Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, September 25, 2020
10:00 a.m. to 4:00 p.m.
Telephonic Meeting: 602.452.3533, # **998 011 762**

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the August 21, 2020 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and discussion of rules** **Workgroup 1: Revisiting Rules 46.1, 103, the bifurcated version of Rule 104 (now, Rules 104 and 104X), and 104.1. Also, Rules 105 and 108** **Workgroup 2: Rules 30 and 31** **Workgroup 3: Rule 42 (revisited), Rule 47.3, and Rule 48X, sections (a) and (b) (revisited)** **Workgroup 3 add-on: Rules 37, 38, 40, and 40.1 (revisited)** **Workgroup 4: Rules 73 and 75 (revisited), Rule 79**	 *Ms. Beckmann* *Ms. Phillis, Mr. Cardy* *Judge Quigley, Ms. Jorquez* *Mr. Owsley* *Professor Atwood, Ms. Coughlin, Mr. Owsley*
Item no. 4	**Roadmap** **Next meetings: October 23, November 20, December 4 (if necessary), and 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, August 21, 2020
(Members and guests attending telephonically)

Meeting Minutes

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

Guests: Nina Preston, Carey Turner, Shari Andersen Head

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the ninth Task Force meeting—its fourth consecutive virtual meeting—to order at 10:01 a.m. The Chair will monitor further health and safety developments and determine whether future Task Force meetings should be virtual. She noted that workgroups met 9 times after the July 17 Task Force meeting, averaging more than 8 attendees per meeting, and the Editorial Group met once.

The Chair reviewed materials for today's meeting. In addition to the draft July 17 meeting minutes and the rules on today's agenda, the materials included A.R.S. § 8-847, which is pertinent to the discussion of Rule 41.2, and a table prepared by staff that shows ICWA references in the current rules. Staff's August 19 email to members included links to two recent Division One decisions. The opinion in *Wilson v Higgins* addressed the issue of whether deleted text in a restyled rule was purposeful and suggestive of a substantive change. The case is still pending on a petition for review. The other link was to a memorandum decision, *Yvette L. v DCS*, which vacated a trial court termination order because it was not supported by specific factual findings based on the record. Staff attached to his August 19 email two law review articles provided by Mr. Owsley concerning his pending presentation on the appointment of counsel and GALs for children in dependency proceedings. Staff also attached a one-page progress summary, version 08.21.2020, which shows that as of the conclusion of the July 17 meeting, 60 rules and one form had been approved; however, a few previously approved rules re-appear on today's agenda.

Next, the Chair asked members to consider draft minutes of the July 17, 2020 Task Force meeting. There were no corrections to the draft.

Motion: A member moved to approve the July 17, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 009**

The Chair then requested reports from the workgroups.

2. Report from Workgroup 1.

Rules 88-102 ("the emancipation rules"). Mr. Volkmer presented the emancipation rules, which comprise Part V of the current Juvenile Rules. Unlike most other juvenile proceedings, which are governed by Title 8 statutes, emancipation is governed by Title 12. Mr. Volkmer noted that some of the current rules are as short as a single sentence. Although the substance of the 15 current rules is generally correct, he described these rules as unnecessarily segmented and choppy. Mr. Volkmer and the workgroup therefore consolidated and reorganized these 15 rules, and as a result there are 5 proposed rules (Rules 88-92). The reorganization improves the flow of the rules. Mr. Volkmer added that two provisions in the current rules were omitted in the reorganization: Rule 90(A), a single sentence rule concerning venue, because it's also covered in current Rule 94(A), now Rule 89(a); and Rule 91(A) that says "the parties may participate in the court proceedings on the parties [sic] own behalf or be represented by counsel chosen independently by the individual party," because this is so basic it doesn't require a rule.

Mr. Volkmer noted that draft Rule 88 ("emancipation generally"), section (c), gives the court discretion to report an allegation of abuse or neglect to DCS. The corresponding provision in current Rule 96 uses the word "shall" but members supported using the word "may" in the draft provision. Section (d) gives the court discretion to appoint a guardian ad litem for the petitioner. A member proposed changing this to "attorney or guardian ad litem." A judge member, after first noting there were fewer than two dozen emancipation petitions in Maricopa County last year, opposed this because, unlike a dependency that requires the court to appoint counsel for children, a juvenile seeking emancipation asks to be treated as an adult, and petitioners validate the request for emancipation by appearing on their own behalf. Another judge member noted that although the statute permits appointment of a GAL, there is no statutory provision authorizing, or providing payment for, an attorney in an emancipation. On a straw vote, only one member supported adding the words "attorney or…." Mr. Volkmer noted that the draft of section (d) omitted a current sentence that says, "The guardian ad litem may be an attorney, volunteer special advocate, or other qualified person." Members then requested clarification that a GAL appointed under section (d) must be an attorney, but the definition of guardian ad litem in draft Rule 2 already does that. Members also discussed whether to retain draft Rule 88(f) ("fee reduction or waiver"). On the one hand, if the petitioner cannot afford the filing fee, the petitioner might not be financially self-sufficient, and emancipation would be inappropriate. On the other hand, a fee reduction or waiver provision is included in

A.R.S. § 12-2451(F); and there might be special situations warranting a fee waiver or reduction. Accordingly, members retained this provision.

Finally, members discussed draft Rule 91 ("proceedings after service of the petition"), section (e), subpart 2 ("parent or guardian"). Members clarified the provision, which requires a parent who filed an objection to a petition to attend the hearing; otherwise, the parent's attendance is optional.

Members approved the draft emancipation rules with these modifications. Judge Kreamer observed that the approved rules provide readers with improved, common sense guidance on emancipation proceedings, and he commended Mr. Volkmer for his work on these rules.

3. <u>Report from Workgroup 2.</u> Workgroup 2 presented its rules next.

Rule 29 ("adjudication hearing"). Ms. Phillis presented Rule 29. She characterized the workgroup's revisions to this rule as a restyling, albeit with some reorganization but without substantive changes. She then reviewed each section of the draft. She noted that in section (d) ("procedure") the workgroup deleted provisions requiring that "the adjudication hearing be as informal as the requirements of due process and fairness permit" and that the adjudication proceed in a manner similar to the trial of an action without a jury, because those principles are now contained in restyled Rule 3(b) ("informality"). Regarding section (d), subpart (1) ("amendments to conform to evidence"), Ms. Phillis explained that amendments are permitted "to correct mistakes of fact or to remedy formal or technical defects," such as an incorrect address or a misspelled name, but the rule would not permit substantive amendments to the allegations. Section (f) ("disposition") requires the court to set a disposition hearing after a finding of delinquency. Rule 29 does not specify the time limit for the disposition hearing; instead, that will be addressed in Rule 30 on dispositions. However, Rule 29(a) ("time limits") specifies the time limit after the advisory hearing when the court "must hold" an adjudication hearing. A member noted that this draft does not allow the court to exceed those limits, even when the juvenile waives time. According, members added to subparts (b)(1) ("detained juvenile") and (b)(2) ("juvenile not detained") the words "unless the juvenile waives time." Members approved Rule 29 with these modifications.

Rule 33 ("disposition of non-felony offenses") and Rule 22 ("referral; diversion"), section (c) ("citation"). Mr. Cardy presented these two rules. Notwithstanding its inapt title, the subject matter of current Rule 33 is citations, more specifically, initiating a case by an Arizona Traffic Ticket and Complaint ("ATTC"). Because the subject of Rule 33 concerns case initiation, the workgroup proposed deleting Rule 33 and relocating its substance to Rule 22, within a new section (c) titled "citation." Rule 22(d), which concerns diversion, provides that diversion is a way of resolving a referral without filing a petition. However, the workgroup wanted to assure that a case could be diverted even after the filing of a citation. Accordingly, the workgroup added a sentence to section (c) that says, "Notwithstanding the filing of a citation, a juvenile who is cited may be diverted by the

prosecutor pursuant to section (d)." During the ensuing discussion, a member noted that draft Rule 26(a) requires the parent or guardian to be notified of the filing of a petition, but current Rule 33 and draft Rule 22(c) require only that the juvenile be served with the citation. Members acknowledged this anomaly, but they made no changes to Rule 22(c) to address it. They approved the deletion of Rule 33 and the inclusion of new Rule 22(c) as presented.

4. Workgroup 3. Workgroup 3 revisited Rules 41.2 and 42. It also made its initial presentations of Rules 43.1, 48, 48X, and 48.1.

Rule 41.2 ("participant's rights"). Judge Quigley's previous presentation of this rule raised issues concerning the application of A.R.S. § 8-847. In response to those issues, the workgroup thereafter added to section (a) ("right to notice") a new subpart (3) that requires DCS, if it is a party, to give notice "for any periodic review hearings under A.R.S. § 8-847, [to] any placements where the child has resided for more than 10 days during the past 6 months." Members observed that this provision appears to overlap with current Rule 58(B) ("review hearing/notice") and whatever the corresponding provision might be in the draft rules. Members also discussed the potential conflict between Rule 41.2, which requires DCS to provide notice, and the statute, which imposes that duty on the court. Although draft subpart 41.2(a)(3) is consistent with current Rule 40(I) ("attendance at hearings/notice in cases with regard to children in foster care"), a minority of members believed a rule that requires the DCS to give notice necessitates a statutory change. Another member contended that (a)(3) does not supplement the statute but rather supplants it. Judge Quigley noted that whereas Rule 41.2 and current Rule 40(I) concern a DCS duty to provide notice, Rule 58 concerns the court's duty to do so, and both provisions in tandem promote the judiciary's interest in providing actual notice of these proceedings to interested participants. Other members observed that DCS would have better knowledge than the court about the names and addresses of potential adoptive placements, which supports a rule that imposes this duty on DCS.

After further discussion, members agreed to the following changes. In subpart (a)(2), the words "any relative" were moved to follow rather than precede pre-adoptive placement (i.e., "pre-adoptive placement or any relative"). In section (e) ("review hearings"), the word "supplement" was replaced by the words "does not limit" ("this rule does not limit ~~supplements~~ the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.") The Chair added that the Task Force's rule petition should note the issue of who has a duty to provide notice, and the potential need for a legislative amendment if the Court adopts this draft rule.

At a later point in the meeting, a member asked whether Rule 41.2 should include a reference to ICWA, because periodic reviews might trigger ICWA notice provisions. The Chair directed Workgroup 3 to address this question and to propose the addition of an ICWA reference if the workgroup believes one is appropriate.

Rule 42 (currently, "telephonic testimony, video conferencing," and as now proposed, "telephonic testimony, videoconferencing, declared emergencies"). Judge Quigley began her presentation of this draft rule by noting that it significantly expands the current rule on this subject, which is only two sentences. She also noted that today's draft rule was produced by an informal workgroup led by Maricopa Superior Court Judge Sara Agne; JRTF member Chris Phillis participated in the workgroup. At the start of Judge Quigley's presentation, a member proposed substituting the word "virtual" in the title of the rule and throughout its provisions. The member explained that technology changes occurring in the next few years might render the term "telephonic" archaic, and "virtual" is a more inclusive and farsighted term. Members agreed with the member's proposal, and with another suggestion to add the word "digital" to the definition in section (b), because digital more accurately describes a connection to online proceedings. Judge Quigley said that although draft Rule 42 was initially modeled on Family Law Rule 8, the changes noted above as well as the addition of section (f) ("evidentiary proceedings during declared emergencies") make draft Rule 42 significantly different from FLR 8.

Judge Quigley then reviewed each section of draft Rule 42. She emphasized the importance of due process determinations, a subject that first appears in section (a) and continues in other sections of the rule. Section (d) (now, "request to testify by a virtual appearance; evidentiary proceedings") includes a presumption in subpart (1) that "evidentiary hearings will be conducted in-person" unless section (f) applies. Subpart (d)(2) contains specified time limits in advance of a hearing for making a request for virtual testimony. In section (e) ("introducing documents during virtual testimony"), members added the words "previously disclosed" before the word "exhibits" to clarify that a party who wants to introduce documents during virtual testimony must not only provide those documents before the hearing to opposing parties, but also must have previously disclosed the documents under the disclosure rule.

Section (f) addresses evidentiary proceedings during emergencies declared by the governor. The section includes a detailed process in subpart (f)(2) for making case-specific due process determinations. Among other things, that subpart requires the court to find that "each person will be audible and visible to every other person participating in the proceeding." Members posed questions during the ensuing discussion, such as the following. How can each person be visible if one or more persons appear by telephone only (such as an appearance by a prison inmate, who might only have telephonic access)? Does the judge need to recess the proceeding if the video function is lost during the hearing, even if the audio function is still operable? What if only one person loses the video connection, but is still able to hear and be heard? Members generally believed the hearing judge should address these issues on a case-by-case basis, and they made no changes to the draft. However, one member suggested adding a requirement that the court make a finding that the circumstances of the virtual proceeding "will not substantially prejudice any party." The Chair asked the workgroup to consider this suggestion and to give the issue further consideration. Finally, in subpart (f)(2)(E), members agreed to remove the words "in open court" ("the court must admonish

witnesses and attendees ~~in open court~~ that the virtual evidentiary proceeding will proceed…") inasmuch as those words are unnecessary because there will be no witnesses or attendees in the courtroom during an emergency.

Rule 43.1 ("change of venue"). Judge Quigley presented Rule 43.1, which has no analog in the current rules. She explained that this new rule is beneficial because the current rules lack a procedure for transferring the venue of a case, and transfers are occasionally done now without prior notice to the court in the receiving county, which is problematic. She then reviewed each section of the draft. In response to a question regarding section (b) ("factors"), Judge Quigley advised that "any other factor that promotes the interests of justice" could encompass an ICWA factor. Section (c) ("procedure in the sending county") requires the sending court to set a hearing on a change of venue, regardless of whether the motion is by a party, by the parties jointly, or by the court. Section (c) also requires the sending court to contact the receiving court before that hearing and obtain a conditional court date in the receiving county. The date is conditional on the sending court granting the motion to change venue. If the sending court grants the motion, it must advise parties at the hearing of the date and location of the first court proceeding in the receiving county. Section (d) ("procedure in the receiving county") requires that county, upon receipt of an order changing venue, to assign a new case number and, if necessary, appoint new counsel and endorse former counsel on its order or minute entry. Former counsel must share the client's file with new counsel and then withdraw from the case. Section (e) ("request pending hearing") provides the sending court options when a motion to transfer is made when an initial, adjudication, or publication hearing is pending.

