication and Return.

(d) Service within Arizona but Outside the County. When the petitioner knows the address of a parent, guardian, or Indian custodian who resides outside the county where the petition is pending, the petitioner may serve the parent, guardian, or Indian custodian by ~~depositing~~ mailing a copy of the petition, notice of hearing, and temporary order through the postal office or a ~~n~~national courier service, with a return receipt~~, restricted delivery requested~~. ~~in the post office~~ ~~[**Staff Note:** Why in the post~~

~~office, why not any mailbox?] postage prepaid, by any form of mail requiring a signed and returned receipt. Service by mail pursuant to this section and the return may be made by the party procuring service or by that party's attorney. [**Staff Note:** What does the preceding sentence add? Isn't the petitioner the "party procuring service?"]~~ When the post office or national courier service has returned the signed receipt, the petitioner must file with the clerk~~'s office~~ an affidavit stating:

(1) ~~that the parent, guardian, or Indian custodian resides out of the county;~~the circumstances warranting the utilization of service by mail;

(2) that copies of the petition, notice of hearing and temporary orders were mailed to the person being served;

(3) that the copies were in fact received by the person to be served as evidenced by the receipt ~~[**Staff Note:** Unless the mailing required restricted delivery, i.e., to the addressee only, the receipt does not establish receipt by the respondent.]~~, a copy of which must be attached to the affidavit; and

(4) the date of receipt by the party being served and the date the receipt was received by the sender.

The affidavit is prima facie evidence of personal service of the petition, notice of hearing, and temporary orders, and service is deemed complete from the date of receipt by the party being served, provided that such completion is no less than 5 days before the hearing and that the affidavit required by this section has been filed prior to or at the time of hearing.

~~[**Staff Note:** It seems challenging to serve a person by mailing five days before the hearing when the hearing may be only five days after the court sets the hearing. Is this currently problematic?][we believe this applied more to private petitioners]~~

(e) Service Outside Arizona. Service outside the state must be completed pursuant to Civil Rule 4.2, sections (a) Extraterritorial Jurisdiction and Personal Service Out of State, (b) Direct Service, (c) Service by Mail and Return, (f) Service by Publication and Return, (i) Service Upon Individuals in a Foreign Country, or (j) Service Upon Minors and Incompetent Persons in a Foreign Country.

~~(e)~~**(f) Service on an Incarcerated Person.** A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service, with the return or confirmation of service completed by an official of the jail, prison or correctional facility. The signature of an official of the jail, prison or correctional facility on the

return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. In addition, the petitioner must send copies of the documents being served to the inmate by first class mail.]

~~**(f)(a) Service Outside Arizona.** Service outside the state must be completed pursuant to Civil Rule 4.2, sections (a) Extraterritorial Jurisdiction and Personal Service Out of State, (b) Direct Service, (c) Service by Mail and Return, (f) Service by Publication and Return, (i) Service Upon Individuals in a Foreign Country, or (j) Service Upon Minors and Incompetent Persons in a Foreign Country.~~

(g) Serving a Conservator for a Minor. If a conservator has been appointed for the child, the conservator must be served pursuant to Civil Rule 4.1.

(h) Service under ICWA.

(1) If the petition alleges or the court has reason to know the child at issue is an Indian child as defined by ICWA, then in addition to service of process as required by these rules, the petitioner must notify the parent, Indian custodian, and child's tribe or tribes as ICWA requires. The petitioner must provide notice by registered or certified mail with a return receipt requested.

(2) If the identity or location of the parent or Indian custodian cannot be determined, the petitioner must give notice to the Secretary of the Interior by certified mail with a return receipt requested. ~~[**Staff Note:** This provision omits the requirement of a return receipt].~~ The Secretary of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

(3) The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. ~~[**Staff Note:** How can a notice of hearing include a hearing date when the date of receipt by these individuals is unknown?]~~ The court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

(i) Waiver under ICWA. The parent, Indian custodian, or the child's tribe may waive the 10-day notice requirement, pursuant to ICWA and to allow the preliminary protective hearing to proceed within the time limit provided by state law.

~~**(i)**~~

(j) Amended petitions. [**Staff Note:** As reorganized, this section was relocated in the previous rule.]

COMMENT

The committee concluded that a provision permitting the parent, Indian custodian or the child's tribe to waive the ~~ten (~~10~~)~~ day notice requirement does not conflict with ICWA and reflects current practice in some counties. Inclusion of the waiver provision allows timely disposition of cases without interfering with the rights afforded the parent, Indian custodian or the tribe under ICWA. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113 the 10-day notice requirement does not apply.

[Staff Note: Family Law Rule 41(m) now requires advance court approval for service by publication. Should the juvenile rules include a similar provision? See further Juvenile Rule 52(D)(2), which appears to require judicial approval for service by publication.]

Rule 74. 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 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. 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.

(e) Motion to Continue. A motion to continue must be made in good faith and must state 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 for good cause.

(f) Motion to Set Aside Judgment. A motion to set aside a judgment rendered by the court shall conform to the requirements of Civil Rule 60(b)-(d), except that the motion must be filed within one year of the final judgment, order or proceeding unless the moving party alleges grounds pursuant to Civil Rule 60(b) (1), (2) or (3), in which case the motion must be filed within 6 months. [**7/22/20 WG-4 note:** See ARS 8-123; is the draft consistent with the statute?] If the child is an Indian child, a motion to set aside a judgment must comply with 25 U.S.C. §§ 1913 and 1914.

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.~~

~~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.**~~

(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 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. 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.

(e) Motion to Continue. A motion to continue must be made in good faith and must state 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 for good cause.

~~(e)~~**(f) Motion to Set Aside Judgment.** A motion to set aside a judgment rendered by the court shall conform to the requirements of Civil Rule 60(b)-(d), except that the motion must be filed within one year of the final judgment, order or proceeding unless the moving party alleges grounds pursuant to Civil Rule 60(b) (1), (2) or (3), in which case the motion must be filed within 6 months. [**7/22/20 WG-4 note:** See ARS 8-123; is the draft consistent with the statute?] If the child is an Indian child, a motion to set aside a judgment must comply with 25 U.S.C. §§ 1913 and 1914.

Rule 76. Service of Process

Workgroup Note: The substance of this rule is now in Rule 79.1.

Rule 76. Service of Process

Workgroup Note: The substance of this rule is now in Rule 79.1.

