Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, October 23, 2020
10:00 a.m. to 4:00 p.m.
Telephonic Meeting: 602.452.3533, # **999 788 843**

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the September 25, 2020 meeting minutes**	*Justice Berch*
Item no. 3	**Workgroup reports and discussion of rules** **Workgroup 1: Rule 8 [new]; Rules 106 and 106.1 [bifurcated]; Civil Rule 81.1** **Workgroup 3: Rules 50 and 53** **Workgroup 4: Rule 77**	 *Judge Kreamer, Ms. Beckmann* *Judge Quigley, Judge Young* *Professor Atwood*
Item no. 4	**Roadmap** **Next meetings: November 20, December 4, 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, September 25, 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, John Gilmore, Magdalena Jorquez, Hon. Joseph Kreamer, Donna McQuality, Eric Meaux, William Owsley, Christina Phillis, Hon. Maurice Portley, Hon. Kathleen Quigley, Beth Rosenberg, Denise Smith, Hon. Patricia Trebesch, Edward Truman, Kent Volkmer, Hon. Rick Williams, Hon. Anna Young

Members absent: Maria Christina Fuentes, Tina Mattison, Denise Avila Taylor

Guests: Nina Preston, Carey Turner, Shari Andersen Head, Lori Ford, Beth Green

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

1. <u>Call to order; preliminary remarks; approval of meeting minutes.</u> The Chair called the tenth Task Force meeting—its fifth consecutive virtual meeting—to order at 10:03 a.m. She noted that workgroups met 7 times after the August 21 Task Force meeting, that the Editorial Group has met 3 times since the August 21 meeting, and that each workgroup and the Editorial Group have set meetings in October.

The Chair reviewed materials for today's meeting. In addition to the draft August 21 meeting minutes and the rules on today's agenda, today's materials included Supreme Court Administrative Directive No. 2018-06 ("court authorized removal"), which pertains to Rule 47.3. Staff once again forwarded to members two law review articles previously provided by Mr. Owsley concerning his presentation on the appointment of counsel and GALs for children in dependency proceedings. Staff also provided members with a one-page progress summary, version 09.25.2020, which shows that as of the conclusion of the August 21 meeting, members had approved 83 rules and one form. There are ten additional rules on today's agenda that are pending approval.

The Chair announced that Judge Quigley was recently appointed to a National Task Force on State Court Responses to Mental Health. Judge Quigley was appointed to this national task force on the recommendation of Chief Justice Brutinel. Members joined the Chair in congratulating Judge Quigley on the appointment.

The Chair next asked members to consider draft minutes of the August 21, 2020 Task Force meeting. Mr. Truman requested corrections, on page 7 of those minutes, of references to Rule 48(D) as the source of Rule 48X; he noted that due to a recent rule amendment, the correct references should be to Rule 48(E).

Motion: A member then moved to approve the August 21, 2020 meeting minutes with these corrections. The motion received a second and it passed unanimously. **JRTF 010**

The Chair then proceeded with rules presentations.

2. Report from Workgroup 3 add-on. The following four rules, which the agenda refers to as the "Workgroup 3 add-on," were combined for discussion.

Rules 37 ("meaning of terms"), 38 ("assignment and appointment of an attorney; advisory attorney"), 40 ("appointment of a guardian ad litem"), and 40.1 ("duties of an appointed attorney and guardian ad litem"). Mr. Owsley, who is a member of Workgroup 4, has worked with Mr. Gilmore and other Workgroup 3 members in trying to clarify a recurring issue regarding the appointment of attorneys and GALs for children in dependency proceedings. Mr. Owsley now proposes modifications to these four rules, each of which was previously conditionally approved by the Task Force members pending further review. The proposed rule modifications are highlighted in today's meeting materials.

Mr. Owsley acknowledged that Arizona statutes are not clear on the nature of appointments for children in dependency and termination cases, and accordingly, county practices can vary. Most notably, Maricopa County initially appoints a GAL for the subject child in these cases, whereas Pima County initially appoints an attorney for the child. Mr. Owsley acknowledged that both of these practices are probably permissible. However, his proposal, which is based on the Pima model, would require the court to initially appoint an attorney for the child in every case, with discretion to subsequently appoint a GAL. Referring to the law review articles, Mr. Owsley added that this is not a new concept, but rather it has been the practice in other jurisdictions for years. A model act proposed by the American Bar Association a decade ago requires the court to appoint an attorney for a child in every dependency case. Mr. Owsley then began his review of his proposed rule modifications, beginning with Rule 37.