Regarding section (c), a member from a rural county advised that the court will not set a court date on a transferred matter until it has assigned a new case number, and it won't assign a case number until it has received a transfer order. Given that procedure, the member questioned whether the process in section (c) is practical. Judge Quigley advised that a judicial assistant in the receiving county should simply reserve the date on the judge's calendar; the date would not need to be entered in that court's case management system until the receiving county is provided with the transfer order. Judge Young added that if the receiving county has multiple courthouse locations and judges, the sending county will know which judicial assistant in the receiving county to contact because juvenile judges statewide have collaborated on the preparation of a comprehensive contact list for transfer purposes. A transferred case might also be permanently reassigned after the first proceeding in the receiving county. Members made minor edits to the rule: in section (a), the words "Title 8" were added before the word "guardianship," in section (d), the words "14 days of receipt" were changed to "14 days after receipt," and in other sections, lists in the subparts were formatted with semicolons rather than periods after each item. Members approved Rule 43.1 with these changes.

Rule 48 ("petition, temporary orders and findings, notice of preliminary protective hearing, amended petition"). Judge Young, who presented this rule, noted at the outset that the workgroup removed the lengthy provisions on service in current Rule 48(D) and relocated those provisions to a new rule provisionally numbered 48X, discussed below. Draft Rule 48(a) ("form and content of a petition") uses the word "verification" rather than "oath" because A.R.S. § 8-841(C) refers to a verified petition. In section (b) ("temporary orders and findings"), the workgroup added the word "other" ("other findings required by law"). Section (c) ("setting a preliminary protective hearing") is new and derives from A.R.S. § 8-824(A). Members added to section (c) the second sentence of that statutory provision: "If clearly necessary to prevent abuse or neglect, to preserve the rights of a party or for other good cause shown, the court may grant one continuance that does not exceed 5 days."

Section (d) ("notice of the preliminary protective hearing") originated from current section (C) ("notice of hearing"). However, the opening clause of the section, which is currently "in addition to information required by law," now says, "in addition to information required by A.R.S. § 8-841(E), …." The draft also reorganizes the content of this section. Section (e) ("amended petition") is based on section (E) of the current rule, which permits the court to order an amendment "no less than thirty (30) days prior to trial unless good cause is shown." Members discussed a workgroup proposal about shortening this time to 20 days before trial. Members concluded that the shortened time would impair the other party's ability to adequately prepare for trial and could also adversely impact the time for submitting a pretrial statement. The time therefore continues to be 30 days. Members agreed to add a new sentence to this section that says, "leave to amend must be freely given when justice requires," a principle that is codified in Civil Rule 15(a). The last sentence of draft section (e) provides that "an amended petition must be served under Civil Rule 5(c)." This differs from the current rule, which requires service of amended petition under Civil Rule 5(c) only when a petition is "amended to add allegations against a parent not set forth in the original petition."

Members approved Rule 48 as modified.

Rule 48X ("service of the dependency petition, temporary orders, and notice of hearing"). Judge Quigley, who presented Rule 48X, reminded members that this draft rule is based on current Rule 48(D) ("service of the petition"), but it is significantly restyled and reorganized. Although service is required as provided by the Civil Rules, in section (a) ("service under Civil Rules 4(f), 4.1, and 4.2") members added a new subpart (3) with the provisional title "no responsive pleading to the petition is required." As the title of section (a) indicates, this section now includes a reference to Civil Rile 4(f) ("accepting or waiving service; voluntary appearance").

Members discussed several issues arising under this rule. First, and unlike the Civil Rules on service, current Rule 48(D) and draft Rule 48X provide a new category of "service within Arizona but outside the county." These rules provide that in the county, a petition must be personally served, but outside the county yet within the state, it may

be served by mailing or by a national courier service with a return receipt. Members discussed whether service anywhere in Arizona should be the same, regardless of the county of service, but they nevertheless agreed to leave this other method of service in the draft rule.

Members also had a lengthy discussion of section (b), which allows service of the case-initiating documents at a court proceeding. Anecdotally, service is frequently accomplished in that manner, and parents' counsel typically acquiesce in such service. Members revised the title of the section governing this method of service; it is now "completing service at a court proceeding." The provision provides that service is complete when the petition and temporary orders are provided to the parent, guardian, or Indian custodian at the preliminary protective conference or the preliminary protective hearing. If service is made outside the confines of a proceeding, for example, in the hallway outside the courtroom or in a building lobby, the parties will then confirm on the record during the proceeding that service was completed, or counsel can accept service. If there is an issue regarding service, a party can raise it at the proceeding.

Section (f) ("service on an incarcerated person") is a new section that is derived from Family Law Rule 41(g) ("serving an incarcerated person"). The draft provision has a belt-and-suspenders requirement of service on an institutional official plus mailing the documents to the inmate. A member objected to allowing service in this manner because even with these requirements, the inmate might not receive actual notice and could be at risk of losing parental rights. This member would prefer that service on the inmate be accomplished by a process server, who the member said routinely serve process at jails and prisons. Members from at least three counties observed that when it appears from the pleadings that a parent is incarcerated, the court typically and promptly appoints counsel, who can then assure that the incarcerated client has knowledge of the proceeding. Accordingly, members made no change to section (f).

In draft section (h) ("service under ICWA"), members removed several words (i.e., "an Indian child ~~as defined by ICWA~~") because the draft rules already define an "Indian child." Section (h) permits service by registered or certified mail. Professor Atwood again noted that registered mail is required under Arizona statutes, but certified mail is also permitted under the Regulations, and she suggested that the statutes be amended to conform to the Regulations. Members agreed to retain the comment to this rule, which will have the title "comment to 2022 amendments." They also agreed to remove the first few words ("the committee concluded that") because it will be a Court comment rather than a committee comment. With these changes, members approved Rule 48X.

Rule 48.1 ("in-home intervention"). Mr. Truman, who presented this rule, began by noting that although in-home interventions occur in some counties, they are relatively infrequent. He also said that the objectives of the workgroup's draft were to adhere to statutory provisions while also providing as much flexibility as possible for the court's application of those provisions.

In section (a) ("generally"), the workgroup added references to the criteria established in A.R.S. § 8-891 and subpart (b)(2) of this rule. Section (b) ("procedure") refers to Form 1A, but Mr. Truman acknowledged that the workgroup has not yet considered the content of that form. The current rule provides that if the parent does not agree to in-home intervention, the court may order "the appropriate party" to file an amended petition; the draft changed this to "the petitioner." The findings in subpart (b)(2) are required by statute. One member asked how the FFPSA will affect in-home intervention. This is a matter that will require the workgroup's further consideration and Ms. Jorquez will make additional inquiries. The workgroup modified the report requirement in subpart (b)(3) to accommodate filing the report sooner than the one-year deadline; a judge might request earlier reports. This subpart also provides a one-year period for completing in-home intervention, but the current rule does not specify when the year begins to run. The draft removes this ambiguity by providing that the period runs "from the date of the filing of the petition." Subpart (b)(4) ("non-compliance") of the current rule says that if removal is contested, the court "shall order" the filing of an amended petition; the draft rule provides that the court "may allow" the filing of an amended petition in that circumstance. This subpart also requires the court to set a dependency adjudication hearing; although neither the current provision nor this subpart specify a time for setting that hearing, members did not believe it was necessary to add a specified time. Approval of this rule will abide the follow-up described above.

5. **Workgroup 4.** Workgroup 4 presented three rules.

Rule 74 ("motions"). The adoptions rule on motions that Professor Atwood presented at the July 17 Task Force meeting simply cross-referenced the provisions of dependency Rule 46 on motions. It became apparent during the discussion of that version that the shortcut was inadequate, and today Professor Atwood presented a revised version of Rule 74 that is organized more like the current rule. She noted that this version, unlike Rule 46, does not include a provision on summary judgment motions, but neither does current Rule 74. On the other hand, the first five sections of draft Rule 74 ("form, filing, response, court ruling," and "motion to continue") include content that is similar to the corresponding provisions in Rule 46. She also observed that the time provisions (respectively, one year and 6 months) in draft Rule 74(f) ("motion to set aside judgment") concerning motions under Civil Rule 60 differ from the analogous time provisions in Rule 46 (6 months and 3 months). Section (f), unlike current section (E) ("motion to set aside judgment") includes references to federal ICWA statutes.

The members' discussion of draft section (f) included consideration of A.R.S. § 8-123. The statute provides, "After one year from the date the adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding." Draft section (f) requires a party to file motions that raise specified grounds under Rule 60 "within one year of the final judgment." If such a motion is filed, for example, 50 weeks after entry of the judgment, can the court rule on it three weeks

later, or under the statute, would it be too late to grant the motion? Members did not conclude that the court would lose jurisdiction after one year, but they thought the application of the statute under this scenario was ambiguous, and it would be helpful if the legislature clarified the statute. To provide some further clarity, members added to section (f) a sentence that says, "the court may not extend these [Rule 60] time limits." Professor Atwood also noted additional time requirements under ICWA, and the members added another sentence to this section that says, "If the child is an Indian child, the provisions of ICWA §§ 1913 and 1914 apply." Members approved Rule 74 with these modifications.

Rule 76 ("service of process") and Rule 79.1 ("service of the petition to adopt and notice of hearing"). Judge Portley presented these rules. He noted that current Rule 76 precedes current Rule 79 ("petition to adopt"), but logically, these two rules should be adjacent. Accordingly, the workgroup proposed abrogating Rule 76 but relocating its content to a new Rule 79.1. Judge Portley also noted the workgroup's change to the title of the new rule, which more accurately describes the content of Rule 79.1. Members agreed with these workgroup proposals.

To be consistent with changes to Rule 48X(a), Rule 79.1(a) ("generally") includes two new subparts: (1) "no summons," and (2) "petitioner and respondent," which are useful for clarifying in adoption cases the application of the referenced Civil Rules on service. However, Rule 79.1(a) does not include a third subpart of Rule 48X(a) that instructs that no response to the dependency petition is required, because responses in the form of objections to adoption proceedings are common. On that point, members added to Rule 79.1 a new section (b) ("objections"), which says, "any person objecting to the petition must promptly file an objection before the hearing." Members agreed to use the words "any person" rather than "party" because the objecting individual might be, for example, a relative who has not filed a formal motion to intervene. Members declined to specify in section (b) a time within which an objection must be filed because objections are occasionally filed as the hearing date approaches. However, the word "promptly" was included to encourage the early filing of objections. In draft section (c) ("persons to serve"), members deleted an illogical requirement that the petitioner serve the petition and a notice of hearing on the petitioner him- or herself. Draft section (d) includes provisions for service when the child is an Indian child. Members approved the draft rule as modified.

ICWA. During the discussion of draft Rule 79.1(d), members asked about the appropriate form of citation to ICWA references. For the time being, they agreed that "CFR" should appear without periods after each letter. Workgroup 4 will consider a uniform system of citing provisions of ICWA and the Regulations throughout the draft rules. Staff also prepared a table that was distributed to the members and that displays references to ICWA and the Regulations in the current rules. The table might have benefit for cross-checking the restyled rules and assuring that all the current ICWA

references have been included in the drafts. The table might be modified later to include ICWA references in the draft rules.

6. **Roadmap; call to the public; adjourn.** Because of the lateness of the hour, Mr. Owsley's presentation on revisiting several rules concerning GALs and counsel for children will be reset on a future meeting agenda. The Chair confirmed the dates for future Task Force meetings: August 21, September 25, October 23, November 20, and December 18, 2020. Most members are available for a meeting on Friday, December 4, 2020 and the Chair asked members to continue to hold that date. December 4 will serve as the target date for finalizing the draft rules. The meeting on December 18 would be devoted to reviewing the draft rule petition and ancillary documents. However, such a schedule would not allow for pre-filing vetting of the draft rules. The Chair is considering the inclusion in the rule petition of a request for a bifurcated comment period, which would permit an initial round of comments, followed by an amended petition and then a second round of comments. Alternatively, the Task Force might file a motion asking the Court to extend the petition filing deadline beyond January 10, 2021. If the Court grants the motion, the Task Force would engage in pre-filing vetting during that additional time, and this would eliminate the need for a bifurcated comment period. Although the Task Force need not decide now which alternative would be preferable, the Chair asked members to give these alternatives thought and to consider which individuals, organizations, and stakeholders the Task Force should specifically ask to review, and comment on, the draft rules.

There was no response to a call to the public.

The meeting adjourned at 4:02 p.m.

IN THE SUPREME COURT OF THE STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

In the Matter of:	)	
	)	
COURT AUTHORIZED REMOVAL	)	Administrative Directive
	)	No. 2018 - 06
	)	
	)	
	)	

Pursuant to Rule 47.3, Court Authorized Removal, a Department of Child Safety (DCS) worker or a peace officer may submit an application for an order to authorize DCS to take a child into temporary custody. The administrative director approves the format and manner of application. Therefore,

IT IS ORDERED, effective July 1, 2018, that applications be submitted as follows:

DCS workers:

1. Use the Juvenile Access Exchange (JAX) web portal and the application contained in it.
2. If JAX is unavailable, fax the application to the Superior Court in Maricopa County Initial Appearance(IA) Court using the form attached as Appendix A to which the court will respond by fax.
3. If neither JAX nor the fax system can be used, telephone the IA court and provide the information required in the form attached as Appendix A.

Peace officers:

1. Fax the application to the Maricopa Initial Appearance (IA) Court using the form attached as Appendix B to which the court will respond by fax.
2. If the fax system cannot be used, telephone the IA court and provide the information required in the form attached as Appendix B.