~~**(a) Service of Process.** Service of process shall must be accomplished pursuant tounder Civil Rules 4.1 and 4.2, Ariz.R.Civ.P., unless otherwise set forth in these rules.~~

~~**Notice Under ICWA..** Under the Regulations, if~~

~~**(1)** In an involuntary proceeding, if the petition to adopt alleges or the court has reason to know the child at issue is an Indian child as defined by ICWA, in addition to service of process as required by these rules, notification shallthe petitioner must be given give notice to the parent, Indian custodian and child's tribe under the ICWA Regulations, 25 C.F.R. § 23.111of any involuntary proceeding involving an Indian child. 6/22/20: STOP HERE~~

~~**(2)** Notice shall must be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall must be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall havehas fifteen (15)15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene.~~

~~**From 61c2: *Indian Child.*** If the motion alleges or the court has reason to know the child at issue is an Indian child, then in addition to service of process as required by this rule, the moving party must also give notification to the parent, Indian custodian, and tribe by registered mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the moving party must give notice by registered mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.~~

~~**(3)** No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.~~

~~From 61d: **Hearing Involving an Indian Child.** The court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The~~

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

~~(b)~~

Rule 79. Petition to Adopt

(a) Contents of the Petition. A petition to adopt must be captioned, "In the Matter of___, a person under the age of 18 years." and the allegations of the petition may be based upon information and belief. In addition to information required by law, the petition must contain the following information:

(1) whether all necessary consents have been obtained, noting any exceptions as provided by law;

(2) whether any termination of parental rights proceeding is pending, including any appeal;

(3) whether approval has been granted through the Interstate Compact on the Placement of Children, if applicable; and

(4) whether there is reason to know the child is an Indian child. If the court has reason to know the child is an Indian child, the petition must state:

(A) whether there is compliance with the placement preferences required under ICWA § 1915 and 25 C.F.R. §23.130;

(B) the name of the Indian child's tribe, if known;

(C) whether the Indian child is reasonably believed to be a resident or domicilary of an Indian reservation; and

(D) whether the Indian child is a ward of a tribal court.

(b) Setting a Hearing on a Petition.

(1) Time Limits. The court must hold a hearing on a petition:

(A) within 60 days after the filing date if the child has resided in the home of the prospective adopted parent or parents for at least one year immediately before the filing of the petition for adoption, unless the prospective adoptive parent is the step-parent of the child who has been married to the birth or legal parent of the child for less than one year;

(B) within 90 days after the filing date if the child is under 3 years of age when the petition is filed or has resided in the home of the prospective adoptive parent or parents for at least 6 months immediately before the filing of the petition, unless the prospective adoptive parent is the step-parent of the child who has been married to the birth or legal parent of the child for less than one year; and

(C) in all other cases, within 6 months after the filing date.

(2) Expedited Hearing. The court must hold an expedited hearing on a motion supported by an affidavit that the expedited hearing is in the child's best interests and that any of the following is true:

(A) the child is suffering from a chronically debilitating progressive or fatal disease, as diagnosed by a licensed physician;

(B) a prospective adoptive parent, birth parent, or legal parent is terminally ill, as diagnosed by a licensed physician; or

(C) the child is free for adoption, is at least 16 years of age, consents to adoption, and has lived with the prospective adoptive parent or parents for at least 6 months.

(3) Indian Child. In an involuntary proceeding, if the court has reason to know the child is an Indian child, then under 25 CFR § 23.112, the court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the adoption hearing.

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(1) whether all necessary consents have been obtained, noting any exceptions as provided by law;

(2) whether any termination of parental rights proceeding is pending, including any appeal;

(3) whether approval has been granted through the Interstate Compact on the Placement of Children, if applicable; and

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(A) whether there is compliance with the placement preferences required under ICWA § 1915 and 25 C.F.R. §23.130;

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(B) within 90 days after the filing date if the child is under 3 years of age when the petition is filed or has resided in the home of the prospective adoptive parent or parents for at least 6 months immediately before the filing of the petition, unless the prospective adoptive parent is the step-parent of the child who has been married to the birth or legal parent of the child for less than one year; and

(C) in all other cases, within 6 months after the filing date.

(2) Expedited Hearing. The court must hold an expedited hearing on a motion supported by an affidavit that the expedited hearing is in the child's best interests and that any of the following is true:

(A) the child is suffering from a chronically debilitating progressive or fatal disease, as diagnosed by a licensed physician;

(B) a prospective adoptive parent, birth parent, or legal parent is terminally ill, as diagnosed by a licensed physician; or

(C) the child is free for adoption, is at least 16 years of age, consents to adoption, and has lived with the prospective adoptive parent or parents for at least 6 months.

~~(3)~~ **Indian Child.** In an involuntary proceeding, if the court has reason to know the child is an Indian child, then under 25 CFR § 23.112, the court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the adoption hearing.

~~Rule 79.1 Service of the Petition to Adopt and Notice of Hearing~~

~~**(a)** Generally. Service of the petition and a notice of hearing must be accomplished under Civil Rules 4.1 and 4.2, unless otherwise set forth in these rules, but Civil Rules 4.1 and 4.2 are deemed modified as follows:~~

~~1. ***No summons.*** References to service of summons are inapplicable because no summons is issued.~~

~~2. ***Petitioner and Respondent.*** References to "plaintiff" mean the petitioner. References to "defendant" mean the respondent.~~

~~**(b)** Persons to Serve. The petitioner must serve the petition and a notice of hearing on the following persons:~~

~~**(A)** the petitioner; [Staff Note: What is the rationale of the petitioner serving the petition on themselves?]~~

~~**(B)** the person, department, or agency conducting the social study required by A.R.S. § 8-112;~~

~~**(C)** any person, department, or agency required by A.R.S. § 8-106 to give consent unless consent and a waiver of notice were filed previously; and~~

~~**(D)** any person who has initiated a paternity action.~~

~~**(c)**~~**(3)** ~~Indian Child. In an involuntary proceeding, if the court has reason to know the child is an Indian child, then in addition to service of process as required by this rule, under 25 CFR § 23.111 the petitioner must also give notice to the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe of their right to intervene.~~

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(a) Generally. Service of the petition and a notice of hearing must be accomplished under Civil Rules 4.1 and 4.2, unless otherwise set forth in these rules, but Civil Rules 4.1 and 4.2 are deemed modified as follows:

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(1) ~~the petitioner; [**Staff Note:** What is the rationale of the petitioner serving the petition on themselves?]~~

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(3) any person, department, or agency required by A.R.S. § 8-106 to give consent unless consent and a waiver of notice were filed previously; and

(4) any person who has initiated a paternity action.