Rule 37. In Rule 37, Mr. Owsley would add new definitions of "child's attorney" and "guardian ad litem." A member noted that the proposed definition of "child's attorney" refers to "an attorney who provides legal services," which Mr. Owsley said derives from the model act, but members preferred "provides legal representation," and members agreed to make that change. An Oxford comma was added in the definition after the word "confidentiality." A member asked whether the role of a "best interests attorney" for a child, which is included in the Family Law Rules, would be included in the proposed modifications; Mr. Owsley responded that it would not. Although the definition of GAL expressly provides that the appointed person is an attorney, after discussion, members agreed to include text in this provision that says the GAL "is not bound by the client's expressed preferences or the attorney-client privilege." Judge Armstrong then noted that Rule 2 also defines GAL, a definition that applies to adults as

well as minors, and in the Rule 2 definition, "best" appears before the word "interests," but "best" was not added to the definition in Rule 37 at this point in the discussion.

Rule 38. The proposed changes to this rule are in section (c) ("appointment of an attorney for a child"). Mr. Owsley noted that a proposed provision regarding the appointment of a GAL for a child is now in Rule 40, which he will address next, and the provision for appointment of a GAL was accordingly deleted in Rule 38. The proposed changes to Rule 38(c) are as follows:

> 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.

Mr. Owsley noted that the prior version gave the court discretion to appoint either an attorney or a GAL or both, while his version would require the appointment of an attorney as soon as practicable.

Judge Kreamer then expressed his three primary reasons for opposing the proposed changes to Rule 38(c). First, he believes the proposed changes conflict with A.R.S. § 8-221(I), which provides that in all dependency petitions containing an allegation of abuse or neglect (which is virtually every petition) that "the court shall appoint a guardian ad litem to protect the juvenile's best interests. This guardian may be an attorney or a court appointed special advocate." Second, even when the court appoints an attorney for a child, in many cases—and especially in cases involving infants and toddlers—the child's attorney by necessity performs the function of a GAL. The child needs an attorney only as the child becomes older and is better able to express preferences. Third, the GAL's input to the court is beneficial not only to the child, but also to the court, which relies on the GAL's input. Judge Kreamer noted that while the law review articles discuss the need for a child's voice to be heard in court, a two-year old has no articulable voice; the child benefits more from having a GAL. He believes that while neither Maricopa nor Pima's method is ideal, he prefers retaining the Task Force's former draft of Rule 38.

Mr. Gilmore, the proposal's co-author, then spoke. Mr. Gilmore believes Pima's system of appointing attorneys has worked well, and he added that when necessary, the court can also appoint a CASA. Although Pima's system requires the appointment of an attorney for a very young child, Mr. Gilmore observed that Ethical Rule 1.14 ("client with diminished capacity") provides appropriate guidance in that situation. His experience has shown that it's preferable to first appoint an attorney for a child, and later, if needed, the court can appoint a GAL. He added that DCS often serves in the role of protecting

the child's best interests, and that attorneys, who are not trained as social workers, might not be the most effective best interests advocates, especially if they lack experience in juvenile matters. Mr. Owsley then noted that A.R.S. § 8-221(I) was initially enacted to facilitate the State's access to federal funding, but other jurisdictions have adopted the attorney appointment model without jeopardizing that funding.

Rule 40. Mr. Owsley advised that modified Rule 40 provides the court discretion to appoint a GAL. While recognizing that A.R.S. § 8-221(I) should be amended, he also proposed modifications to A.R.S. § 8-221(A), which says in part that "in all proceedings involving offenses, dependency or termination of parent rights…that may result in detention, a juvenile has the right to be represented by counsel." He suggested deleting the words "that may result in detention" because those words have no application to dependency proceedings. In response to Judge Kreamer's comment that a GAL can be a better advocate for the interests of a child of tender years, Mr. Owsley observed that the model act and ER 1.14 allow the attorney to use "substituted judgment." He believes that an attorney who uses substituted judgment to represent a young child can be just as effective as a GAL. During the discussion of Rule 40, Judge Armstrong reiterated his belief that the word "best" should appear before "interests" in the definition of GAL in Rule 37, and Mr. Owsley then agreed with that proposed change.