Dated this 12th day of June, 2018.

DAVID K. BYERS
Administrative Director of the Courts

Superior Court of Arizona

Court Ordered Juvenile Removal Request

Fax to (602) 253-2645

DCS Case ID:

County of Removal Request:

Date:

Enter the information regarding child(ren) and parents that are the subject of this removal order:

Child's First Name	Child's Last Name	DOB	Sex	ICWA	Parents		
					Role	First Name	Last Name
				☐			
				☐			
				☐			

If more than three children, use and attach another request form.

☐ Probable cause exists to believe that temporary custody is clearly necessary to protect the child(ren) from suffering abuse or neglect, and it is contrary to the child(ren)'s welfare to remain in the home under **A.R.S. §8-821(A)**.

Enter safety threats, facts and reasons you want the judge to consider: *Facts are required

Specific present danger condition(s) or impending danger threat(s) for each child listed on this application
Circumstances that require temporary custody including a detailed account of circumstances and supporting facts
Specific reasons why a less intrusive option is not feasible or sufficient to manage the safety of the child in the home and why remaining in the home is contrary to the child's welfare

DCS representative name:

Immediate callback phone number:

DCS Fax number:

☐ I am employed by the Arizona Department of Child Safety. By virtue of my education, training, and experience, I am qualified and authorized to conduct child abuse and neglect investigations. I am currently assigned to investigate the case involving the child(ren) named in this application and declaration for removal, or am that person's supervisor. I make this declaration in support of this application.

Enter other qualifications, if needed:

☐ I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Superior Court of Arizona

Court Ordered Juvenile Removal Request

Fax to (602) 253-2645

County of Removal Request:

Date:

Enter the information regarding child(ren) and parents that are the subject of this removal order:

Child's First Name	Child's Last Name	DOB	Sex	ICWA	Parents		
					Role	First Name	Last Name
				☐			
				☐			
				☐			

If more than three children, use and attach another request form.

☐ Probable cause exists to believe that temporary custody is clearly necessary to protect the child(ren) from suffering abuse or neglect, and it is contrary to the child(ren)'s welfare to remain in the home under **A.R.S. §8-821(A)**.

Enter safety threats, facts and reasons you want the judge to consider: *Facts are required

Specific present danger condition(s) or impending danger threat(s) for each child listed on this application
Circumstances that require temporary custody including a detailed account of circumstances and supporting facts
Specific reasons why a less intrusive option is not feasible or sufficient to manage the safety of the child in the home and why remaining in the home is contrary to the child's welfare

Applicant name:

Immediate callback phone number:

Applicant Fax number:

☐ I am a Peace Officer in the State of Arizona, employed by _____. I am currently investigating a case involving the child(ren) named in this application and declaration for removal, or am that person's supervisor. I make this declaration in support of this application.

Enter other qualifications, if needed:

☐ I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Rule 30. Disposition

(a) Disposition ~~Investigation and~~ Report. Before the disposition hearing, the court may ~~[**Staff Note:** Should this be "must" or "may?"]~~ order the juvenile probation officer to prepare and submit a written report to the court with recommendations regarding the juvenile's disposition. The disposition report and any attachments to that report are confidential and must be withheld from public inspection except upon court order. The report must be submitted to the court and be made available to counsel for the parties, or to the juvenile if unrepresented by counsel, 3 court days before the disposition hearing.

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

(A) the juvenile's delinquency referral and detention history;

(B) an evaluation of the juvenile's risk of reoffending and identified needs including the strengths of the juvenile and family;

(C) ~~identification of mitigating and aggravating circumstances;~~

(D) a victim impact statement;

(E) any information furnished by the victim regarding restitution; and

(F) a disposition recommendation ~~that best meet the needs of the juvenile and provide community safety~~.

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

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

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

(3) ***Waiver of Report.*** If the victim has provided, or has had an opportunity to provide a written or oral impact statement, and with court approval, the parties may waive the disposition report.

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

(5) ***Release of Information.*** The court may withhold from the parties any material that might be psychologically damaging to them, or that might be destructive of

relationships between family members ~~of the family concerned may, in the discretion of the court, be withheld from any of the parties in question~~.

(6) ***Filing Disposition Reports and Records.*** Disposition reports and any Rule 19(A)(2) social file records must be filed in a segregated portion of the legal file.

(b) Disposition Hearing.

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

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

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

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

(2) ***Procedure.*** When the court makes a finding that a juvenile is delinquent, the court must make a disposition of the matter as provided by law or set the matter for a disposition hearing. The court may assign the matter to another judge or a juvenile hearing officer. The victim has the right to be present and to address the court ~~at any disposition hearing, as provided by law~~.

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

(4) ***Advisals.*** Following the entry of its disposition order, the court must advise the juvenile, and provide written notice of, the following:

(A) the right to appeal;

(B) the right to set aside the adjudication;

(C) the right to destruction of records;

(D) if appropriate, a felony offender warning; and

(E) if the disposition is for a felony offense, the prohibition concerning firearms.

Rule 30. Disposition

(a) Disposition ~~Investigation and~~ Report. Before the disposition hearing, the court ~~shall~~ may ~~[**Staff Note:** Should this be "must" or "may?"]~~ order the juvenile probation officer to ~~conduct an investigation [**Staff Note:** Conduct an investigation of what? If this is the disposition report, could the words "conduct an investigation and" be deleted, as shown?]~~ prepare and submit a written report to the court with recommendations regarding the juvenile's disposition. The disposition report ~~is~~ and any attachments to that report are confidential and must be withheld from public inspection except upon court order. The report must be submitted to the court and be made available to counsel for the parties, or to the juvenile if unrepresented by counsel, 3 court days before the disposition hearing.

~~**(a)**~~

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

~~**(A)**~~ the juvenile's delinquency referral and detention history; ~~be submitted to the court 3 days before the disposition hearing;~~

(A)

(B) an evaluation of the juvenile's risk of reoffending and identified needs including the strengths of the juvenile and family;

(C) ~~identification of mitigating and aggravating circumstances;~~

(D) a victim impact statement;

(E) any information furnished by the victim regarding restitution; and

(F) a disposition recommendation ~~that best meet the needs of the juvenile and provide community safety~~.

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

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

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

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

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

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

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

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

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

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

~~**(E)** the juvenile's detention history.~~

(3) ***Waiver of Report.*** If ~~the court approves, the parties may waive the disposition report, but only if~~ tthe victim ~~did not~~ has provided, or has had an opportunity to provide a~~ a~~ written ~~impact statement~~or oral impact ~~as provided by law~~ statement, and with court approval, the parties may waive the disposition report.

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

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

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

(b) Disposition Hearing.

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

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

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

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

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

~~**(3)**~~

~~**(4)**~~**(3)** ***Findings and Orders***. At the close of the disposition hearing, the court must make findings in a signed minute entry or written order. If the disposition is probation, the order must include the conditions of probation.

(4) ~~***Right to Appeal***~~***Advisals*.** Following the entry of its disposition order, the court must ~~explain to~~advise the juvenile, and provide written notice of, the following:

~~**(5)**~~ (A) the right to appeal ~~and the method of appeal;~~.

(B) the right to set aside the adjudication;

(C) the right to destruction of records;

(D) if appropriate, a felony offender warning; and

(E) if the disposition is for a felony offense, the prohibition concerning firearms.

~~**(c) Amended Final Order.** On a party's motion filed no later than 10 days after the entry of a final order, the court may amend its order to correct errors or to make additional findings. This deadline may not be extended. [**Note:** Beth~~

~~Beckmann suggested adding section (c) in conjunction with the provisions concerning time-extending motions in Rule 104.]~~

Rule 31. Probation

(a) Imposition of Probation. The court may place a juvenile on probation at the time of disposition. The court must impose conditions of probation designed to promote the juvenile's positive development, assure accountability, and protect the public. In addition, the juvenile probation officer may impose directives that are consistent with and necessary for implementing the conditions imposed by the court.

(b) Notice. All conditions imposed by the court and directives imposed by a juvenile probation officer must be given to the juvenile in writing, unless exigent circumstances require the juvenile probation officer to give oral notice directly to the juvenile. When oral notice is given, the juvenile must also be provided with prompt written notice that confirms the oral notice.

(c) Modification of Probation.

(1) A juvenile probation officer may modify or clarify any directive that the probation officer has imposed.

(2) After notice to the prosecutor and the juvenile, and after the parties have had an opportunity to be heard, the court may modify any condition it has imposed, or any directive imposed by a probation officer.

(3) The juvenile, juvenile probation officer, or the state may ask the court to modify or clarify any condition or directive. The court may hold a hearing at the request of any party. Upon a victim's request, the court must notify the victim of any proposed modification of the terms of probation if the modification will substantially affect the juvenile's contact with, or the safety of the victim, or if the modification affects restitution or incarceration of the juvenile. The court must afford the victim an opportunity to be heard, as provided by law. The court must give the juvenile a written copy of a modification or clarification.

(d) Termination of Probation.

(1) The court may terminate the juvenile's probation at any time, but no later than the following:

(A) within one year after the disposition, except as provided by A.R.S. § 8-341(B);

(B) upon the juvenile's eighteenth birthday; or

(C) for cases filed pursuant to A.R.S. § 8-202(H), upon the juvenile's nineteenth birthday.

(2) If the victim requests notice, the court must notify the victim of any proceeding in which the court is asked to terminate the juvenile's probation. The court must afford the victim an opportunity to be heard, as provided by law.

[**Staff Note:** See further 2019 statutory amendments contained in HB 2055/Chapter 125 A.R.S. § 8-348) and HB 2080/Chapter 149 (particularly A.R.S. § 13-907, et seq.). In light of these statutory amendments, should the Juvenile Rules contain an analogous process for setting aside a juvenile adjudication? See Criminal Rule 29 for an analogous process for setting aside a conviction.]

Rule 31. Probation

(a) Imposition of Probation. The court may place a juvenile on probation at the time of disposition. The court must impose conditions of probation ~~that will~~ designed to promote the juvenile's ~~rehabilitation~~ positive development, assure accountability, and protect the public ~~[**Staff Note:** The draft uses "protect the public" rather than "public safety," which is in the current rule]~~. In addition, the ~~assigned~~ juvenile probation officer may impose ~~regulations~~ directives that are consistent with and necessary for implementing the conditions imposed by the court.

(b) Notice. ~~Written notice of a~~All conditions imposed by the court and ~~regulations and~~ directives imposed by a juvenile probation officer must be given to the juvenile in writing, unless exigent circumstances require the juvenile probation officer to give oral notice directly to the juvenile. When oral notice is given, the juvenile must also be provided with prompt written notice that confirms the oral notice.

(c) Modification of Probation.

(1) A juvenile probation officer may modify or clarify any ~~regulation~~ directive ~~which~~ that the probation officer has imposed.

(2) After notice to the prosecutor and the juvenile, and after the parties have had an opportunity to be heard, the court may modify any condition it has imposed, or any ~~regulation~~ directive imposed by a probation officer.

(3) The juvenile, juvenile probation officer, or the s~~S~~tate may ask the court to modify or clarify any condition or ~~regulation~~directive. The court may hold a hearing at the request of any party. Upon a victim's request, the court must notify the victim of any proposed modification of the terms of probation if the modification will substantially affect the juvenile's contact with, or the safety of~~,~~ the victim, or if the modification affects restitution or incarceration of the juvenile. ~~[**Staff Note**: Why is the victim notified only on request? Given the nature of these modifications, shouldn't the victim always receive notice?]~~ The court must afford the victim an opportunity to be heard, as provided by law. The court must give the juvenile a written copy of a modification or clarification ~~to the juvenile~~.

(d) Termination of Probation.

(1) The ~~court may terminate the~~ court may terminate the juvenile's probation at any time, but no later than the following:

(A) w~~W~~ithin one year after the disposition, except as provided by A.R.S. § 8-341(B)~~;~~.

(B) ~~**at any time before the juvenile's eighteenth birthday.**~~**(B)** ~~U~~upon the juvenile's eighteenth birthday; or~~.~~

~~**(1)**~~

~~**(2)**~~**(C)** ~~**(C)** F~~for cases filed pursuant to A.R.S. § 8-202(H), ~~the court may terminate probation~~ upon the juvenile's nineteenth birthday~~, if requested by the juvenile probation officer, on the juvenile's motion, or on its own, after giving notice to all parties and an opportunity for a response~~.

~~(3)~~**(2)** If the victim requests notice, the court must notify the victim of any proceeding in which the court is asked to terminate the juvenile's probation. The court must afford the victim an opportunity to be heard, as provided by law.

[**Staff Note:** See further 2019 statutory amendments contained in HB 2055/Chapter 125 A.R.S. § 8-348) and HB 2080/Chapter 149 (particularly A.R.S. § 13-907, et seq.). In light of these statutory amendments, should the Juvenile Rules contain an analogous process for setting aside a juvenile adjudication? See Criminal Rule 29 for an analogous process for setting aside a conviction.]

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.

Rule 42. Virtual Proceedings; Declared Emergencies.

(a) Generally. Upon the court's own motion or motion by a party, the court may permit virtual testimony, argument, or appearances 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 "Virtual." When used in this rule, "virtual" means by telephone, video conferencing, or other audio or visual technology allowing two or more persons to communicate.

(c) Non-Evidentiary Proceeding. The court may allow or direct a party to appear virtually 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 Virtually; 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 virtual testimony at an evidentiary proceeding and email or deliver it to the division staff of the assigned judicial officer. If the evidentiary proceeding is scheduled to occur on 21 days' notice or more, the moving party must file a motion 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 moving party must file a motion sufficiently in advance of the proceeding to allow the judicial officer to consider it in a timely manner. Responses must be filed as provided by Rule 46 or as the court otherwise directs. The court may rule on the motion with or without a hearing.

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

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

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

(2) exhibits must be provided in advance to the witness or party 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 virtually; must follow the clerk's procedures for submitting exhibits; and must email them to the division staff of the assigned judicial officer 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 identified 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 virtually, 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 virtually.