(c) Indian Child. In an involuntary proceeding, if the court has reason to know the child is an Indian child, then in addition to service of process as required by this rule, under 25 CFR § 23.111, the petitioner must also give notice to the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe of their right to intervene.

Staff Note Regarding the Emancipation Rules.

There currently are 15 emancipation rules, numbered 88 through 102. Mr. Volkmer initially proposed consolidating these provisions into 5 new rules. These 5 new rules are as follows:

88. Emancipation Generally

89. Petition and Documentation Requirements

90. Time for Hearing and Notice of Hearing

91. Proceedings After Service of the Petition

92. Determination and Order of Emancipation

Staff then further reorganized the provisions of these rules. Here is a table showing the source of each new rule provision in the current rules.

New Rule	Current Rule
88(a)	88
88(b)	89
88(c)	96
88(d)	91
88(e)	92
88(f)	93
89(a) through (d)	90, 94
90(a)	95(A) + 100
90(b)	95(B)
90(c)	95(c)
91(a)	97
91(b)	99
91(c)	99
91(d)	98(A)
91(e)	98(B)
92(a)	101
92(b) through (d)	102

Two provisions in the current rules were omitted: Rule 90 (because it's also in Rule 94(A), now Rule 89(a)); and Rule 91(A), because it's obvious and unnecessary.

Rule 88. Emancipation Generally

(a) Scope. These rules and A.R.S. §§ 12-2451 through 12-2456 govern procedures for the emancipation of minors.

(b) Definitions. In emancipation proceedings, the following definitions apply.

(1) ***"Petitioner"*** means the minor seeking emancipation.

(2) ***"Respondent"*** means any parent or guardian of the petitioner.

(3) ***"Parent"*** means the minor's natural or adoptive mother or father, unless parental rights have been terminated by court order.

(4) ***"Guardian"*** means a legally appointed guardian.

(c) Allegation of Abuse or Neglect. If at any time during emancipation proceedings there is an allegation of child abuse or neglect, the court may stay the proceedings under A.R.S. § 12-2452(A), and require DCS to investigate the allegation and submit a written report to the court.

(d) Appointment of a Guardian ad Litem. The court may appoint a guardian ad litem for the petitioner at any time during an emancipation proceeding. ~~The guardian ad litem may be an attorney, volunteer special advocate, or other qualified person.~~ [**Staff Note:** Suggest the workgroup delete the preceding sentence (shown with strikethrough) because it might conflict with Rule 40.] The court may assess the parent or guardian for the cost of the guardian ad litem. [**Staff Note:** This duplicates a portion of A.R.S. § 12-2451(E).]

(e) Public Access to Records and Hearings.

(1) ***Emancipation Record.*** The court must maintain the record of an emancipation case as a public record, but for good cause, the court may order the record closed pursuant to Supreme Court Rule 123.

(2) ***Hearings.*** Emancipation hearings must be open to the public, unless the court makes a written finding that closing the hearing is necessary to protect a party or there is a clear public interest in confidentiality.

(f) Fee Reduction or Waiver. At any time before or at the hearing the court, based on financial hardship, may reduce or waive the fee prescribed in A.R.S. § 12-284 for filing an emancipation petition.

Rule 89. Petition and Documentation Requirements

~~**Staff Note:** Sections (A), (B), and (C) duplicate the requirements of A.R.S. § 12-2451.~~

(a) Requirements. A minor may file a petition for emancipation with the clerk of the court in the county in which the minor resides if all the following apply:

(1) The ~~minor~~ petitioner is at least sixteen years of age;

(2) The ~~minor~~ petitioner is an Arizona resident;

(3) The ~~minor~~ petitioner is financially self-sufficient;

(4) The ~~minor~~ petitioner is not a ward of the court and is not in the care, custody, and control of a state agency; and

(5) The ~~minor~~ petitioner files with the court an acknowledgment that the petitioner has read and understands the information provided by the court explaining the rights and obligations of an emancipated minor and the potential risks and consequences of emancipation.

(b) Content of Petition. A petition for emancipation must be under oath and captioned: "In the Matter of Emancipation of ___, a minor." It must state:

(1) The petitioner's name, mailing address, date of birth, and the last four digits (only) of the petitioner's social security number;

(2) The name and mailing address of the petitioner's parent or legal guardian if known, and if the address is unknown, a description of the efforts taken to obtain the address; and

(3) Specific facts and supporting documentation that warrant emancipation and address:

(A) The petitioner's demonstrated ability to manage the petitioner's financial affairs, including proof of employment or other means of support.

(B) The petitioner's demonstrated ability to manage the petitioner's personal and social affairs, including proof of housing.

(C) The petitioner's demonstrated ability to live wholly independent of the petitioner's parents or guardian.

(D) The petitioner's demonstrated ability and commitment to obtain or maintain education, vocational training, or employment.

(E) How the petitioner will obtain or maintain health care.

(F) Any other information considered necessary to support the petition.

(c) Supporting Documentation. The petitioner must provide at least one of the following to support the petition:

(1) Documentation that the petitioner has been living on petitioner's own for at least three consecutive months;

(2) A statement explaining why the petitioner believes the home of the petitioner's parent or guardian is not a healthy or safe environment; or

(3) A notarized statement from the petitioner's parent or guardian that contains their written consent to the emancipation, with an explanation of the reason for giving consent.

(d) Lack of Information. If a petition fails to include the information required by sections (b) and (c), the court may:

(1) Dismiss the petition without prejudice, or

(2) Require the petitioner to file supplemental information. If the court requires supplemental information, it must give written notice to the petitioner and specify a date for filing the required supplement. The court may dismiss the petition without prejudice if the petitioner fails to file the supplement by that date.

Rule 90. Time for Hearing, Notice of Hearing

(a) Time for Hearing. The court must conduct a hearing within 90 days after the filing of the petition. The court for good cause may extend the time for conducting the hearing. The following periods are excluded from the 90-day computation:

(1) For the petitioner to file supplemental information under Rule 89(c).

(2) For the court to gather correct address information under Rule 90(c).

(3) For the DCS investigation and report under Rule 88(c).

(4) The time from the court's referral of the matter to mediation or alternative dispute resolution until the time of filing a notice of agreement or non-agreement under Rule 91(f).

(b) Notice of Hearing.

(1) The court must notify the petitioner and the petitioner's parents or guardian of the date, time, and place of the hearing by certified mail~~, with a return receipt requested,~~ at least 60 days before the hearing date. Notice is effective upon mailing.

(2) The court must provide the petitioner, parents, or guardian a copy of the petition with the notice.