Rule 40.1. Mr. Owsley substantially reorganized proposed Rule 40.1(a) ("explain the role") by adding two subparts. Subpart (1) includes a lengthy description of the attorney's duties, and it includes references to ER 1.14 and "substituted judgment." Most significantly, Mr. Owsley explained that the rule places the responsibility on the child's attorney, rather than on the court, of making a diminished capacity determination. He believes that the child's counsel, not the court, is in the best position to make that determination. He highlighted certain language in subpart (1), particularly the words "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." He said that this language was derived from the model act. The last sentence of this subpart requires the attorney to advise the court of the determination of capacity, so that the court knows whether the attorney is using substituted judgment or advocating for the child's wishes. Subpart (2), which is a single sentence, requires the GAL to "assist the court in determining what is in the child's best interest and is not bound by the client's expressed preferences."

In making the capacity determination, Rule 40.1 requires counsel to contemplate whether the child is capable of making "an adequately considered decision." One member criticized this language and questioned whether there can be an objective basis for an attorney to make the determination. Mr. Owsley replied that this language is taken from the model act and includes the child's ability to thoughtfully communicate. The member would prefer that the text refer to the child's ability to vocalize his or her wishes, but Mr. Owsley replied that a developmentally disabled child might be able to vocalize but still have diminished decision-making capacity. A judge member added that a five-year old's communications alone doesn't rise to the level of considered decision-making.

One member reminded the Editorial Group that if these provisions go forward, it will need to make them gender neutral (e.g., Rule 40.1(a)(1) refers to "his or her"). Another member expressed concerns with the application of these rules to guardianship proceedings (see further A.R.S. § 8-872(D), which refers to the appointment of an attorney for a child when a GAL has not been appointed), but no changes followed the discussion of this point. And another member asked whether proposed Rule 38(c), which refers to the appointment of an attorney in a dependency or termination case, should also refer to guardianship proceedings, but (1) A.R.S. § 8-872(D) addresses this, and (2) a dependency proceeding precedes a Title 8 guardianship, and the court's appointments in the dependency should remain effective during the guardianship.

The Chair then asked Mr. Owsley and Judge Kreamer to summarize their positions. Mr. Owsley emphasized that every child should have a court-appointed attorney at the very beginning of a case in which the child is the primary subject. He noted that although the court sometimes appoints a GAL at the start of a case involving a young child with the expectation that the court will appoint an attorney as the child ages, this rarely happens in practice. He added that the attorney rather than the court is in the best position to determine whether the child has diminished capacity and whether it is necessary for the attorney to exercise substituted judgment. He concluded that this change is consistent with the ethical rules and represents a good compromise. Judge Kreamer responded that this was not a compromise but was instead a substantial change, because Maricopa would no longer be able to continue its practice of appointing a GAL at the inception of a case rather than a lawyer. Not only will the court lose the benefit of information that a GAL could provide, but the child will lose a person who will advocate for the child's best interests. He concluded by saying that substituted judgment is another way of advocating for the child's best interests, and it would align the title of the appointment more closely with that function by allowing the court to appoint a GAL for the child rather than an attorney.

> <u>Straw vote:</u> The Chair then called for a straw vote on the issue. An aye vote would support Mr. Owsley's proposed rule modifications, and a no vote would not and would instead retain the previous draft, particularly without the proposed strikethrough in Rule 38(c). The vote was 9 aye and 7 no. Note that 3 members who were present during the vote took no position, and 3 members who were present at the start of the meeting were absent when the vote occurred.

The Chair said that the Task Force's rule petition would note this division and explain the reasons for its recommendation. The rule petition will be opened for public comments, and the Task Force should anticipate feedback on this issue.

3. <u>Report from Workgroup 1.</u> Ms. Beckmann presented Workgroup 1's rules. Each of the rules on today's agenda, except for Rules 105 and 108, had been previously presented.

Rule 46.1 ("altering or amending a final order"). During her presentation of this rule at the July 21 meeting, Ms. Beckmann noted that the workgroup had been guided in its drafting of this new rule by analogous provisions in the Family and Civil Rules. Based on members' comments on the first draft at the previous meeting, the workgroup pared the grounds for a Rule 46.1 motion. There are only two grounds for this motion in the current draft: correcting a clerical error or amending insufficient findings of fact or conclusions of law. The draft specifies that the time for filing the motion is limited to 12 days after entry of the final order. The workgroup chose this time because it had to be less than the 15-day limit for filing a notice of appeal, and 10 days would require the time calculation to exclude intermediate weekends and holidays, which then might exceed 15 days. She noted that a Rule 46.1 motion would be a time-extending motion under Rule 104, which she will discuss later today.