(1) Objections: How Made, When Made.

(A) How to Object to a Virtual Evidentiary Proceeding. A party objecting to a virtual evidentiary proceeding must file the objection in writing with the clerk and email or deliver it to the division staff of the assigned judicial officer.

(B) When to Object to a Virtual Evidentiary Proceeding. If the virtual 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. Responses must be filed as provided by Rule 46 or as the court otherwise directs. 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 virtual 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 virtual evidentiary proceeding. To overrule the objection and to demonstrate that due process will be satisfied, the court must specifically find that the virtual evidentiary proceeding will not substantially prejudice any party, and that each person will be audible and, if practicable, 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 virtually, 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 that the virtual evidentiary proceeding will proceed in a manner similar to the trial of a civil action before the court sitting without a jury.

Rule 42. ~~Telephonic~~ Virtual ~~Testimony~~ Proceedings~~, ; Video Conferencing,~~ Declared Emergencies.

(a) Generally. Upon the court's own motion or motion by a party, the court may permit ~~telephonic~~ virtual ~~-~~testimony ~~or,~~ argument, or appearances ~~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~~Virtual." When used in this rule, "~~telephonic~~virtual" means by telephone, video conferencing, or other audio or ~~video~~ visual technology allowing two or more persons to communicate.

(c) Non-Evidentiary Proceeding. The court may allow or direct a party to appear virtually~~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~~ Virtually ~~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~~ virtual testimony at an ~~in-person~~ evidentiary proceeding ~~in writing with the clerk~~ and email or deliver it to the division staff of the assigned judicial officer ~~to which the case has been assigned~~. If the ~~telephonic~~ ~~virtual~~ evidentiary proceeding is scheduled to occur on 21 days' notice or more, the ~~objecting~~ moving party must file ~~their~~ a motion ~~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~~ moving party must file ~~their objection~~ a motion sufficiently in advance of the proceeding to allow the judicial officer to consider it in a timely manner. Responses must be filed as provided by Rule 46 or as the court otherwise directs. The court may rule on the ~~objection~~ motion with or without a hearing.

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

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

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

(2) ~~the~~ exhibits must be provided in advance to the witness or 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~~virtually; must follow the clerk's procedures for submitting exhibits; and must email them to the division staff of the assigned 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~~ identified 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~~virtually, 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~~virtually.~~.~~

(1) Objections: How Made, When Made.

(A) How to Object to a ~~Telephonic~~ Virtual Evidentiary Proceeding. A party objecting to a ~~the telephonic~~ virtual ~~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 assigned judicial officer ~~to which the case has been assigned~~.

(B) When to Object to a ~~Telephonic~~ Virtual Evidentiary Proceeding. If the ~~telephonic~~ virtual 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. Responses must be filed as provided by Rule 46 or as the court otherwise directs. 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~~ virtual 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~~ virtual evidentiary proceeding. To overrule the objection and to demonstrate that due process will be satisfied, the court must specifically find that the ~~telephonic~~ virtual evidentiary proceeding will not substantially prejudice any party, and that each person will be audible and, if practicable, 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~~virtually, 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~~ virtual evidentiary proceeding will proceed in a manner similar to the trial of a civil action before the court sitting without a jury.

Rule 46.1. Altering or Amending a Final Order

(a) Generally.

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

(2) ***Ground for Altering or Amending a Final Order.*** The court, on its own no later than 12 days after the entry of a final order and with notice to the parties, or on a party's motion, may alter or amend a final order on the ground the court did not enter sufficient findings of fact or legal conclusions as required by law, or for a clerical mistake or a mistake arising from oversight or omission

(b) Time to File a Motion; Response.

(1) ***Motion.*** A party's motion under this rule must be filed no later than 12 days after the entry of a final order. The juvenile court may extend this deadline or excuse an untimely motion only on a showing of extraordinary circumstances.

(2) ***Response.*** No later than 10 days after a party files a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the non-moving party an opportunity to file a response.

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

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

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

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

Rule 46.1. Altering or Amending a Final Order

(a) Generally.

~~(a)~~

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

~~(1)~~

~~(2)~~ ***Ground~~s~~ for Altering or Amending a Final Order.*** The court ~~may,~~ on its own no later than 1~~0~~2 days after the entry of a final order and with notice to the parties, or on a party's ~~its own or on~~ motion~~, to~~ may ~~alter or amend a final order on the any of the following~~ ground~~s:~~

~~(A) t~~t the court did not enter sufficient findings of fact or legal conclusions as required by law, or for a clerical mistake or a mistake arising from oversight or omission~~;w. [modeled on Rule 52(b), Ariz. R. Civ. P.]~~

(2)

~~Aany irregularity in the proceedings, including misconduct of the other party, that deprived the party of a fair trial;[This is party of 59(a)(1) and I would remove since we really want to limit this to correcting a judgment]~~

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

~~a clerical mistake, or a mistake arising from oversight or omission. [CivR 60(a) and Fam.L.R. 85(a) both allow court to correct a judgment on its own motion but both say if NOA filed, need permission of appellate court which seems to be in conflict with ARCAP 9, which says both are time extending]~~

(b) Time to File a Motion; Response.

(1) ***Motion.*** A party's motion under this rule must be filed no~~t~~ later than ~~10~~ 12 days ~~[BCB or 12 days or calendar days to avoid extra 5 for mailing or confusion about that]~~ after the entry of a final order. The juvenile court may ~~not~~ extend this deadline or excuse an untimely motion ~~except~~only on a showing of extraordinary

circumstances. ~~[Because it is so close to the appeal time, perhaps there should be no extending this. Civ.R. 52(h) only allows it on a party's motion and deadline may not be extended ty stip or court order except as allowed by R.6(b)(2)says, lack of notice, and rule says the motion may accompany a motion for new trial under 59; clerical errors are in 60(a), which is like 85(a); can be by motion or on court's own motion but if appeal filed or pending, cannot do it without leave of the court]~~

(2) ***Response.*** ~~Within~~No later than 10 days after ~~the filing of~~a party files a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the non-moving party an opportunity to file a response.

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

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

Successive Motions. No party may file a motion to alter or amend an order granting or denying a party's motion under this rule ~~but a party may file a motion under this rule if the court on its own entered an altered or amended judgment~~.

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

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

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

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

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

(b) Time to File a Motion; Response.

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

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

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

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

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

(d)

Rule 47.3. Court Authorized Removal

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

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

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

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

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

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

(c) Procedure.

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

(A) the applicant's professional qualifications;

~~**(B)**~~ the particular reasons why each child is presently or imminently (*Clearly* per ARS 8-821 subsection B?) in danger of abuse or neglect; [~~**Staff Note:** The~~

~~standard here appears to conflate (b)(1) and the requirement in section (b) for ICWA.]~~

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

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

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

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

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

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

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

(d) Findings and Order.

(1) ***Content.*** An order granting an application must:

(A) identify and describe each child with reasonable particularity,

(B) identify the factual basis for authorizing temporary custody of each child,

(C) state whether there is probable cause to believe that authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect, and

(D) state whether remaining in the child's ~~current~~ home is contrary to the welfare of the child as required by Rule 47.1(A). ~~An order granting an application must: (a) identify the factual basis for authorizing temporary custody of each child, and (b) identify and describe each child with reasonable particularity.~~

~~*(If ICWA applies?)*~~ For an Indian child the court must also find that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child, as required by *25 C.F.R. § 23.113(b)(1).*

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

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

(B) sign an electronically transmitted version of the original order which is then deemed to be the original, or

(C) orally authorize the applicant to sign the judicial officer's name on the order, after which:

(i) the judicial officer must record the time and date of issuance of an orally authorized order on the original order, and

(ii) the applicant must send a duplicate original order to the judicial officer who issued the order.

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

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

(A) ~~*Child Not Receiving Inpatient Care.*~~ ***Duration of Order.*** ~~the child who is the subject of the order is not receiving inpatient care when the order is sought,~~ DCS may execute the order FOR 10 CALENDAR DAYS FROM THE DATE OF ISSUANCE OR until ~~the earlier of~~ a material change in the factual basis for the probable cause determination, whichever comes first. ~~or ten calendar days from the date of issuance.~~ ~~[**Staff Note:** What is the origin or basis for the 10-calendar day term?]~~

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

(C) *Expiration of Temporary Custody.* ~~The court's temporary custody authorization order will expire after~~ A child shall not remain in temporary custody for more than 72 hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in Rules 50 and 51.

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

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

(a) Service at or Before the Preliminary Protective Hearing. Service of the dependency petition, temporary orders, and a notice of the initial dependency hearing is complete:

(1) when provided to any parent, guardian, or Indian custodian at the preliminary protective conference or at the preliminary protective hearing; or

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

(b) Service After or in the Absence of a Preliminary Protective Hearing. If the parent, guardian, or Indian custodian did not attend the preliminary protective hearing, or if the court did not set a preliminary protective hearing, the petitioner must serve copies of the dependency petition, temporary orders, and a notice of the initial dependency hearing on a parent, guardian, or Indian custodian as soon as possible after the petition was filed but no fewer than 5 days before the initial dependency hearing, and 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 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 parent, guardian, or Indian custodian.

(3) ***No responsive pleading to the petition is required.*** A party served must appear at the time and place indicated on the notice of the initial dependency hearing and temporary orders served with the petition.

(c) Service within Arizona. Service of process on a parent, guardian, or custodian within Arizona must be completed pursuant to Civil Rule 4.1(d). However, when warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g), (k), or (l).

(a) 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.

(b) Service Outside Arizona. Service outside the state must be completed pursuant to Civil Rule 4.2(a), (c), (f), (i), or (j).

(c) 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.

(d) 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.

(e) Service under ICWA.

(1) If the petition 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 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.

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

COMMENT TO 2022 AMENDMENT

The 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.

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

(a) Service at or Before the Preliminary Protective Hearing. Service of the dependency petition, temporary orders, and a notice of the initial dependency hearing is complete:

(1) when provided to any parent, guardian, or Indian custodian at the preliminary protective conference or at the preliminary protective hearing; or

~~**(a)**~~ if the parent, guardian, or Indian custodian signs an acceptance of service before the preliminary protective hearing.~~**, 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) Service After or in the Absence of a Preliminary Protective Hearing. If the parent, guardian, or Indian custodian did not attend the preliminary protective hearing, or if the court did not set a preliminary protective hearing, the petitioner must serve copies of the dependency petition, temporary orders, and a notice of the initial dependency hearing on a parent, guardian, or Indian custodian as soon as possible after the petition was filed but no fewer than 5 days before the initial dependency hearing, and 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 modified as follows:

~~**(2)**~~**(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 parent, guardian, or Indian custodian.

(3) ***No responsive pleading to the petition is required.*** A party served must appear at the time and place indicated on the notice of the initial dependency hearing and temporary orders served with the petition.

~~**(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.]~~

~~service of the petition and temporary orders may occur at the preliminary protective hearing, or~~

~~**(c)** if the parent, guardian, or Indian custodian `signs an acceptance of service. [**Staff Note**: The FLR (see Rule 39(b)) uses only the term "acceptance," and not "waiver" of service].~~

~~(d)~~(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~~.

~~(e)~~(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

(3)

~~—~~the date of receipt by the party being served and the date the receipt was received

(4) 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~~.

(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) 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.~~

~~(h)~~**(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.

~~(i)~~(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.

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

COMMENT TO 2022 AMENDMENT

~~The committee concluded that a~~The 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 73. Disclosure and Discovery in Contested Adoptions

(a) Generally.

(1) *Duty to Disclose.* If the court at any stage of the proceeding, on its own initiative or upon request of a party, determines that an adoption is contested, a party must disclose to other parties all relevant information that is not privileged. A party must allow other parties to inspect materials, with or without copying and regardless of whether those materials are in physical, paper, or electronic form.

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

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

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

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

(1) the uncontested facts deemed material;

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

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

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

(5) a list of and copies of all exhibits which the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection and the specific grounds for each objection and provide a copy of the

notice to all parties and the court within ten (10) days of receipt of the list of exhibits. Specific objections or grounds not listed in the disclosure statement are deemed waived, unless otherwise ordered by the court. No exhibits may be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

(c) Methods of Discovery. The parties may agree to utilize the discovery methods in Civil Rules 26-37. Absent such agreement, a party may utilize those discovery methods only after the court grants a party's motion stating why these methods are necessary.

(d) Sanctions. Upon a party's motion or the court's own motion, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include granting a continuance, precluding the evidence, or entering any order against a party the court deems appropriate. Any sanction should accord with the intent of these rules as set forth in Rule 67 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

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

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

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

(b) Request for Records. ~~Unless otherwise provided by law, individuals must file a request with the juvenile court presiding judge or the presiding judge's designee to inspect or obtain copies of adoption records. Requests must state the information being sought and reasons why the requestor needs the information.~~ The court may release identifying and non-identifying information about the adoptee or birth parent ~~when:~~ as provided by A.R.S. §§ 8-121 and 8-129.

~~the file contains a notarized statement granting consent. or~~

~~the requestor establishes a compelling need for disclosure.~~

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

COMMITTEE COMMENT

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

Rule 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 A.R.S. § 8-109, the petition must contain the following information:

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

(2) whether a petition for termination of parental rights has been granted or is pending, including any pending special action or appeal;

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

(4) if the child is an Indian child:

(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 petitioner reasonably believes that the Indian child is a resident or domiciliary of an Indian reservation; and [WG Note 9/10: include this element in 8-109?]

(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 within 6 months after the filing date, except under the following circumstances:

(A) within 60 days after the filing date if the child has resided in the home of the prospective adoptive parent or parents for at least one year immediately before the filing of the petition for adoption; or

(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.

But if the prospective adoptive parent is the stepparent of the child, subparts (A) and (B) apply only if the stepparent has been married to the birth or legal parent of the child for at least one year.

(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 child is an Indian child, then under 25 C.F.R. § 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. Petition to Adopt

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(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 petitioner reasonably believes that the Indian child is a resident or domiciliary of an Indian reservation; and [WG Note 9/10: include this element in 8-109?]