(3) The notice must advise the parents or ~~legal~~ guardian that if they fail to appear at the emancipation hearing, the court may proceed in their absence.

(c) Incorrect or Unknown Address. If the notice of hearing and petition are returned to the court as undelivered due to an incorrect address, or if the petition fails to provide an address for a necessary party, the court may make further inquiry of the petitioner, or it may require the petitioner to provide a full explanation concerning efforts to locate the necessary party or the circumstances why the necessary party cannot be located and served with notice.

Rule 91. Proceedings after Service of the Petition

(a) Responses and Objections. The petitioner's parent or guardian may file a written response or objection to the petition for emancipation. An objection to the petition for emancipation must state specifically why the petition for emancipation is inaccurate or should be denied. The parent or guardian must mail or deliver a copy of the response or objection to the petitioner.

(b) Disclosure.

(1) Duty to Disclose Witnesses and Exhibits. Unless otherwise ordered by the court, each party must disclose in writing to other parties and the court at least 20 days before the emancipation hearing the following information:

(A) A list of witnesses the party intends to call at the emancipation hearing, including the names, addresses, and telephone numbers of each witness, and a description of the substance of the witness's expected testimony. The disclosure must identify witnesses whose testimony will be in the form of a deposition.

(B) A list and copies of all exhibits the party intends to use at the emancipation hearing.

(2) Exclusion. The court may exclude witness testimony or an exhibit if the witness or exhibit was not timely disclosed, except in rebuttal or for good cause.

(c) Objection. A party who objects to the admission of an exhibit 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 10 days after receipt of the disclosure statement. The court may rule on objections at any time before the emancipation hearing.

(d) Discovery. The court may permit discovery only for good cause.

(e) Attendance.

(1) Petitioner. The petitioner must personally appear in court for all proceedings or as the court directs otherwise. If the petitioner had notice of the date, time, and place of a hearing, the petitioner's absence may be deemed voluntary and the court may proceed and make findings or enter further orders, including dismissal of the petition.

(2) Parent or Guardian. The petitioner's parents or guardian may attend any hearing but must appear personally or through counsel for all court proceedings, or as the court directs otherwise, if they have filed an objection to the emancipation. If a parent or guardian had notice of the date, time, and place of a

hearing, a parent or guardian's absence may be deemed voluntary and the court may proceed to make findings or enter further orders.

(f) Mediation and Alternative Dispute Resolution.

(1) At any time before the emancipation hearing, the court may stay proceedings and refer the parties to mediation or alternative dispute resolution.

(2) If the petitioner's parent or guardian objects to the petition for emancipation, the court must stay further proceedings and refer the matter to mediation or alternative dispute resolution, unless the court reasonably believes that mediation would not be in the petitioner's best interests. The court may consider:

(A) whether the petitioner's parent or guardian has been convicted of abuse, neglect or abandonment;

(B) whether the petitioner's parent or guardian is named as a perpetrator of abuse, neglect, or abandonment in the DCS central registry; or

(C) any other relevant information.

(3) If an agreement is reached through mediation or alternative dispute resolution, the agreement must be signed by all parties and submitted to the court for approval.

(4) If an agreement is not reached through mediation or alternative dispute resolution, the court must reset and conduct the emancipation hearing.

Rule 92. Determination and Order of Emancipation

(a) Burden of Proof. The petitioner must prove by clear and convincing evidence that emancipation is in the petitioner's best interest.

(b) Determination of Emancipation. The court must determine emancipation based on the petitioner's best interests. The court must consider the following: [**Staff Note:** Section (A) duplicates the provisions of A.R.S. § 12-2453(A) with the exception that the rule adds factor number (8).]

(1) the potential risks and consequences of emancipation and to what degree the petitioner understands these risks and consequences;

(2) the wishes of the petitioner;

(3) the opinions and recommendations of the petitioner's parents or guardian;

(4) the financial resources of the petitioner, including any employment history;

(5) the petitioner's ability to be financially self-sufficient;

(6) the petitioner's educational level and success in school;

(7) whether the petitioner has any criminal record; and

(8) any other factor the court deems relevant.

(c) Order of Emancipation. If the court finds emancipation is in the petitioner's best interests, the court must:

(1) make the following findings on the record:

(A) the petitioner is at least sixteen years of age;

(B) the petitioner is a resident of this state;

(C) the petitioner is financially self-sufficient;

(D) the petitioner has acknowledged in writing that the petitioner has read and understands the information provided by the court that explains the rights and obligations of an emancipated minor and the potential risks and consequences of emancipation; and

(E) the petitioner is not a ward of the court and is not in the care, custody and control of a state agency.

(2) file an order of emancipation with the clerk;

(3) provide a copy of the order to the petitioner and any party entitled to notice of the proceeding; and

(4) provide a copy of the order to the Department of Economic Security, DCS, or the department's agent if the petitioner is a child in a Title IV-D case.

(d) Appeal. A party may appeal from an order granting or denying the emancipation petition as provided in Rules 103.

BEGINNING OF PART V

SUBPART 1: SCOPE OF RULES [**Staff Note:** As with previous "scope" provisions, staff suggests that this single rule should not be a standalone subpart.]

Rule 88. Emancipation Generally

[Staff Note: Rules 88 through 102 concern emancipation. These rules in large part duplicate statutory provisions; see A.R.S. § 12-2451 et. seq. A threshold question is whether the rules should duplicate the statutes, whether a rule instead should simply reference a statute, or do neither, because the statute alone governs. The Task Force might also consider consolidating some of these rules, especially short rules. The long list of emancipation rules suggests that these are complex proceedings, although they are not.]

[Staff Note: Also refer to Rule 1, which does not include emancipation actions in the list of proceedings governed by these rules. Because emancipation is a Title 12 rather than a Title 8 proceeding, is that omission significant?]

(a) Scope. These rules govern procedures for the emancipation of minors. [**Staff Note:** The statutes also include procedures.]

(b) Civil Rules. Emancipation proceedings shall conform to the Civil Rules except for the provisions contained herein. **[Staff Note:** Is there something concerning emancipation that's not included in the juvenile rules? If so, why not simply add that provision or provisions?]

Rule 90. Venue

Venue is appropriate within the county where the minor resides. [**Staff Note:** This duplicates a provision of A.R.S. § 12-2451(A).

Rule 91. Attorneys and Guardians Ad Litem

(a) Attorney. A party to an emancipation proceeding may participate on the party's own behalf or be represented by retained counsel. **[Staff Note:** What is the purpose of this provision?]