Ms. Beckmann then reviewed the procedure for the motion, which is detailed in section (b) ("time to file a motion; response"). Because the current draft limits the grounds for the motion, the workgroup modified section (c) ("court action") by removing provisions that would have allowed the court to take additional testimony or to require further proceedings. The workgroup also deleted a sentence that said that a new order need not be a final order, because the purpose of Rule 46.1 is to allow the court to promptly correct an error without lengthening the trial court proceeding and without delaying the appeal. Under modified section (c), the court's options are either denying the motion or vacating the previous order and entering a new or amended final order. Section (d) ("successive motions") prohibits a party from filing a motion to alter or amend an order granting or denying a party's Rule 46.1 motion. The intent is to avoid successive motions that would further delay the proceeding. Ms. Beckmann noted that this provision applies to a party's motion but not to a motion on the court's initiative.

For clarity, should the rule refer to "calendar days?" Ms. Beckmann agreed that it would be useful if the reference to 12 days was "calendar" days, while the reference to the 10-day period for filing a response should be "court" or "business" days. The Editorial Group will address this. How long will a Rule 46.1 motion delay the appeal? A member calculated that it might be as long as a couple months (12 days to file the motion + 10 or 15 days to respond + time for the court to enter an order granting or denying the motion + 15 more days in which to file a notice of appeal from that order.) The member suggested that Rule 103, which permits the trial court to rule on issues "in furtherance of the appeal," could adequately supplant Rule 46.1. Ms. Beckmann disagreed because the trial court might be reluctant to enter orders otherwise allowed under Rule 46.1 without the specific authority provided by this new rule. A judge member agreed with that point, noting that Rule 46.1 provides a clear process for correcting a final order, which becomes necessary in a significant number of cases, and the rule expresses the trial court's authority to do so. Rule 46.1 was accordingly approved.

Rule 103 ("right to appeal"). In section (b) ("final orders"), Ms. Beckmann noted the addition of a new subpart (K) and a revised subpart (L). Subpart K was prompted by the addition of Rule 46.1 and makes appealable an order altering or amending a final order under Rule 46.1, or an order denying the motion. Subpart (L) makes appealable an order granting or denying a motion to set aside a final order under Rule 46.2 (which is a Workgroup 3 pending rule) or Rule 74(f), which applies in adoption proceedings. Members approved these modifications.

Rule 104 [new] ("time for filing a notice of appeal and notice of cross-appeal") and Rule 104X ("content and distribution of the notice of appeal"). The Task Force previously considered Rule 104, which was titled "notice of appeal." The previous 104 addressed several subjects in a single, lengthy rule. Rule 104 has now been bifurcated as shown in the above titles.

The workgroup's most notable changes in new Rule 104 are in section (c) ("effect of certain post-judgment motions on the time for filing a notice of appeal"), which is modeled on ARCAP 9(e) and concerns time-extending motions. The specific time-extending motions identified in section (c) are timely-filed motions under Rules 46.1, 46.2, and 74(f). Section (c) has 3 subparts, each addressing a different scenario. Subpart (1), as indicated by its title, applies when there has been "no previous notice of appeal." Subpart (2), titled "previous notice of appeal," applies when a notice of appeal was filed prior to the filing of the motion or while the motion was pending. The procedure specified in this subpart allows the appellate court to "suspend" the appeal (this is the term used in the ARCAP, although some still use the term "stay" the appeal) until the trial court has disposed of the motion. Finally, subpart (3) applies when a final order has been altered or amended on the court's own initiative. If a party has previously filed a notice of appeal, subpart (3) provides that the party is not required to file a new or amended notice to appeal from subsequent sua sponte order. Two members expressed continuing objections to the provisions on time-extending motions because they believed those provisions would delay the finality of permanency determinations in dependency proceedings.

Rule 104(d) ("other post-judgment motions") provides that post-final order motions, other than the motions expressly referred to in this rule but that concern the final order, do not extend the time for filing a notice of appeal or cross-appeal. Once a proper notice of appeal is filed, the rule provides that the juvenile court is divested of jurisdiction to hear the motion unless the appellate court suspends jurisdiction and re-vests jurisdiction in the juvenile court. In that event, a party who challenges the juvenile court's subsequent order must file a new or amended notice of appeal. Ms. Beckmann then briefly reviewed section (e) ("delayed appeal or cross-appeal"), which the workgroup had not recently changed.