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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.~~

~~**(C)**~~ But if the prospective adoptive parent is the stepparent of the child, subparts (A) and (B) apply only if the stepparent has been married to the birth or legal parent of the child for at least one year.

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

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(3)

Rule 103. Right to Appeal. [Staff Note: X-reference A.R.S. § 8-235]

(a) Who May Appeal. Any aggrieved party may appeal to the Court of Appeals from a final order of the juvenile court. A party is aggrieved under this rule if the order from which the appeal or cross-appeal is taken denies the party a personal or property right or imposes a substantial burden on the party.

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

(1) In delinquency and incorrigibility proceedings:

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

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

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

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

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

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

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

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

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

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

(F) An order terminating visitation.

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

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

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

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

(K) An order altering or amending a final order under Rule 46.1 and an order denying a motion to alter or amend a final order under Rule 46.1.

(L) An order granting or denying a motion to set aside a final order under Rule 46.2(b) or Rule 74(f).

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

Rule 103. Right to Appeal. [Staff Note: X-reference A.R.S. § 8-235]

(a) Who May Appeal. Any aggrieved party may appeal to the Court of Appeals from a final order of the juvenile court. A party is aggrieved under this rule if the order from which the appeal or cross-appeal is taken denies the party a personal or property right or imposes a substantial burden on the party.

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

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

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

(K) An order altering or amending a final order under Rule 46.1 and an order denying a motion to alter or amend a final order under Rule 46.1.~~[BCB: must we include denial of a motion to amend?]~~

(L) An order granting or denying a motion to set aside a final order under Rule 46.2(b~~e~~) ~~or~~ Rule 74(f).

~~**(b)**~~ Any other order that is final pursuant to Arizona case law.

~~1. In delinquency and incorrigibility proceedings,~~

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

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

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

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

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

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

~~C. An order granting or denying a motion to intervene.~~

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

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

~~F. An order terminating visitation.~~

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

~~H. An order granting or denying an adoption petition.~~

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

~~J. An order granting or denying a petition for emancipation.~~

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

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

(M)

Rule 104. Time for Filing a Notice of Appeal and Notice of Cross Appeal

(a) Notice of Appeal.

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

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

(b) Notice of Cross Appeal. Except as otherwise provided by this rule, a party must file a notice of cross-appeal in the juvenile court no later than 10 days after the appellant filed a notice of appeal, or 15 days after entry of the final order from which the appeal is taken, whichever is later.

(c) Effect of Certain Post Judgment Motions on the Time for Filing a Notice of Appeal. If a party within 12 days after entry of a final order files a motion under Rule 46.1 to alter or amend the final order, or a motion to set aside the final order under Rule 46.1(b) or Rule 72(f), the time to file a notice of appeal or cross-appeal under section (a) is extended as follows.

(1) ***No Previous Notice of Appeal.*** If a party has not previously filed a notice of appeal, the time for filing a notice of appeal begins to run on the date of entry of:

(A) the altered or amended order, regardless of whether that order was entered on a party's motion or the court's initiative;

(B) an order denying a party's motion to alter or amend; or

(C) an order granting or denying a party's motion to set aside.

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

(3) ***Altering or Amending a Judgment on the Court's Initiative.*** If a party has filed a notice of appeal before the court enters an altered or amended final order on its own under Rule 46.1, the party is not required to file an amended notice of appeal after the court enters the altered or amended order.

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

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

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

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

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

Rule 104.X. Content and Distribution of the Notice of Appeal

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

(1) the party filing notice;

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

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

(4) if the notice of appeal or cross-appeal is filed by an attorney, it must be in substantially the same form as Form 5, and must include the following statement: "By signing and filing this notice of appeal, undersigned counsel avows that counsel communicated with the client after entry of the order being appealed, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal." If the attorney for a party files a notice of appeal or cross-appeal that does not contain the required statement, the clerk must refer the notice of appeal or cross-appeal to the juvenile court judge assigned to the case. After reviewing the notice of appeal or cross-appeal, the assigned judge must issue an order informing the attorney and the appellant or cross-appellant that the notice does not comply with this rule and permit counsel to file an amended notice of appeal or cross-appeal no later than 5 days after the order is entered. If a proper notice of appeal or cross-appeal is not filed within that period, the court must strike the notice of appeal or cross-appeal and direct the clerk not to process it under Rules 104, 104.1 and 105. If the appellate court receives a notice of appeal or cross-appeal that does not comply with this rule and the juvenile court has taken no action on it, the appellate court must give counsel for the appellant or cross-appellant a reasonable opportunity to file an amended notice and if a compliant notice of appeal is not filed, the court must dismiss the appeal or cross-appeal.

(b) Distribution of Notice. Unless otherwise provided, no later than two business days after the filing of a notice of appeal or cross-appeal, the juvenile court clerk must distribute copies of the notice to:

(1) all parties;

(2) each certified court reporter who reported any juvenile court proceeding that is part of the presumptive record as described in Rule 104.1(a) or the court's designated transcript coordinator, if the record was made by electronic or other means; and

(3) the appellate court clerk. The juvenile court clerk must include with the copy of the notice served on the appellate court clerk a copy of the order from which the appeal is taken and the names of the persons to whom the clerk distributed a copy of the notice of appeal or cross-appeal.

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

Rule 104. Notice of Appeal~~.~~

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

Time for Filing a Notice of Appeal and Notice of Cross-Appeal.~~.~~

(1) ~~***Time for Filing a***~~ ***Notice of Appeal.***

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

~~**(1)**~~**(B)** ~~except as otherwise provided by this rule. that is the subject of the appeal.~~ An order is entered ~~Entry of an order occurs~~ on the date the clerk files it, as shown by the clerk's date stamp on the filed order~~ or as otherwise documented in the clerk's official records~~. ~~[staff suggested adding to Rule 7 the equivalent of civil rule 5.1(a) and (b) and then this preceding sentence can be removed] A final order may be in the form of a signed minute entry or a separate written order. [BCB: If the WG thinks this is useful, we should move it to Rule 103 and definition of final order]~~

(2) ***Notice of Cross-Appeal.*** Except as otherwise provided by this rule, ~~To cross-appeal a final order, a~~~~a~~~~A~~ ~~A~~ party must file a notice of cross-appeal ~~with the clerk~~in the juvenile court no later than 10 days after the appellant~~'s~~ files~~d~~~~ing of~~ a ~~after the~~ notice of appeal, ~~was filed~~or 15 days after entry of the final order from which the appeal is taken, whichever is later. ~~[BCB: I'm taking this from ARCAP 9(b).~~

(3) ***Effect of Certain Post-Judgment Motions on the Time for Filing a Notice of Appeal.*** If a party within 12 days after entry of a final order files a motion under Rule 46.1 to alter or amend the final order, or a motion to set aside the final order under Rule 46.1(b) or Rule 72(f), the time to file a notice of appeal or cross-appeal under section (a) is extended as follows.

(A) *No Previous Notice of Appeal.* If a party has not previously filed a notice of appeal, the time for filing a notice of appeal begins to run on the date of entry of:

(i) the altered or amended order, regardless of whether that order was entered on a party's motion or the court's initiative;

(ii) an order denying a party's motion to alter or amend; or

(iii) an order granting or denying a party's motion to set aside.

(B) *Previous Notice of Appeal.* If a party has filed a notice of appeal before timely filing one of these motions, or files a notice of appeal while the motion is pending, then after the appellate court assigns a case number under Rule 105(a), the appellant must promptly notify the appellate court of the pending motion. Upon receipt of that notice, the appellate court will suspend the appeal. The appellant must promptly notify the appellate court when the juvenile court has decided the motion. The appellate court will then reinstate the appeal as of the entry of the order disposing of the last motion. A party intending to appeal the juvenile court's ruling on such a motion must file a new or amended notice of appeal or cross-appeal within the time prescribed in (a)(1) or (a)(2) as measured from the entry of the order disposing of the motion.

(C) *Altering or Amending a Judgment on the Court's Initiative.* If a party has filed a notice of appeal before the court enters an altered or amended final order on its own under Rule 46.1, the party is not required to file an amended notice of appeal after the court enters the altered or amended order.

~~***Effect of Post-Judgment Motion To Set Aside Judgment or Motion for New Trial on Notice of Appeal; Amended Notice of Appeal.*** If a party files either of the following motions12, the time to file a notice of appeal or cross-appeal begins to run from the entry of a signed written order disposing of the last such motion:~~

~~A motion to alter or amend the final order under Rule 46.1. If the juvenile court grants a motion to alter or amend, the time for filing a new or amended notice of appeal begins to run from the entry of the altered or amended order. If the court alters or amends the final order on its own, the time for filing a notice of appeal or cross-appeal is extended for all parties and begins to run from the entry of the altered or amended final order. If a party has filed a notice of appeal before the court enters an altered or amended final order on its own, the party is not required to file a new or amended notice of appeal after the court enters the altered or amended final order. Motion to set aside a judgment under Rule 46(e).(BCB: We would put the 15-day restriction it as ARCAP 9 does for Rule 60 motions filed within that period. For all others, party needs to seek stay of appeal and revesting of jurisdiction in trial court).~~

~~Motion for new trial based on ineffective assistance of counsel under Rule 46( ) or Rule ___ [BCB: This would require a new rule, perhaps two, one in the general section of rules applicable to dependencies and severances, which means it could be in Rule 46, and another new rule in the delinquency section.]~~

~~A motion to set aside the final order under Rule 46.2(b) or Rule 74(f). Alternative to B or in addition to: M, or Family Law Rule 83~~

~~If a party files a notice of appeal before timely filing one of these motions, or files a notice of appeal while the motion is pending, the appellant must promptly notify the appellate court of the pending motion whenafter the appellate court assigns a case number under Rule 105(a). Upon receipt of that notice, the appellate court willmust [note: "will" is used later in this subpart] suspend the appeal until the last motion is decided. The appellant must promptly notify the appellate court when the juvenile court has decided the motion. The appellate court will be reinstate the appeal as of the entry of the order disposing of the last motion. A party intending to appeal the juvenile court's ruling on such a motion must file a new or amended notice of appeal or cross-appeal , or an amended notice of appeal or cross-appeal, within the time prescribed in subparts (a)(1) or (a)(2) as measured from the entry of the order disposing of the last motion or entry of an altered or amended judgment under Rule 46.1.~~

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

(4) ***Delayed Appeal or Cross-Appeal.*** ~~***Excusable Neglect.***~~ If a party ~~y's~~ failsure to file a timely notice of appeal or cross-appeal and the juvenile court finds good cause for the failure~~, was the result of excusable neglect,~~ the juvenile court ~~presiding juvenile court judge on motion may excuse the untimeliness and~~ must allow the appeal or cross-appeal to proceed. ~~[**Staff Note:** This provision was derived from the last sentence of current Rule 108(B). But see staff's note in Rule 108.]~~

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

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

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

(C)

(b) ~~(b)~~ **Content of the Notice of Appeal.** The notice of appeal or notice of cross-appeal must be in substantially the same form as form 5 and must include the following: [BCB: I was thinking we could create a form for this and adopt the forms Judge Quigley has been providing~~, which I will get to you before we discuss this rule~~. We could then incorporate the contents of the form. ~~Otherwise, they are specified below~~]

~~(3)~~(1) ~~i~~It ~~must specify~~ the party ~~taking the appeal or cross-appeal~~filing the notice;

~~(4)~~(2) ~~i~~It ~~must designate~~ the final order or portion of the order the party is appealing~~part thereof appealed from; and~~;

~~If the party wishes to add or remove items from the presumptive record under Rule 104(e), the party must include a designation of the record under Rule 104(f), specifying the documents, transcripts or other items to be added to the record or deleted from it. [BCB: Perhaps we need to permit an objection?]~~

(3) ~~if Unless the party filing the notice is not a government agency, the notice it must state~~ whether the party was represented ~~proceeding with~~by appointed counsel in the juvenile court when the final order was entered, unless the party filing the notice is a government agency; and~~.~~

~~(5)~~

(4) ~~When~~ ~~i~~If the notice of appeal or cross-appeal is filed by an attorney ~~on behalf of the the appellant or cross-appellant~~, ~~is represented by counsel, the notice of appeal or cross-appeal also~~ it must be in ~~contain~~ substantially the same form as form 5~~.~~, and must include ~~including~~ the following statement: "By signing and filing this notice of appeal, undersigned counsel avows that ~~[he/she]~~ counsel ~~[**Staff Note:** Prefer the gender-neutral word "counsel" here]~~ communicated with the client after entry of the ~~judgment~~ order ~~[**Staff Note:** The word "order" is used throughout the appeals rules rather than "judgment"]~~ being appealed,

discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal." If the attorney ~~counsel~~ for a party files a notice of appeal or cross-appeal that does not contain the required statement, ~~and an avowal that the appeal has merit~~the clerk must refer the notice of appeal or cross-appeal to the ~~assigned~~ juvenile court judge assigned to the case. After reviewing the ~~referral~~notice of appeal or cross-appeal, the assigned judge must issue an order informing the attorney~~counsel~~ and the appellant or cross-appellant that the notice does not comply with this rule and permit counsel to file an amended notice of appeal or cross-appeal no later than 5 days after the order is entered. If a proper notice of appeal or cross-appeal is not filed within that period, the court must strike ~~must promptly issue an order striking~~ the notice of appeal or cross-appeal and direct~~ing~~ the clerk not to process it under Rules 104, 104.1 and 105. If the appellate court receives a notice of appeal or cross-appeal that does not comply with this rule and the juvenile court has taken no action on it, the appellate court must give counsel for the appellant or cross-appellant a reasonable opportunity to file an amended notice and if a compliant notice of appeal is not filed, the court must dismiss the appeal or cross-appeal.