(b) Guardian ad Litem. The court may appoint a guardian ad litem for the petitioner at any time during these proceedings. The guardian ad litem may be an attorney, volunteer special advocate, or other qualified person. The court may assess the parent or guardian for the costs. [**Staff Note:** This duplicates a portion of A.R.S. § 12-2451(E).]

Rule 92. Public Access

(a) Emancipation Record. The record of an emancipation case must be maintained as a public record. Upon a party's motion showing good cause, the court may order the record closed under Supreme Court Rule 123.

(b) Hearings. Emancipation hearings must be open to the public, unless the court makes a written finding that closing the hearing is necessary to protect a party or a clear public interest in confidentiality.

Rule 93. Fee Reduction or Waiver [**Staff Note:** The current rule title is "fees and waivers," which staff believes is inaccurate because the rule does not describe "fees." Staff accordingly changed the title to what is shown.]

At any time prior to or at the hearing, the court, based on financial hardship, may reduce or waive the fee prescribed in A.R.S. § 12-284 for filing an emancipation petition. [**Staff Note:** This duplicates A.R.S. § 12-2451(F).]

Rule 94. Petition, Filing, Content, and Documentation Requirements

Staff Note: Sections (A), (B), and (C) duplicate the requirements of A.R.S. § 12-2451.

(a) Filing of Petition. A minor seeking emancipation may file a petition for emancipation with the clerk of the court in the county in which the minor resides [**Staff Note:** The "where the minor resides" provision is already in Rule 90] if all of the following apply:

(1) The minor is at least sixteen years of age.

(2) The minor is a resident of this state.

(3) The minor is financially self-sufficient.

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

(5) The minor is not a ward of the court and is not in the care, custody and control of a state agency.

(b) Content of Petition. A petition for emancipation shall be made in writing, under oath, captioned: "In the Matter of Emancipation of ___, a minor." It shall set forth:

(1) The petitioner's name, mailing address, social security number (last four digits only) and date of birth.

(2) The name and mailing address of the petitioner's parent or legal guardian if known. The petitioner shall state the efforts taken to obtain the address.

(3) Specific facts and documentation to support the petition, including:

(A) The petitioner's demonstrated ability to manage the petitioner's financial affairs including proof of employment or other means of support.

(B) The petitioner's demonstrated ability to manage the petitioner's personal and social affairs, including proof of housing.

(C) The petitioner's demonstrated ability to live wholly independent of the petitioner's parent(s) or guardian.

(D) The petitioner's demonstrated ability and commitment to obtain or maintain education, vocational training or employment.

(E) How the petitioner will obtain or maintain health care.

(F) Any other information considered necessary to support the petition.

(c) Supporting Documentation. At least one of the following shall be provided to support the petition:

(1) Documentation that the petitioner has been living on petitioner's own for at least three consecutive months.

(2) A statement explaining why the petitioner believes the home of the petitioner's parent or guardian is not a healthy or safe environment.

(3) A notarized statement that contains written consent to the emancipation and an explanation by the petitioner's parent or guardian.

(d) Lack of Documentation or Proper Form.

(1) If a petition fails to include the required information, the court may dismiss the petition without prejudice or the court may require the petitioner to file supplemental information.

(2) If the court requires supplemental information, it must give written notice to the petitioner and specify a date for the filing the required supplement. The court may dismiss the petition without prejudice if petitioner fails to file the supplement by that date.

Rule 95. Hearing, Service of Petition, and Notice.

(a) Hearing. Upon receipt of a completed petition, the court shall set a hearing within 90 days of the filing of the petition. [**Staff Note**: This section duplicates A.R.S. § 12-2451(C).]

(b) Notice of Hearing. The court shall notify the petitioner and the petitioner's parent or legal guardian of the date and place of the hearing by certified mail at least sixty (60) days before the hearing date. Notice is effective upon mailing. The notice shall include a copy of the petition and notice that the court may find that the failure to file an objection within thirty (30) days constitutes a waiver of objection. [**Staff Note:** The first sentence duplicates A.R.S. § 12-2451(C). In the second sentence, neither the rule nor the statute requires a return receipt, but if service is by certified mail, a return receipt would assure actual receipt; and service would be complete on the date of the signature on the return receipt. In the third sentence, A.R.S. § 12-2451(D) makes the filing of a response to the petition permissive ("may file a written response") but this rule provision seems to require a response.]

(c) Incorrect or Unknown Address.

(1) If the notice of hearing and service of petition are returned due to an incorrect address, or if the petition fails to provide an address to a necessary party, the court may make further inquiry or require the juvenile to provide full explanation concerning efforts to locate the necessary party or the circumstances why the necessary party cannot be located and served with notice of proceedings.

(2) If no parent or guardian can be located and the court does not grant the emancipation petition, the court may require the DCS to investigate and submit a written report to the court.

Rule 96. Allegation of Abuse or Neglect

At any time in these proceedings, if the court reasonably believes that the petition for emancipation contains an allegation of child abuse or neglect, the court must require the DCS to investigate the allegation and submit a written report to the court. [**Staff Note:** This duplicates a provision in A.R.S. § 12-2452(A)(2).]

Rule 97. Responses and Objections

The petitioner's parent or legal guardian may file a written response or objection to the petition for emancipation. An objection to the petition for emancipation must state specifically why the petition for emancipation is inaccurate or should be denied. A copy of the response or objection must be provided to the petitioner pursuant to Civil Rule 5(c) of the Rules of Civil Procedure. [**Staff Note:** Staff deleted subpart (1) because it pertains only to service on a party represented by an attorney. Also, current Rule 97, which says a respondent "may" file a response, appears to conflict with current Rule 95(B); see staff's note in Rule 95(b).]

Rule 98. Proceedings

(a) Attendance.

(1) ***Petitioner.*** The petitioner must personally appear in court for all proceedings as the court directs. If the petitioner had notice of the date, time, and place of a hearing, the petitioner's absence may be deemed voluntary and the court may proceed make findings or enter further orders, including dismissal of the petition.

(2) ***Parent(s) or Guardian.*** The parent(s) or guardian may attend any hearing, [**Staff Note:** What does the remainder of this sentence mean? If the filing of a response is optional, can a parent who has not filed a response attend the hearing?] but shall appear personally or through counsel before the court for all proceedings if the parents or guardian have filed an objection to the emancipation. If a parent or guardian had notice of the date, time, and place of a hearing, a parent or guardian's absence may be deemed voluntary and the court may proceed make findings or enter further orders.

(b) Mediation and Alternative Dispute Resolutions.