Rule 104X was derived from previously drafted Rule 104 sections (b) ("content of the notice of appeal") and (c) ("distribution of the notice of appeal"). Ms. Beckmann advised that other than being relocated to a free-standing rule, the substance of these provisions is the same. Notwithstanding the objection to the time-extending motions noted above, members approved new Rule 104 and Rule 104X.

Rule 104.1 ("the record on appeal"). The changes in Rule 46.1 and elsewhere concerning post-final order motions prompted a change in section (a) ("presumptive record on appeal"). The previously approved version of Rule 104.1 provided that the presumptive record included any documents filed with the clerk "before and including" the filing of the notice of appeal. To assure that post-final order motions also were included in the presumptive record, section (a)(1)(A) now requires the clerk to transmit documents "filed with the clerk before the record is transmitted." Members had no objections to this change.

Rule 105 ("assigning an appellate case number; filing, serving, and transmitting the record on appeal"). This rule is presented for the first time. It concerns the mechanics of the appeal in the appellate court after the filing of the notice of appeal. Ms. Beckmann reviewed the rule, which contains subjects such as assigning an appellate case number, and transmitting the record to, and filing the record in, the Court of Appeals.

In subpart (a)(2), Ms. Beckmann detailed the process for filing a motion in the Court of Appeals prior to the assignment of a case number. This occasionally occurs when a party asks the appellate court to stay a trial court's final order. She noted that a statute precludes the trial court from staying its own order, even though it has the most familiarity with the case, and she suggested addressing this anomaly by a statutory amendment. Section (b) requires the appellate court to notify court reporters of the assigned case number, which facilitates inclusion of the case number on the reporters' transcripts. Ms. Beckmann emphasized the importance of section (e) ("notice of completion of the record") because it triggers the briefing schedule in Rule 106. She also advised that the workgroup deleted a portion of section (f) (now, "supplementing the record by appellate court") that required the superior court clerk to immediately forward to the appellate court any document filed in the superior court after the initial transmission of the record. The workgroup concluded that this requirement was burdensome and unnecessary because many of those documents were not pertinent to the appeal. The modified provision allows the appellate court to request any document, exhibit, or other item necessary for determining the appeal. Members had no questions concerning draft Rule 105 and approved it as presented.

Rule 108 (currently, "service, how made, filing, extensions of time," and as proposed, "abrogated"). Ms. Beckmann noted that although this is the final rule on juvenile appeals, it contained information that properly belonged in previous rules. Pertinent content has therefore been relocated to other rules, and the workgroup now proposes the abrogation of Rule 108. The members agreed.

Report from Workgroup 4. Rules 73 and 75 were presented a second time, with modifications, and Rule 79 was presented for the first time.

Rule 73 (now, "disclosure and discovery in contested adoptions"). Ms. Coughlin presented the modifications to Rule 73. The duty to disclose arises only in contested adoptions. The Task Force asked the workgroup to clarify when an adoption matter is contested. The solution proposed by the workgroup is new language in section (a)(1) that requires a judicial determination "at any stage of the proceeding, on its own or upon request of a party…." This removes guesswork about when an adoption is contested, because a judicial officer makes that determination, and it allows a determination at a late stage of the adoption if the contest arises at a later time, such as a late challenge under ICWA. For clarity, the title of this rule now includes the words, "in contested adoptions." Members had no questions or objections and approved the modified rule as presented.

Rule 75 ("release of information"). Mr. Owsley presented the modifications to Rule 75. Members believed the workgroup's previous draft unartfully parsed the statutory requirements for release of information. In response, the workgroup deleted almost all of the specified requirements in its previous draft and replaced that language with "as provided by A.R.S. §§ 8-121 and 8-129." Mr. Owsley also proposed adding to the foregoing clause a reference to A.R.S. § 8-134, which, like § 8-129, is referenced in § 8-121. He suggested that adding this third statutory reference would make Rule 75 more complete. Members discussed whether the rule should refer to all three statutes or only to § 8-121, which refers to the other two. They concluded that the single statutory reference would be sufficient to make readers aware of all three statutes, and they revised the draft accordingly. They also changed the title of section (b) from "request for record" to "release of information," which is more accurate. They agreed to delete the comment to the current rule, which is substantially contained in draft section (c) ("records of Indian adoption"). Members approved Rule 75 with these revisions.