~~(6)~~

(c) ~~(c)~~ **Distribution of the Notice.** ~~Within t~~Unless otherwise provided, ~~N~~no later than two business days after the filing of a notice of appeal or cross-appeal, the juvenile court clerk must ~~serve~~ distribute ~~[**Staff Note:** Restyling nomenclature is that parties serve documents, and the clerk distributes them]~~ copies of the notice to:

~~(7)~~**(1)** all parties~~; or their counsel;~~

(2) each certified court reporter who reported any juvenile court proceeding that is part of the ~~certified transcript~~presumptive record as described in ~~subpart (E~~e)~~(2)~~Rule 104.1(a) ~~or~~ or the court's designated transcript coordinator, if the record was made by electronic or other means~~, and if additional transcripts are designated in a supplemental designation of record, then immediately upon the filing of the designation, in the notice under subpart (f), or the court's designated transcript coordinator, if the record was made by electronic or other means~~; and

~~(8) , and on~~ the ~~Court of Appeals~~appellate court clerk. The juvenile court clerk must include with the copy of the notice served on the appellate court clerk a copy of the order from which the appeal is taken~~,~~ and the names of the persons to whom the clerk ~~sent~~distributed a copy of the notice of appeal or cross-appeal.

~~**Notice of Non-Participation.**~~

(9) No later than 10 calendar days after the clerk has served copies of the notice of appeal or cross-appeal under section (Cc), any party to the case or any party's fiduciary, which includes a personal representative, Title 14 guardian, conservator or trustee,fiduciary [Staff Note: This is the first time the word "fiduciary" appears in the juvenile rules. See staff's note in Rule 32; BCB: I took the definition in Rule 2(j) and plugged it in here. Maybe we can then just take it out of the definitions in Rule 2] who has appeared in the proceeding on behalf of a party may file with the clerk a notice of non-participation stating that the party or fiduciary does not intend to participate actively in the appeal, and instead adopts and agrees in advance to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are specifically identified in the notice. The party or fiduciary filing a notice of non-participation must serve a copy of the notice on all persons on whom service was made under section (Cc). A notice of non-participation may not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or cross-petition for review.

By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal.

(10)

NOTE TO WG 1; HOW ABOUT A NEW RULE: 104.1

Rule 104.1. The Record on Appeal.

Presumptive Record on Appeal. The presumptive record on appeal consists of documents filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:.

(11) *Documents and Exhibits*. The presumptive record on appeal includes the following documents:

(A) AIncludes all filings with the clerk (including petitions, Petitions, motions, minute entries, orders, exhibit lists) and other items filed in the juvenile court before and including and including the filing of the notice or amended notice of appeal or cross-appeal.; a certified copy of all pleadings, orders, and other documents filed with the clerk;.

(B) tThe originals of all documentary exhibits [Staff Note: Could this provision use the word "documents" instead of "documentary exhibits?" If they were not exhibits they would not have been "introduced into evidence"] of manageable size introduced into evidence.; and

AIncludes all exhibits admitted into evidence, including Aany reports or other evidence the juvenile court has considered and admitted into evidence under Rule 3.1(d), but does not include described in subpart (C).

(C) documents and other items added pursuant to sections (F) and (G). Notwithstanding the preceding provisions of Rule 104(E)(1), tThe presumptive record on appeal shallmMust not include any document or other item deleted pursuant to Rule 104.1(bfF) or any item of a size, bulk or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply.. [Staff Note: This last sentence is redundant to section (F).]

(12) *Transcripts.* .The record on appeal includes transcripts of the following proceedings: TThehe presumptive record in each of the following types of appeals includes the transcripts respectively specified below: on appeal includes the following transcripts.

When an appeal is taken f *From in a delinquency or incorrigibility adjudication, appeal, the transcript includes:* transcripts of the adjudication and disposition hearings and any separate restitution hearing.;

(A) *F When an appeal is taken from a probation violation proceeding, the transcript includes:* transcripts of the contested violation hearing or the admission hearing and the disposition hearing.

(B) *WhenFrom an appeal is taken from in an order transfertransferring a juvenile for prosecution as an adult, :appealorder,* transcripts of the transcript includes the probable cause and public safety transfer phases of the transfer hearing.;[BCB: Rule 34 calls this phase the Public Safety Determination]

WhenFrom an appeal is taken from in an order adjudicating a child dependent or dismissing a dependency petitionmatter, the transcript includes : transcripts of the contested dependencyhearing or hearings that generated the order. If the notice of appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing. report and review, or other hearing that generated the order being appealed;

When an appealFrom is taken from an order granting or denying a motion to intervene, the transcript :includes transcripts of the hearing or hearings hearing on the motion.

(C) *When an appeal is taken fFrom an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation,:* transcripts of the transcript includes the hearing or hearings that resulted in that order.

(D) *When an appeal is taken fFrom in an order establishing or denying a guardianship or proceeding to an order granting or denying a motion or petition to terminateeion of parental rights: (severance) appeal,* transcripts of the transcript includes the contested guardianship, or termination, or other hearing that generated the order being appealed.; and

WhenFrom an appeal is taken from in an order granting or denying an adoption petitionappeal, the transcript includes: transcripts of any hearing on the validity of a parent's consent to adoption and any finalthe adoption hearing.

When an appeal is taken fFrom an order granting or denying a petition for emancipation: transcripts of n, the transcript includes the hearing orany hearings on the petition.

When an appeal is taken fFrom an order granting or denying a motion to set aside a final order under Rule 46(e) or a motion to alter or amend a final order): transcripts of , the transcript includes any hearing on the motion.

F When an appeal is taken from any other final order, the record includes the transcript of: transcripts of any hearing that resulted in that order.

(E) Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

(F) (b)

Notwithstanding the preceding provisions of Rule 104(eE)(2), tThe certified transcript must not include any proceeding or portion thereof that the appealing party states in the notice of appeal or cross-appeal that the party wishes to excluded from the presumptive record.d pursuant to Rule 104(Ff). [Staff Note: This sentence is redundant to section (F).]

(G) When an appeal is taken from any other final order, the record includes the transcript of any hearing that resulted in that order.

Appellant's Additional DesignationSupplementing of the Presumptive Record by Appellant's Supplemental Designation.

The record may be supplemented to add items listed in the designation of record portion of the party's notice of appeal or cross-appeal. The supplemental record may include

the following: No later than five 5 days after filing thea notice of appeal, the appellant may file "file with the clerk aappellant's "supplemental designation of record"" requestingthat requests that the juvenile court clerk to to include in the record to be transmitted to the court of appeals, the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal::

(A) add to the record on appeal specifically identified documents not included in section (E)(1), including such items as sStudies, reports, or medical or psychological evaluations, or compilations of such studies, reports, or evaluations, prepared as required by statute, court rule, or order for the juvenile court's use in the proceedings thatAny exhibit that has been marked and, offered but not admitted into evidence.; and

(13) (B) the court did not admit into evidence under Rule 3.1(d)(6) or are not otherwise part of the presumptive record, but directly or indirectly resulted in the order from which the appeal is takendirectly or indirectly resulted in the order from which the appeal is taken and are not otherwise part of the record; or

(14) delete from the record specifically identified items otherwise automatically included in the record on appeal under section (E)(1).The All or part of the transcript of any designated proceeding or part thereof that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

Appellant's additional designation of the record may also request one or more certified court reporters or the court's designated transcript coordinator, if the record was made by electronic or other means, to prepare the transcript of any designated proceeding or part thereof not automatically included, or to exclude from the transcript any portion thereof otherwise automatically included.

The appellant must serve the additional supplemental designation of record on all parties, on each court reporter who reported a designated portion of the proceedings, and as applicable, on the court's designated transcript coordinator. , if applicable. The certified transcript on appeal must not include any proceeding or portion thereofof any proceeding excluded from the presumptive record pursuant to a supplemental designation of record underunder sections (b) or (cthis subpart).

(c) Appellee's Supplementalt al Designation of the Record. No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk a

"appellee's supplemental designation of record" for any items not included in sections section (Eea) or deleted by appellant under section (Ffb) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. The appellee must serve the supplemental designation as provided in section (fbF).

(d)

Supplementing the Record Byby Motion. After the time for filing a supplemental designation under section (b) or (c) has passed, a party may move torequest to supplement the record only by motion filed in the appellate court after the Rbch.

Within 7 days. Notice of Appeal has been filed. Except as otherwise provided by Furle 104.1(f) and (g) this rule, after the notice of appeal or cross-appeal has been filed but nNo later than 7 days after the appellate clerk sends thea notice under Rule 105(e) that the record on appeal is complete, a party may file a motion that to supplement the record in the appellate court and requests to addadding to the record on appeal only those items the party reasonably believes are necessary for proper consideration of issues the party intends to raise on appeal by filing a motion to supplement the record in the appellate court. The motion must —

moving party must show good cause for seeking to supplement the record; and

must state in the motion whether other partiesies consent or object to the proposed supplementation of the record, or explain why the moving party was unable to contact the other parties before filing the motion.

After 7 days. If a party files a motion under this subpartsection later more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must establish the portions of the record requestedshow that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's untimely motion to supplement the record filed after the clerk has issued the notice under Rule 105(e) unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1)before thenpreviously, and that the party has established that the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

(e) Disputes, Omissions, and Misstatements. The parties must submit to the juvenile court any dispute about whether the record [accurately includes] discloses what actually occurred in the juvenile court to the juvenilethat court, which will resolve the dispute. If anything that is material to any party is omitted from or misstated in the

record, the parties may add to or correct it the record by a court- approved stipulation. Alternatively, the juvenile court, either before or after the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected, and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

(f) Sanctions. If a A party must not requests adding thatadding to the presumptive record any item or transcript be added to the presumptive record that that is not is not essential necessary to for proper consideration of deciding the issues on appeal, t. The appellate court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103(Gg), for any infraction of this rule.

Rule 104.2 Notice of Non-Participation.

(a) Generally. Any party to the case or a party's fiduciary, which includes a personal representative, Title 14 guardian, conservator or trustee, [Staff Note: This is the first time the word "fiduciary" appears in the juvenile rules. See staff's note in Rule 2; BCB: I took the definition in Rule 2(j) and plugged it in her; Maybe we can then just take it out of the definitions in Rule 2] who has appeared in the proceedings on behalf of a party, may file with the appellate court clerk a notice of non-participation stating that the party or fiduciary does not intend to participate actively in the appeal, and adopts and agrees to be bound by the appellate positions, filings, representations, actions, and omissions of another party or parties who are identified in the notice.

(b) Time for filing. A notice of non-participation may be filed in the juvenile court no later than 10 calendar days after the juvenile court clerk has served copies of the notice of appeal or cross-appeal under Rule 104(c). Otherwise, a notice of non-participation must be filed in the appellate court. A party or fiduciary filing a notice of non-participation must serve a copy of the notice on all persons on whom service was made under that provision.

(c) Effect of filing. By filing a notice of non-participation, a party or fiduciary does not waive the right to continue to receive orders, notices, or other documents issued by the juvenile court or the appellate court, or service of motions, briefs, notices, or other documents filed by any other party in connection with the appeal. Filing a notice of non-participation does not relieve the party or fiduciary who files it of the obligation to serve upon the remaining parties other documents filed by the party or fiduciary in the juvenile court or the appellate court in connection with the appeal. A notice of non-participation must not be used or relied upon as a substitute for a notice of appeal, notice of cross-appeal, petition for review, or a cross-petition for review.

~~The court reporter or reporters or authorized transcribers shall prepare the original certified transcript and one copy for each party to the appeal who has not filed a notice pursuant to subsection C.2. of this rule promptly upon receiving a notice of appeal filed by a governmental entity or a notice of appeal stating that the appellant was proceeding with appointed counsel in the juvenile court when the final order that is the subject of the appeal was filed. [Staff Note: Staff did not make any changes to the current provision because it is not clear what it's trying to convey.]~~

(3) ~~Arrangement for Costs. An appellant without appointed counsel—no later than 5 days after filing a notice of appeal, or 5 days after the court has denied the appellant's request for appointed counsel—must make arrangements with the court reporter or authorized transcriber to pay for the transcript. The court reporter or authorized transcriber must immediately give written notice to the appellate court if the appellant fails to make satisfactory arrangements within the prescribed time. When satisfactory payment arrangements are made, the court reporter or authorized transcriber must promptly prepare the certified original transcript. An appellant who is not proceeding with appointed counsel must pay for all portions of the record on appeal the appellant has designated or requested, and for those portions of the record on appeal that are required under section (E) and that were not deleted by another party.[BCB: I think this belongs in Rule 105, which addresses the preparation of the [transcript.]~~ ~~An appellant who is not proceeding with appointed counsel must pay for all portions of the record on appeal the appellant has designated or requested, and for those portions of the record on appeal that are required under section (E) and that were not deleted by another party.[BCB: I think this belongs in Rule 105, which addresses the preparation of the [transcript.]~~

Rule 104.1. The Record on Appeal

(a) Presumptive Record on Appeal. The presumptive record on appeal consists of documents filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:

(1) ***Documents and Exhibits.*** The presumptive record on appeal:

(A) Includes all documents filed with the clerk before the record is transmitted. No other filings may be transmitted without an order from the appellate court.

(B) Includes all exhibits admitted into evidence, including any reports or other evidence the juvenile court has considered and admitted into evidence under Rule 3.1, but does not include described in subpart (a)(1)(C).

(C) Must not include any document or other item deleted pursuant to Rule 104.1(b) or any item of a size, bulk or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply.

(2) ***Transcripts.*** The presumptive record in each of the following types of appeals includes the transcripts respectively specified below:

(A) *From a delinquency or incorrigibility adjudication:* transcripts of the adjudication and disposition hearings and any separate restitution hearing.

(B) *From a probation violation proceeding:* transcripts of the contested violation hearing or the admission hearing and the disposition hearing.

(C) *From an order transferring a juvenile for prosecution as an adult:* transcripts of the probable cause and public-safety phases of the transfer hearing.[BCB: Rule 34 calls this phase the Public Safety Determination]

(D) *From an order adjudicating a child dependent or dismissing a dependency petition:* transcripts of the hearing or hearings that generated the order. If the notice of appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing.