(1) At any time before an emancipation hearing proceeds, the court may stay the proceedings and refer the petitioner and parent or guardian to mediation. [**Staff Note:** This provision duplicates A.R.S. § 12-2452(A)(1). The rule, like the statute, does not refer to ADR.]

(2) [**Staff Note:** The following provision duplicates A.R.S. § 12-2452(B), and like the statute includes a reference to ADR.] If the petitioner's parent or guardian objects to the petition for emancipation, the court shall stay any further proceedings and refer the matter to mediation or alternative dispute resolution unless the court reasonably believes that mediation would not be in the best interest of the petitioner. The court may consider any of the following in its decision:

(A) The petitioner's parent or guardian has been convicted of abuse, neglect or abandonment.

(B) The petitioner's parent or guardian is named as a perpetrator of abuse, neglect or abandonment in the Department of Child Safety central registry.

(C) Any other relevant information.

(3) If agreement is reached through mediation or alternative dispute resolution, the signed agreement shall be submitted to the court. [**Staff Note:** The preceding sentence duplicates A.R.S. § 12-2452(C), although the statute omits a reference

to ADR.] The court may reset and conduct the emancipation hearing or enter other appropriate orders.

(4) If agreement is not reached through mediation or alternative dispute resolution, the court shall reset and conduct the emancipation hearing. [**Staff Note:** Is this provision necessary?]

Rule 99. Disclosure

(a) Duty to Disclose Witnesses and Exhibits. Unless otherwise ordered by the court, each party must disclose the following information to each other and the court, in writing, at least 20 days before the emancipation hearing:

(1) A list of witnesses the party intends to call at the emancipation hearing, including the names, addresses, and telephone numbers and a description of the substance of the witness' expected testimony. Witnesses whose testimony will be in the form of a deposition shall be noted. [**Staff Note:** Should the Task Force decide whether the rules should allow formal discovery in an emancipation proceeding? Or should the rules allow discovery only on motion showing good cause?]

(2) A list and copies of all exhibits the party intends to use at the emancipation hearing.

(b) Exclusion. The court may exclude a witness' testimony or an exhibit if the witness or exhibit was not timely disclosed, except in rebuttal or for good cause. [**Staff Note:** But see further proposed Rule 1(b).]

(c) Objection. A party who objects to the admission of an exhibit 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 10 days after receipt of the disclosure statement. The court may rule on objections at any time before the emancipation hearing.

Rule 100. Time Limits and Exclusions

The emancipation hearing shall be held within 90 days of the filing of the petition for emancipation. [**Staff Note:** Rule 95(A) already contains this 90-day requirement.] The following time is excluded from the computation:

(a) For the petitioner to file supplemental information under Rule 94.

(b) For the court to gather correct address information under Rule 95.

(c) For delays caused by the DCS investigation and report under Rule 96.

(d) For delay resulting from the court's referral to mediation or alternative dispute resolution until notice of agreement or non-agreement under Rule 98.

Rule 101. Burden of Proof

The petitioner has the burden of proving by clear and convincing evidence that emancipation is in the petitioner's best interest.

Rule 102. Determination and Order of Emancipation

(a) Determination of Emancipation. The court shall determine emancipation based on the best interests of the petitioner and shall consider the following: [**Staff Note:** Section (A) duplicates the provisions of A.R.S. § 12-2453(A) with the exception that the rule adds factor number (8).]

(1) The potential risks and consequences of emancipation and to what degree the petitioner understands these risks and consequences.

(2) The wishes of the petitioner.

(3) The opinions and recommendations of the petitioner's parent(s) or guardian.

(4) The financial resources of the petitioner, including any employment history.

(5) The petitioner's ability to be financially self-sufficient.

(6) The petitioner's educational level and success in school.

(7) Whether the petitioner has any criminal record.

(8) Any other factor deemed relevant by the court.

(b) Order of Emancipation. If the court finds emancipation is in the petitioner's best interests, the court must:

(1) Make the following findings on the record:

(A) The petitioner is at least sixteen years of age.

(B) The petitioner is a resident of this state.

(C) The petitioner is financially self-sufficient.

(D) The petitioner has acknowledged in writing that the petitioner has read and understands the information provided by the court that explains the rights and obligations of an emancipated minor and the potential risks and consequences of emancipation. [**Staff Note:** Where is this information found? Is it uniform statewide?]

(E) The petitioner is not a ward of the court and is not in the care, custody and control of a state agency.

(2) File an order of emancipation with the clerk.

(3) Issue a copy of the order to the petitioner and any party entitled to notice of the proceeding.

(4) Issue a copy of the order to the Department of Economic Security, the DCS, or the department's agent if the petitioner is a child in a Title IV-D case. [**Staff Note:** The agency information may need updating.]

(c) Appeal. A party may appeal from the emancipation order as provided in Rules 103 et seq. [**Staff Note:** Does this encompass an appeal from an order denying the emancipation petition?]

ICWA references in the current Juvenile Rules
08.12.2020

This table includes references in the current Juvenile Rules to "the Indian Child Welfare Act," "ICWA," and "the Regulations."

- The table does not include associated terms such as Indian child, Indian tribe, or Indian custodian when they are mentioned in the Rules, unless they appear with a reference to ICWA or the Regulations.

Current rule # and title	**ICWA reference**
8. Applicability of the Indian Child Welfare Act 8(A). Application	"All provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 ("ICWA"), and Part 23 of Title 25 of the Code of Federal Regulations ("Regulations"), including any amendments to those provisions, govern proceedings subject to ICWA."
8(B). Excluded Proceedings	"ICWA does not apply to delinquency, incorrigibility when there is no out-of-home placement, or criminal transfer proceedings involving an Indian child."
8(C). Findings	"Under the Regulations, if the court determines or has reason to know the child is an Indian child as defined by ICWA, the court shall make all findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations and otherwise treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child under ICWA."
8(D). Jurisdiction	"Under the Regulations, if the court determines or has reason to know the child is an Indian child as defined by ICWA and the proceeding is for foster care placement or termination of parental rights, the court shall determine whether to grant a petition to transfer the proceeding to tribal court according to the standards required under 25 U.S.C. § 1911(b) and 25 C.F.R. §§ 23.115-119."
8. Comments	"These rules acknowledge certain provisions of ICWA and the Regulations. However, not all provisions are identified in these rules, and ICWA and the Regulations should be carefully reviewed in cases in which they apply. In the event of a conflict with these rules, ICWA and the Regulations shall govern. "Under the Regulations, a court has "reason to know" that a child is an Indian child upon the occurrence of any of the following: (1) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; (2) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; (3) the child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; (4) the court is informed that the domicile or residence of