Rule 79 ("petition to adopt"). Professor Atwood noted that the Task Force recently approved Rule 79.1 ("service of the petition to adopt and notice of hearing"), which was formerly included as Rule 79(c) and is now a freestanding rule. Professor Atwood reported that the workgroup did not make substantive changes in Rule 79(a) ("contents of the petition") but she noted restyling changes, including use of the phrase "if the child is an Indian child" in subpart (a)(4). However, she recommended an amendment to A.R.S. § 8-109 ("petition to adopt; contents") concerning whether the child is an Indian child. Both current and draft Rule 79(a) contain a requirement to include this information in the adoption petition, but the requirement is omitted in the statute.

Professor Atwood advised that the workgroup spent considerable time on section (b) ("setting a hearing on a petition"), which is not easily understandable in the current rule. She reviewed each of the subparts in section (b): subpart (1), on time limits, subpart (2), on expedited hearings, and subpart (3), if the child is an Indian child. The subpart on

time limits clarifies provisions concerning the child's residence in the prospective adoptive parent's home and the nuance concerning the length of time a prospective adoptive parent has been married to the birth or legal parent. The subpart on expedited hearings derives from a recent statutory amendment and is substantively unchanged. In subpart (c), Professor Atwood suggested adding the ICWA cite, ICWA section 1912, in addition to the CFR cite. On CFR cites, Judge Armstrong advised that the Editorial Group is using periods after each letter, as recommended by the Blue Book, even though the government's CFR website does not follow that convention. Members approved Rule 79 following this discussion.

4. <u>Workgroup 3.</u> Workgroup 3 revisited Rule 42 and made its initial presentation of Rule 47.3. Rule 48X was on the agenda because the Editorial Group had made a significant change to the rule, but it was taken off calendar because a member requested additional time to discuss the change with colleagues.

Rule 42 (now, "virtual proceedings; declared emergencies"). Judge Quigley, who presented this rule, noted that Judge Agne joined the workgroup to discuss modifications proposed at the August 21 Task Force meeting. As recommended by the members on August 21, the word "virtual" rather than "telephonic" is used throughout the rule. The workgroup also made other non-substantive changes. For example, in section (b) ("meaning of virtual"), it changed "audio or video technology" to "audio or visual technology" in anticipation of future technological innovations. In section (d)(2) ("time"), it changed "objecting party" to "moving party." The workgroup also added a sentence in this section, as well as in section (f) ("evidentiary proceedings during declared emergencies") that says, "responses must be filed as provided by Rule 46 or as the court otherwise directs." In section (e) ("introducing documents during virtual testimony"), and in section (f), the workgroup changed "judicial officer to which the case has been assigned" to "assigned judicial officer." Section (f) now includes the words "if practicable" in the phrase "will be audible and, if practicable, visible to every other person…." In response to a question, Judge Quigley said that the rule would apply to termination proceedings as well as dependencies, but the court in both circumstances must make appropriate due process determinations. A presumption in section (d) includes a presumption that evidentiary proceedings in non-emergency circumstances will be conducted in-person. She also clarified that section (f) is not triggered by a county or a court declaration; it instead requires a gubernatorial declaration, signifying a bona fide statewide emergency. There were no further questions and Rule 42 was approved.

Rule 47.3 ("court authorized removal"). Ms. Jorquez, who presented this rule, noted that Mr. Truman and Mr. Turner collaborated on the proposed revisions, and because the rule is relatively new, those revisions are stylistic rather than substantive. Section (a) of the draft ("generally") adds this new concluding sentence, which they believe adds clarity and direction: "The court must then determine whether to authorize DCS to take temporary custody of a child." In section (b) ("burden of proof"), the word "current" was removed from the phrase "child's current home." The word "current"

overlooks the possibility that the child might be in a location other than the "current home." For example, the child might be in a temporary shelter, living in a car, or even homeless. (See further A.R.S. § 8-821(B), which says, "…it is contrary to the child's welfare to remain in the home.") The word "why" was added in section (c) ("procedure") subpart 1 ("application") in the phrase "the particular reasons why each child is presently or imminently in danger…." The phrase "presently or imminently in danger" is used in current Rule 47.3(C)(1)(b), whereas A.R.S. § 8-821(B) uses the phrase "clearly necessary," but the draft rule tracks the current rule in this regard rather than the statute. Section (c) also includes organizational changes.