(E) *From an order granting or denying a motion to intervene:* transcripts of the hearing on the motion.

(F) *From an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation:* transcripts of the hearing or hearings that resulted in that order.

(G) *From an order establishing or denying a guardianship or an order granting or denying a motion or petition to terminate parental rights:* transcripts of the contested guardianship, termination, or other hearing that generated the order being appealed.

(H) *From an order granting or denying an adoption petition:* transcripts of any hearing on the validity of a parent's consent to adoption and the adoption hearing.

(I) *From an order granting or denying a petition for emancipation:* transcripts of any hearings on the petition.

(J) *From any other final order:* transcripts of any hearing that resulted in that order.

Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

(b) Appellant's Supplemental Designation.

(1) No later than 5 days after filing a notice of appeal, the appellant may file "appellant's supplemental designation of record" that requests the juvenile court clerk to include in the record transmitted to the court of appeals the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:

(A) Any exhibit that has been marked and offered but not admitted into evidence; and

(B) All or part of the transcript of any designated proceeding that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

(2) The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

(3) The appellant must serve the supplemental designation of record on all parties, on each court reporter who reported a designated proceedings, and as applicable, on the court's transcript coordinator. The certified transcript on appeal must not include any proceeding or portion of any proceeding excluded from the presumptive record under this subpart.

(c) Appellee's Supplemental Designation. No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk "appellee's supplemental designation of record" for any items not included in section (a) or

deleted by appellant under section (b) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. The appellee must serve the supplemental designation as provided in section (b).

(d) Supplementing the Record by Motion. After the time for filing a supplemental designation under section (b) or (c) has passed, a party may request to supplement the record only by motion filed in the appellate court.

(1) *Within 7 days.* No later than 7 days after the appellate clerk sends a notice under Rule 105(e) that the record on appeal is complete, a party may file a motion that requests adding to the record on appeal items the party reasonably believes are necessary for proper consideration of issues the party intends to raise on appeal. The motion must:

(A) show good cause for seeking to supplement the record; and

(B) state whether other parties consent or object to the proposed supplementation of the record or explain why the moving party was unable to contact the other parties before filing the motion.

(2) *After 7 days.* If a party files a motion under this section more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must show that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's untimely motion to supplement the record unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1), and the party has established the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

(e) Disputes, Omissions, and Misstatements. The parties must submit to the juvenile court any dispute about whether the record [accurately includes] what occurred in that court, which will resolve the dispute. If anything material is omitted from or misstated in the record, the parties may add to or correct the record by a court-approved stipulation. Alternatively, the juvenile court, before the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

(f) Sanctions. If a party requests adding to the presumptive record any item or transcript that is not necessary for proper consideration of the issues on appeal, the appellate

court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103(g).

~~(a) NOTE TO WG 1; HOW ABOUT A NEW RULE: 104.1~~

Rule 104.1. The Record on Appeal.

~~(b)~~**(a) Presumptive Record on Appeal.** The presumptive record on appeal consists of documents ~~-~~filed and exhibits admitted in the juvenile court, and transcripts of reported or recorded proceedings as follows:~~.~~

(1) ***Documents and Exhibits.*** The presumptive record on appeal:~~ includes the following documents:~~

(A) ~~A~~Includes all documents filed with the clerk ~~clerk Petitions, motions, minute entries, orders, exhibit lists~~ before the record is transmitted~~and other items filed in the juvenile court before and including the filing of the notice or amended notice of appeal or cross-appeal.~~; No other filings may be transmitted without an order from the appellate court.~~a certified copy of all pleadings, orders, and other documents filed with the clerk;~~.

~~**(B)** tThe originals of all documentary exhibits [**Staff Note:** Could this provision use the word "documents" instead of "documentary exhibits?" If they were not exhibits they would not have been "introduced into evidence"] of manageable size introduced into evidence.; and~~

(B) ~~A~~Includes all exhibits admitted into evidence, including ~~A~~any reports or other evidence the juvenile court has considered and admitted into evidence under Rule 3.1~~(d)~~, but does not include described in subpart (a)(1)(C).

(C) ~~documents and other items added pursuant to sections (F) and (G). Notwithstanding the preceding provisions of Rule 104(E)(1), t~~The ~~presumptive record on appeal shall m~~Must not include any document or other item deleted pursuant to Rule 104.1(b~~f~~F) or any item of a size, bulk or condition that makes transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply.~~.~~. ~~[**Staff Note:** This last sentence is redundant to section (F).]~~

(2) ***Transcripts.*** ~~.The record on appeal includes transcripts of the following proceedings:~~ ~~T~~The~~he~~ presumptive record in each of the following types of appeals includes the transcripts respectively specified below:~~ on appeal includes the following transcripts.~~

(A) ~~When an appeal is taken f~~ *From ~~in~~ a delinquency or incorrigibility adjudication~~, appeal, the transcript includes~~:* ~~-~~transcripts of the adjudication and disposition hearings and any separate restitution hearing.~~;~~

~~(A)~~(B) *F ~~When an appeal is taken f~~rom a probation violation proceeding~~, the transcript includes:~~* ~~-~~ transcripts of the contested violation hearing or the admission hearing and the disposition hearing.

~~(B)~~(C) *~~When~~From ~~an appeal is taken from in~~ an order ~~transfer~~transferring a juvenile for prosecution as an adult~~, :appeal~~~~order,~~ ~~-~~transcripts of ~~the transcript includes~~ the probable cause and public-safety ~~transfer~~ phases of the transfer hearing.~~:~~[BCB: Rule 34 calls this phase the Public Safety Determination]

(D) *~~When~~From ~~an appeal is taken from in~~ an order adjudicating a child dependent or dismissing a dependency petition~~matter, the transcript includes :~~* transcripts of the ~~contested dependency~~hearing or hearings that generated the order. If the notice of appeal states the appeal is also taken from the disposition order, the transcript also includes the disposition hearing. ~~report and review, or other hearing that generated the order being appealed;~~

(E) *~~When an appeal~~From ~~is taken from~~ an order granting or denying a motion to intervene~~, the transcript :includes~~* ~~-~~transcripts of the ~~hearing or hearings~~ hearing on the motion.

~~(C)~~(F) *~~When an appeal is taken f~~From an order relieving DCS of its obligation to provide reunification services, removing a child who has been adjudicated dependent from a parent's physical custody, or terminating visitation~~,~~:* transcripts of the ~~transcript includes the~~ hearing or hearings that resulted in that order.

~~(D)~~(G) *~~When an appeal is taken f~~From ~~in~~ an order establishing or denying a guardianship or ~~proceeding to~~ an order granting or denying a motion or petition to terminat~~e~~~~ion of~~ parental rights~~: (severance) appeal~~~~,~~ ~~-~~transcripts of ~~the transcript includes~~ the contested guardianship, ~~or~~ termination, or other hearing that generated the order being appealed.~~; and~~

(H) *~~When~~From ~~an appeal is taken from in~~ an order granting or denying an adoption petition~~appeal, the transcript includes:~~* ~~-~~ transcripts of any hearing on the validity of a parent's consent to adoption and ~~any final~~the adoption hearing.

(I) *~~When an appeal is taken f~~From an order granting or denying a petition for emancipation:* ~~-~~transcripts of ~~n, the transcript includes the hearing or~~any hearings on the petition.

(J) *~~When an appeal is taken from an order granting or denying a motion to set aside a final order under Rule 46(e) , the transcript includes any hearing on~~*

~~the motion.~~ ~~*F When an appeal is taken f*~~*rom any other final order, the record includes the transcript of:*~~ transcripts of any hearing that resulted in that order.

~~**(E)**~~ Notwithstanding the preceding provisions, the certified transcript must not include any proceeding or portion thereof excluded pursuant to section (b).

~~**(F)** (b)~~

~~Notwithstanding the preceding provisions of Rule 104(eE)(2), tThe certified transcript must not include any proceeding or portion thereof that the appealing party states in the notice of appeal or cross-appeal that the party wishes to excluded from the presumptive record.d pursuant to Rule 104(Ff). [**Staff Note:** This sentence is redundant to section (F).]~~

~~**(G)** When an appeal is taken from any other final order, the record includes the transcript of any hearing that resulted in that order.~~

(b) ~~Appellant's Additional Designation~~Supplementing of the Presumptive Record by Appellant's Supplemental Designation.

~~**(c)(1)**~~ ~~The record may be supplemented to add items listed in the designation of record portion of the party's notice of appeal or cross-appeal. The supplemental record may include the following:~~ No later than ~~five~~ 5 days after filing ~~the~~a notice of appeal, the appellant may file "~~file with the clerk a~~appellant's "supplemental designation of record"" ~~requesting~~that requests ~~that~~ the juvenile court clerk to ~~to~~ include in the record ~~to be~~ transmitted to the court of appeals~~,~~ the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:~~:~~

~~**(A)** add to the record on appeal specifically identified documents not included in section (E)(1), including such items as s~~Studies, reports, or medical or psychological evaluations, or compilations of such studies, reports, or evaluations, prepared as required by statute, court rule, or order for the juvenile court's use in the proceedings that~~Any exhibit that has been marked and~~,~~ offered but not admitted into evidence~~.~~; and

~~**(1)** (B) the court did not admit into evidence under Rule 3.1(d)(6) or are not otherwise part of the presumptive record, but directly or indirectly resulted in the order from which the appeal is taken~~**directly or indirectly resulted in the order from which the appeal is taken and are not otherwise part of the record;** ~~or~~

~~(2) delete from the record specifically identified items otherwise automatically included in the record on appeal under section (E)(1).~~ ~~The~~ All or part of the transcript of any designated proceeding ~~or part thereof~~ that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.

(1) The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.

~~Appellant's additional designation of the record may also request one or more certified court reporters or the court's designated transcript coordinator, if the record was made by electronic or other means, to prepare the transcript of any designated proceeding or part thereof not automatically included, or to exclude from the transcript any portion thereof otherwise automatically included.~~

(2) The appellant must serve the ~~additional~~ supplemental designation of record on all parties, on each court reporter who reported a designated ~~portion of the~~ proceedings, and as applicable, on the court's ~~designated~~ transcript coordinator. ~~, if applicable.~~ The certified transcript on appeal must not include any proceeding or portion ~~thereof~~of any proceeding excluded from the presumptive record ~~pursuant to a supplemental designation of record under~~under sections (b) ~~or~~ (~~c~~this subpart~~)~~.

(c) ~~(c)~~ Appellee's Supplemental ~~al~~ Designation ~~of the Record~~. No later than 12 days after the filing of the notice of appeal, any appellee may file with the juvenile court clerk ~~a~~ "appellee's supplemental designation of record" for any items not included in ~~sections~~ section (~~E~~ea) or deleted by appellant under section (~~F~~fb) that the appellee reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal. ~~-~~The appellee must serve the supplemental designation as provided in section (~~f~~b~~F~~).

~~(d)~~ ~~(d)~~

(d) Supplementing the Record ~~By~~by Motion. After the time for filing a supplemental designation under section (b) or (c) has passed, a party may ~~move to~~request to supplement the record only by motion filed in the appellate court ~~after the Rbch~~.

(1) ~~-~~*Within 7 days.* ~~Notice of Appeal has been filed. Except as otherwise provided by Furle 104.1(f) and (g) this rule, after the notice of appeal or cross-appeal has been filed but n~~No later than 7 days after the appellate clerk sends ~~the~~a notice under Rule 105(e) that the record on appeal is complete, a party may file a motion that ~~to supplement the record in the appellate court and~~ requests ~~to add~~adding to the record on appeal ~~only those~~ items the party reasonably believes

are necessary for proper consideration of issues the party intends to raise on appeal ~~by filing a motion to supplement the record in the appellate court~~. The motion must:~~———~~

(A) ~~moving party must~~ show good cause for seeking to supplement the record; and

(B) ~~must~~ state ~~in the motion~~ whether other parti~~es~~ies consent or object to the proposed supplementation of the record~~,~~ or explain why the moving party was unable to contact the other parties before filing the motion.

(2) *After 7 days.* If a party files a motion under this ~~subpart~~section ~~later~~ more than 7 days after the appellate clerk has issued a notice of completion of the record under Rule 105(e), the party must ~~establish the portions of the record requested~~show that the requested records are necessary for the proper consideration of issues the party intends to raise on appeal. The appellate court may not grant a party's untimely motion to supplement the record ~~filed after the clerk has issued the notice under Rule 105(e)~~ unless the court finds extraordinary circumstances exist to excuse the party's failure to file the motion within the time specified in subpart (d)(1)~~before then~~previously~~,~~ and ~~that~~ the party has established ~~that~~ the supplemental materials are necessary for the proper consideration of the issues the party intends to raise on appeal.

(e) ~~(e)~~ **Disputes, Omissions, and Misstatements.** The parties must submit to the juvenile court any dispute about whether the record [accurately includes] ~~discloses~~ what ~~actually~~ occurred in ~~the juvenile court to~~ ~~the juvenile~~that court, which will resolve the dispute. If anything ~~that is~~ material ~~to any party~~ is omitted from or misstated in the record, the parties may add to or correct ~~it~~ the record by a court-approved stipulation. Alternatively, the juvenile court, ~~either~~ before ~~or after~~ the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own, may direct that the omission or misstatement be corrected~~,~~ and, if necessary, that a supplemental record be certified and transmitted. All other questions concerning the form and content of the record must be presented to the appellate court.

~~(f)~~ **(f)** **Sanctions.** If a ~~A~~ party ~~must not~~ request~~s adding~~ ~~that~~adding to the presumptive record any item or transcript ~~be added to the presumptive record that~~ that is not ~~is not essential~~ necessary ~~to~~ for proper consideration of ~~deciding~~ the issues on appeal, t~~. T~~he appellate court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103(~~G~~g)~~, for any infraction of this rule~~.

(f)

Rule 105. Assigning an Appellate Case Number; Filing, Serving, and Transmitting the Record on Appeal

(a) Assigning an Appellate Case Number and Caption.