	the child, the child's parent, or the child's Indian custodian is on a pueblo, reservation, or in an Alaska Native village; (5) the court is informed that the child is or has been a ward of a tribal court; or (6) the court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe. 25 C.F.R. § 23.107. "The Regulations also address the criteria for ruling on petitions to transfer proceedings to tribal court, including 25 C.F.R. §§ 23.115-119. Under 25 U.S.C. § 1911(b), the court must grant a petition by a parent, Indian custodian, or the child's Tribe to transfer the foster care placement or termination of parental rights proceeding to tribal court, absent objection by either parent or tribal declination of transfer, or when there is good cause to deny transfer. The regulations provide that in determining whether good cause exists, the court must *not* consider any of the following: (1) whether the foster-care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage; (2) whether there have been prior proceedings involving the child for which no petition to transfer was filed; (3) whether transfer could affect the placement of the child; (4) the Indian child's cultural connections with the Tribe or its reservation; or (5) socioeconomic conditions or any negative perception of Tribal or Bureau of Indian Affairs ("BIA") social services or judicial systems."
37. Definitions 37(A). Parties	"Reference to a party to the action means a child, parent, guardian, the Department of Child Safety or petitioner, and any person or entity who has been permitted to intervene pursuant to Rule 24, Ariz. R. Civ. P., or the Indian Child Welfare Act."
37 (C). Definitions and Mandatory Placement Preferences pursuant to the Indian Child Welfare Act, 25U.S.C. 1903 and 1915	Contains definitions of "parent," "Indian child," "Indian Child's Tribe," "Indian custodian," "Indian tribe" [including a reference to 43 USC 1602(c)], "extended family member," and "foster care or preadoptive placement preferences"
38. Assignment, Appointment of Counsel 38(A). Assignment of Counsel	"Counsel shall be assigned to represent those persons entitled to counsel as provided by law and the Indian Child Welfare Act, from the filing of a dependency petition through the preliminary protective hearing until the court formally appoints counsel or otherwise relieves assigned counsel."
40.1. Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem	"Education and training shall be on juvenile law and related topics, such as child and adolescent development (including infant/toddler mental health), effects of substance abuse by parents and by and upon children, behavioral health, impact on children of parental incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental

	domestic violence upon children and other issues concerning abuse and/or neglect of children."
40.2. Duties and Responsibilities of Appointed Counsel for Parent Representation	"All attorneys must complete at least eight (8) hours each year of education and training specifically on juvenile law and related topics such as child welfare policy and procedures, substance abuse and addiction, mental illness and treatment options, psychological evaluations (how to read), domestic violence, the effects of trauma, cultural awareness, social issues surrounding families involved in the dependency process, motivational interviewing, child and adolescent development (including infant/toddler mental health), the effects of parental incarceration, the Indian Child Welfare Act, parent and child immigration issues, the need for timely permanency, and other training concerning abuse and/or neglect of children."
47.3. Court Authorized Removal 47.3. (B) Burden of Proof	"Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the facts stated must support a finding that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child."
47.3. Procedure	"Additionally, under 25 C.F.R. § 23.113(d), if there is reason to know the child is an Indian child, the applicant must provide this information. The information that should be provided under 25 C.F.R. § 23.113(d) should be provided in the dependency petition."
47.3. (D) Findings and Order	"Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the court must find that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child."
48. Petition, Temporary Orders and Findings, Notice of Hearing, and Service of Process 48(A). Petition	"The action shall be captioned, "In the Matter of _____ a person under the age of 18 years," may be based upon information and belief and shall state whether there is reason to know the child is an Indian child as defined by ICWA."
48(D). Service of petition	"9. Under the Regulations, if the petition alleges or the court has reason to know the child at issue is an Indian child as defined by ICWA, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child's tribe or tribes. Notice shall be provided by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered or certified mail and the Secretary of the Interior shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall

	be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe. "10. The parent, Indian custodian or the child's tribe may waive the ten (10) day notice requirement, pursuant to ICWA and the Regulations, for purposes of proceeding with the preliminary protective hearing within the time limit as provided by state law."
48. comment	"The committee concluded that a provision permitting the parent, Indian custodian or the child's tribe to waive the ten (10) day notice requirement does not conflict with ICWA and reflects current practice in some counties. Inclusion of the waiver provision allows timely disposition of cases without interfering with the rights afforded the parent, Indian custodian or the tribe under ICWA. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113 the 10-day notice requirement does not apply."
Rule 50. Preliminary Protective Hearing 50(A). Purpose	"The preliminary protective hearing may be held as an emergency hearing as provided in Section 1922 of ICWA and 25 C.F.R. § 23.113."
50(B). Procedure 50(C). Findings and Orders	(B)(1): "Under the Regulations, inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA;" (C)(3): "Under the Regulations, confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);" (C)(6): "If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by Section 1922 of ICWA;"
50.1. Deviation from Placement Preferences	"Under 25 C.F.R. § 23.132, the determination to depart from the placement preferences in Section 1915 of ICWA must be made in the following manner: [sections (a) through (e) follow]"

50.1 comment	"The Regulations provide that good cause to deviate from placement preferences 'should' be based on one of the five factors, but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be "narrow and limited in scope." 81 Fed. Reg. 38778, 38839 (June 14, 2016)."
Rule 52. Initial Dependency Hearing 52(A). Procedure	**C. Procedure.** At the initial hearing the court shall: 1. Under the Regulations, inquire if any party has reason to know that the child is an Indian child as defined by ICWA;
52(D). Findings and Orders	**"**9. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
53. Settlement Conference 53(D). Findings and Orders	"5. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
54. Pretrial Conference 54(C). Findings and Orders, subpart 2(c)	"c. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
55. Dependency Adjudication Hearing 55(E). Findings and Orders	"7. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
56. Disposition Hearing 56(E). Findings and Orders	"6. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
57. Provision of Reunification Services Hearing	"6. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations; including whether placement of the Indian child is in accordance with

57(C). Findings and Orders	Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
58. Review Hearing 58(B). Notice Subpart (1). Right to participate	"The court shall provide the following persons notices… "d. The child's parent or guardian (unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107), and the child's Indian custodian as defined by ICWA and the Regulations."
58(F). Findings and Orders	"7. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
59. Return of the Child 59(E). Findings and Orders	"5. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. 23.131 or whether there is good cause to deviate from the preferences;"
60. Permanency Hearing 60(E). Findings and Orders	"5. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations; including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
61. Motion, Notice of Hearing, Service of Process and Orders for Permanent Guardianship 61(A). Motion	"…The motion shall contain all information required by law and under the Regulations, shall state whether there is reason to know the child is an Indian Child as defined by ICWA."
61(C). Service	"If the motion alleges or, under the Regulations, the court has reason to know the child at issue is an Indian child as defined by the ICWA, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and child's tribe."
61(D). Orders	"If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required under ICWA and the Regulations or whether good cause exists to deviate from the placement preferences."

62. Initial Guardianship Hearing 62(C). Procedure	**"**At the initial hearing the court shall: 1. Under the Regulations, inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA;"
62(D). Findings and Orders	"5. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
63. Guardianship Adjudication Hearing 63(F). Findings and Orders	"4. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
63.1. Motion, Notice of Hearing, Service of Process and Orders for Successor Permanent Guardianship 63.1(C). Notice	"…If the child is subject to the Indian Child Welfare Act of 1978, the person filing the motion shall provide notice pursuant to 25 U.S.C. § 1912, to the Indian parent, the Indian custodian and the child's tribe. If the identity or location of the Indian child's parent cannot be determined, the person filing the motion shall provide notice to the U.S. Secretary of the Interior pursuant to 25 U.S.C. § 1912."
63.2. Initial Successor Permanent Guardianship Hearing 62.2(C). Procedure	"At the initial successor permanent guardianship hearing, the court shall: 1. Under the Regulations, inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA;"
64. Motion, Petition, Notice of Hearing and Service of Process and Orders 64(A). Motion for Termination of Parental Rights	"The motion shall allege the grounds for termination of parental rights as provided by law and, under the Regulations, shall state whether there is reason to know the child is an Indian child as defined by ICWA."
64(B). Petition for Termination of Parental Rights	"If the child at issue is not a dependent child or is a dependent child who was the subject of a dependency petition filed prior to July 1, 1998, the petitioner shall file a petition for termination of parental rights, pursuant to A.R.S. § 8-534 and, under the Regulations, shall state whether there is reason to know the child is an Indian child as defined by ICWA."
64(D). Service	"Under the Regulations, if the motion or petition alleges or the court has reason to believe know the child at issue is an Indian child as defined by ICWA the Indian Child Welfare Act, in addition to service of process as

	required by this rule, notification shall be given to the parent, Indian custodian and the child's tribe or tribes."
65. Initial Termination Hearing 65(C). Procedure	"At the initial hearing the court shall: 1. Under the Regulations, inquire if any party has reason to know that the child at issue is an Indian Child as defined by the ICWA;"
65(D). Findings and Orders	**"**All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall: 4. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;"
66. Termination Adjudication Hearing 66(F). Findings and Orders by the Court	"2. If the moving party or petitioner has met its burden of proof, the court shall: "e. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences."
68. Definitions	**B.** Definitions and Mandated Placement Preferences pursuant to the Indian Child Welfare Act, 25 U.S.C. 1903 and 1915: [Followed by "parent," "Indian child," "Indian Child's Tribe," "Indian Custodian," "Indian Tribe," "Extended Family Member," "Preadoptive or Foster Care Placement Preferences," and "8. *Adoptive Placement Preferences.* In any adoptive placement of an Indian child, a preference shall be given, where the child's tribe has not established a different order of preference under ICWA and in the absence of good cause to the contrary, to a placement with: …"
69. Appointment, Appearance and Withdrawal of Counsel 69(A). Appointment	**"**The court may appoint counsel for those persons entitled to counsel and determined to be indigent as provided by law, these rules, or ICWA and the Regulations."
76. Service of Process 76(B). Notice	**"**Under the Regulations, if the petition to adopt alleges or the court has reason to know the child at issue is an Indian child as defined by ICWA, in addition to service of process as required by these rules, notification shall be given to the parent, Indian custodian and child's tribe of any involuntary proceeding…"

78. Temporary Custody 78(A). Petition for Temporary Custody	**"…**The petition shall set forth how the child came into the prospective adoptive parent's care, how long the child has resided with the prospective adoptive parent, why continued custody is in the best interests of the child and, under the Regulations, whether there is reason to know the child is an Indian child as defined by ICWA."
78(E). Findings and Orders	**"**The court shall; … 2. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.
79. Petition to Adopt 79(A). Petition to Adopt	"1. Under the Regulations, whether there is reason to know the child to be adopted is an Indian child as defined by ICWA. If ICWA applies, the petition shall include the following: a. Whether the placement preferences required under Section 1915 of ICWA and 25 C.F.R. § 23.130 have been complied with;"
84. Hearing to Finalize Adoption 84(C). Procedure	"At the hearing the court shall: 6. If an Indian child subject to ICWA is being adopted, the court shall determine whether: a. The tribe was notified of the proceedings and the right to intervene, if applicable; b. The parent or Indian custodian's consent to the adoption was taken in accordance with ICWA and the Regulations; c. The placement complies with the preferences set forth in Section 1915 of ICWA and 25 C.F.R. § 23.130 or whether good cause exists for deviation from the placement preferences; and d. The parental rights of the parent or Indian custodian have been terminated…."
84(D). Findings and Orders	"…If ICWA applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required under ICWA and the Regulations."
84. Committee Comment	"Pursuant to 25 U.S.C. 1951, if the child being adopted is subject to the Act, the court must provide the Secretary of the Interior with a copy of the final adoption decree and the following; …"
85. Motion and Hearing to Set Aside Adoption 85(A). Motion to Set Aside Adoption	"A person seeking to set aside a final order of adoption shall file a motion to set aside the adoption with the clerk of the court. The motion shall allege grounds only as permitted by Rule 60(b)-(d), Ariz. R. Civ. P. or by ICWA and the Regulations. Upon receipt of the motion, the court shall set an initial hearing within ten (10) days and shall advise the parties as to the

	date, time and location of the initial hearing. Under the Regulations, if there is reason to know the child is an Indian child as defined by ICWA, the court shall proceed under ICWA and the Regulations."
85(G). Findings and Orders	"…If ICWA applies, the court shall make findings and enter orders pursuant to the standards and burdens of proof as required under ICWA and the Regulations."
85. Committee Comment	"The Indian Child Welfare Act contemplates the return of the child to the parent or Indian custodian if the adoption is set aside. The court should return the child in the absence of clear and convincing evidence, including testimony of a qualified expert, that return of the child to the parent or Indian custodian would likely result in serious emotional or physical damage to the child."
86. Adoption Records 86(B). 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 such 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 shall be redacted prior to release."