(1) The appellate court clerk must assign an appellate case number upon receipt of the notice of appeal from the superior court clerk. The appellate court clerk must establish the official caption of the appeal pursuant to the criteria in Rule 103.1(a).

(2) If a timely notice of appeal was filed but the court of appeals has not received the notice before a motion is filed in that court that seeks to stay the superior court's order pending resolution of the appeal, the appellate court clerk may assign the appeal an appellate case number when that motion is filed. The moving party must attach to the motion a copy of the timely filed notice of appeal that was filed in the superior court.

(b) Notification of Assignment of Appellate Case Number. The appellate court clerk must provide notice of the assigned appellate case number and the official caption to:

(1) all parties;

(2) the superior court clerk; and

(3) the court reporter or authorized transcriber for all presumptive transcripts as provided in Rule 104.1(a)(2) and for any proceeding or part thereof designated pursuant to Rule 104.1(b)(1)(B) or (c).

(c) Filing and Transmitting Documents. No later than 20 days after the notice of appeal is filed, the superior court clerk must:

(1) prepare a certified copy of the following by individually numbering each document in filing-date order, beginning with the first-filed document:

(A) the documents that are part of the presumptive record, identified in Rule 104.1(a)(1), except documents excluded from the presumptive record under Rule 104.1(b)(2), and

(B) any documents added to the presumptive record under Rule 104.1(b) or (c);

(2) identify and assemble all exhibits, identified in Rule 104.1(a)(1)(B) and admitted into evidence, including any reports or other evidence the juvenile court has considered and marked for identification under Rule 3.1, except:

(A) any exhibit appellant has excluded under Rule 104.1(b), unless appellee has re-designated the exhibit under Rule 104.1(c), and

(B) any item of a size, bulk or condition that makes the transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply;

(3) prepare an index of the record on appeal separately listing:

(A) the documents prepared pursuant to subpart (c)(1), in numerical order, indicating for each the title or a brief description of the document and its filing date, and

(B) the exhibits identified and assembled pursuant to subpart (c)(2), by number, with a brief description of each and the date it was admitted into evidence;

(4) transmit the documents, exhibits, and the index to the appellate court clerk; and

(5) serve copies of the index on all parties to the appeal.

(d) Filing and Serving Certified Transcripts; Sanctions.

(1) *General Requirements*.

Unless otherwise ordered by the appellate court, the court reporter or authorized transcriber must file the completed certified transcript with the appellate court clerk, and must serve one copy on each appellant and each appellee who has not filed a Notice of Non-Participation under Rule 104.2. The court reporter or authorized transcriber must file a notice of service with the transcript, stating when, upon whom, and by what means service was made. The transcript must show the assigned appellate court case number.

(2) *Time for Filing*. The court reporter or authorized transcriber must file the transcript no later than 30 days after the following, whichever occurs first:

(A) the filing of a notice of appeal by a governmental agency or of a notice of appeal stating that appellant was represented by appointed counsel in the juvenile court when the final order was entered;

(B) service of notice on the court reporter or authorized transcriber that the juvenile court or the appellate court has appointed counsel to represent the appellant on appeal; or

(C) the appellant makes satisfactory arrangements to pay for the certified transcript.

(3) *Sanctions*. If the certified transcript is not timely filed with the appellate court clerk, the noncomplying court reporter or reporters or authorized transcriber may be subject to orders or sanctions as the appellate court deems appropriate.

(e) Notice of Completion of the Record. Upon receipt of all documents, exhibits and transcripts that are included in the presumptive record, or added by supplemental designation or by the appellate court's order under section (f), the appellate court clerk must send a notice to all parties of the date on which the record on appeal is complete.

(f) Supplementing the Record by Appellate Court The appellate court, on motion filed under Rule 104.1(d) or on its own initiative, may direct the transmission of any document, exhibit or other item necessary for determining the appeal and not transmitted under sections (c) and (d) of this rule.

Rule 105. Assigning an Appellate Case Number~~, ;~~ Filing, Serving, and Transmitting the Record on Appeal~~ ANGLEA PLEASE FIX THE FORMATTING REGARD SUBPART DESIGNATIONS. SOME ARE (A) and others are A.~~

(a) Assigning an Appellate Case Number and Caption.

(1) The ~~Court of Appeals~~appellate court clerk must assign ~~the appeal~~ an appellate case number upon receipt of the notice of appeal from the superior court clerk~~ of the juvenile court~~. The appellate court ~~of appeals~~ clerk must ~~and the order from which the appeal is taken and~~ establish the official caption of the appeal pursuant to the criteria in Rule 103.1(a).

(2) If a timely notice of appeal ~~has been~~was filed but ~~has not been received by~~ the court of appeals has not received the notice before a motion is filed in that court that seeks to stay the superior court's order pending resolution of the appeal, ~~In the alternative, t~~the ~~court of appeals~~ appellate court clerk may assign the appeal an appellate case number ~~when on the filing of a motion is filed in the C~~court of ~~A~~appeals ~~that seeks to suspend or stay the juvenile court's order pending resolution of the appeal,~~when that motion is filed. ~~provided the party has filed~~The moving party must attach to the motion a copy of the ~~the motion makes an appropriate showing that a~~ timely ~~-~~filed notice of appeal that was filed ~~was filed~~ in the ~~juvenile~~ superior court~~, which must be attached to the motion, and that the order from which the appeal is taken was is final and appealable. [**Staff Note:** If the NOA was filed in the juvenile court, wouldn't the appellate clerk already have it and assigned an appellate case number?]~~.

(b) Notification of Assignment of Appellate Case Number. ~~At the time of assigning an appellate case number, the Court of Appeals clerk must establish the official caption of the appeal pursuant to the criteria in Rule 103(B).~~ The appellate court clerk ~~then~~ must provide notice of ~~notify~~ the assigned appellate case number and the official caption to:

(1) all parties;

(2) ~~and~~ the ~~juvenile~~ superior court clerk; and

(3) ~~-~~the court reporter or authorized transcriber for all presumptive transcripts as provided in Rule 104.1(a)(2) and for any proceeding or part thereof designated pursuant to Rule 104.1(b)(1)(B) or (c)~~, of. the assigned appellate case number and the official caption.~~

~~(a)~~ **Filing and Transmitting Documents.** No later than 20 days after the notice of appeal is filed, the superior court clerk must:

(b) Filing and Serving Certified Transcripts. Unless otherwise ordered by the appellate court, The the court reporter or authorized transcriber must file the completed certified transcript with the appellate court of appeals clerk, marked with the case number assigned to the appeal by the Ccourt of aAppeals, no later than the earliest of later of the following:

(1) 30 days after theafter the filing of a notice of appeal by a governmental agency or of a notice of appeal stating that appellant proceeded withwas represented by appointed counsel in the juvenile court when the final order that is the subject of the appeal was filedentered;; [**Staff Note:** For clarity, current subpart (B)(1) was broken into draft subparts (B)(1) and (B)(2).]

(2) 30 days after service of an order by the juvenile court order or the appellate court appointing counsel to represent the appellant on appeal;, or

(3) 30 days after the appellant makes satisfactory arrangements to pay for the certified transcript.

(c) Filing and Transmitting Documents. No later than 20 days after the notice of appeal is filed, the juvenile superior court clerk must:

(1) prepare a certified copy of the following, by individually numbering each document in filing-date order, beginning with the first-filed document:

(1)

(A) the documents that are part of the presumptive record, identified in Rule 104.1(a)(1), all pleadings [**Staff Note:** Does any rule define what constitutes a "pleading" in juvenile court?], orders, and other documents on file with the clerk, except for documents omitted deletedexcluded from the presumptive record under Rule 104.1(b)(2), (E) or (F), and

A.

B.**(B)** any documents added to the presumptive record under Rule 104.1(b) or (c)and individually number each document in filing-date order beginning with the first filed document;;

(2) identify and assemble all exhibits, identified in Rule 104.1(a)(1)(B) and admitted into evidence, including any reports or other evidence the juvenile juvenile court has considered and admitted into evidencemarked for identification under Rule 3.1, except:

(2)

(A) any exhibit appellant has ~~deleted~~ excluded under Rule 104.1(b), unless appellee has re-designated the ~~deleted~~ exhibit under Rule 104.1(c), and

~~A.~~

~~B.~~**(B)** any item of a size, bulk or condition that makes the transmission impractical, in which case the provisions of ARCAP 11.1(c)(2) apply ~~the original documentary and electronic exhibits in the record that are of manageable size, including those added to, or deleted from, the record under Rule 104(E) or (F);;~~

(3) prepare an index of the record on appeal separately listing:

(A) the documents prepared pursuant to subpart (c)(1), in numerical order, indicating for each the title or a brief description of the document and its filing date, and

(B) the exhibits identified and assembled pursuant to subpart (c)(2), by number, with a brief description of each and the date it was admitted into evidence;

(4) transmit the documents, exhibits, and the index to the appellate court clerk; and

(5) serve copies of the index on all parties to the appeal.

(d) Filing and Serving Certified Transcripts; Sanctions.

(1) *General Requirements*.

Unless otherwise ordered by the appellate court, t~~T~~he court reporter or authorized transcriber must file the completed certified transcript with the appellate court clerk, and ~~unless otherwise ordered by the appellate court~~must serve one copy on each appellant and each appellee who has not filed a Notice of Non-Participation under Rule 104.2~~, and~~. The court reporter or authorized transcriber must file a notice of service with the transcript, stating when, upon whom, and by what means service was made. The transcript must show the assigned appellate court case number. ~~The court reporter or authorized transcriber must file the transcript no later than:~~

(2) *Time for Filing*. The court reporter or authorized transcriber must file the transcript no later than 30 days after the following, whichever occurs first: ~~30 days after~~

(A) ~~(the A)~~ the filing of a notice of appeal by a governmental agency or of a notice of appeal stating that appellant was represented by appointed counsel in the

juvenile court when the final order ~~that is the subject of the appeal~~ was entered;

(B) ~~(B)~~ service of notice on the court reporter or authorized transcriber that the juvenile court or the appellate court has appointed counsel to represent the appellant on appeal; or

(C) ~~(C)~~ the appellant makes satisfactory arrangements to pay for the certified transcript.

~~*30 days after service of an order by the juvenile court or the appellate court appointing counsel to represent the appellant on appeal;*~~ *Sanctions.* If the certified transcript is not timely filed with the appellate court clerk, the noncomplying court reporter or reporters or authorized transcriber may be subject to ~~such~~ orders or sanctions as the appellate court deems appropriate.~~or~~

~~**(3)** 30 days after the appellant makes satisfactory arrangements to pay for the certified transcript.~~

~~**(5)**~~

(e) Notice of Completion of the Record. Upon receipt of all documents, exhibits and transcripts that are ~~part of~~included in the presumptive record,~~,~~ or ~~either presumptively under the rule~~ added by supplemental designation o~~,~~r by the appellate court's order under ~~sub~~section (f) ~~of this rule~~, ~~the Court of Appeals clerk must file each portion of the record on appeal and~~ the appellate court clerk must send a notice to all parties of the date on which the record on appeal is complete.

~~**(d)**~~

~~**(e)**~~ ~~**(f)**~~ **Supplementing the Record by Appellate Court**~~.~~ The appellate court, on motion filed under Rule 104.1(d) or on its own initiative, may direct the transmission of any document, exhibit or other item necessary for determining the appeal and not transmitted under sections~~subparts~~ (~~C~~c) and (d) of this rule.

~~**(1)** The juvenile court clerk must immediately forward to the Court of Appeals clerk certified copies of minute entry orders and documents that were filed in the superior court after the initial transmission of the record to the Court of Appeals, [marked with the number assigned to the appeal by the Court of Appeals.] [**Staff Note:** Are the preceding words in brackets necessary?]~~

~~(2)~~(f) ~~The appellate court, on motion or on its own initiative, may direct the transmission of any document, exhibit or other item necessary for determining the appeal and not transmitted under section (C).~~

Rule 108. ~~**Service, How Made, Filing, Extensions of Time**~~ **ABROGATED. PLEASE SEE THE BCB NOTES BELOW.**

~~**[Staff Note: The Task Force should consider a general rule at the beginning of the juvenile rules that addresses filing and service. Rule 108(A) and (B) could be stated more clearly, and staff has not revised them pending further discussion. For example, what is the meaning of a "pleading" under the appellate rules? Also, the current provisions might conflict with other rule provisions concerning appeals. For example, Rule 103 incorporates ARCAP 5 by reference, and ARCAP 5(b) permits only the appellate court to modify a deadline; section B contradicts that rule. And ARCAP 5(b) does not include an exception of excusable neglect for an untimely NOA.]**~~

~~**(a) Unless otherwise specified, any pleadings, motions, notices, or other documents required to be filed under any provision of Rules 103 through 105 of these rules shall be filed with the clerk of the superior court and a copy thereof lodged with the presiding judge of the juvenile court. Whenever under Rules 103 through 107 service of pleadings, motions, notices, or other documents filed with the clerk of the superior court or the appellate court is required or permitted, such service shall be made in accordance with the provisions of Rule 5(c), Ariz. R. Civ. P., 16 A.R.S.**~~ **[BCB: not sure what any of the first sentence refers to. Second sentence can be incorporated into 103.1.]new subsection (h).**

~~**(b) Any requests for extensions of time for filing pleadings, motions, or other documents with the clerk of the superior court under the provisions of Rules 103 through 105 of these rules shall be made to the presiding judge of the juvenile court and shall be governed by the provisions of Rule 6(b), Ariz. R. Civ. P.; provided, however, that the time specified in Rule 104(A) for filing a notice of appeal or cross-appeal may not be extended, but where the failure to timely file was the result of excusable neglect, the juvenile court may excuse the untimely filing upon motion made after the expiration of the specified period.**~~**[BCB: I think we eliminate this completely. I moved the delayed NOA to 104. I'm not sure what the first sentence of this applies to since the juvenile court loses jurisdiction and no extensions other than the time for filing an appeal would be in that court and the appellate rules make clear all filings must e in thatcourt]**