Section (d) ("findings and orders") includes a subpart on notice that refers to certain statutes, including A.R.S. § 8-807(L). The (L) designation was removed so that the entirety of the statute is applicable. Subpart (d)(4) of the current rule ("execution and duration") includes provisions regarding whether the child is or is not receiving inpatient care. This subpart was reorganized into new and separate subparts, one titled "duration of the order," which is generally applicable, and the other titled "inpatient care extension of order," when that circumstance is present. These subparts allow 10 days for execution of the order. A member asked why DCS should have 10 days to execute an order for a child who is not in-patient if the situation is a true emergency. After discussion, it appears that situations may occur where DCS cannot immediately locate the child, or that DCS attempts to work with the family over the ensuing days to alleviate circumstances that prompted it to obtain the order. In subpart (d)(4)(c), the words "temporary custody authorization order will expire after…" were replaced by the words, "a child shall not remain in temporary custody for more than…." In three places, Rule 47.3 referred to 25 CFR § 23.113; in each instance, members added to these references the underlying statute, ICWA section 1922. Members had no other suggested revisions and approved the rule with these modifications.

5. Report from Workgroup 2. Workgroup 2 presented Rules 30 and 31.

Rule 30 ("disposition"). Ms. Phillis presented this rule. She noted in section (a) (now, "disposition report") that the workgroup changed the word "shall" in the current rule to "may" as follows: "…the court ~~shall~~ may order the juvenile probation officer [to prepare a report]." The workgroup believed the court should have discretion to proceed to disposition without a report. Ms. Phillis also explained that subparts (a)(1) ("contents of the report") and (a)(2) ("availability of report to the victim") were revised, but the content of those subparts is substantively equivalent to the current provisions.

One member disagreed with the change of "shall" to "may" and believed that a disposition report should be required in every case ("must"), even if the report is a short one, and that this report would be useful if the juvenile commits a subsequent offense. Ms. Phillis disagreed, noting first that many juveniles do not reoffend, and further, that the current practice is to dispense with a report in appropriate cases. Current Rule 30(A)(3) allows the waiver of a report, and so does draft subpart (a)(3) ("waiver of

report"), provided the victim has had an opportunity to provide input. Draft subpart (a)(3), unlike the current provision, permits the victim to provide information in writing or orally. The member asked how the victim can obtain access to the report, as provided under subpart (a)(2), if no report was prepared. Other members responded that prosecutors can provide pertinent information to victims in those circumstances, sometimes by providing a document referred to as a "current information report." After discussion, members retained the word "may" in section (a) and made no changes to subparts (a)(1) through (a)(5). (Subpart (a)(4) is "evaluation of juvenile," and subpart (a)(5) is "release of information.") Subpart (a)(6) ("filing disposition reports and records") requires that the disposition report and social file record "be filed in a segregated portion of the legal file." Ms. Beckmann observed that this can be problematic because these documents aren't always transmitted to the appellate court with the record on appeal. Ms. Phillis responded that the workgroup would reexamine the provision to address that issue.

In section (b) ("disposition hearing"), subpart (1) ("time limits"), members added the underlined words to be consistent with a change the Editorial Group recently made to Rule 29 ("adjudication hearing"): "…unless the juvenile waives time or time is excluded by the court under Rule 17." A member asked why the word "signed" was included in subpart (b)(3) ("findings and orders"). The answer was that Rule 103 requires that an appealable final order be signed. Ms. Phillis reviewed subpart (b)(4) ("advisals"), including the requirement that these advisals be provided to the juvenile in writing and that they include, when appropriate, a felony offender warning and the prohibition concerning firearms. Members approved Rule 30 subject to reexamination of the issue noted above.

Rule 31 ("probation"). Mr. Cardy presented Rule 31. In section (a) ("imposition of probation"), the current rule refers to conditions "that will promote rehabilitation and public safety." The restyled rule instead says, "designed to promote the juvenile's positive development, assure accountability, and protect the public." Although the current rule and Criminal Rule 27 refer to the probation officer imposing "regulations," the workgroup preferred the term "directives," which members agreed was the term customarily used for juvenile probationers. Section (b) ("notice") requires that when a juvenile receives oral notice of a directive under exigent circumstances, the juvenile must thereafter receive prompt written notice that confirms the oral one. The workgroup revised section (c) ("modification of probation") to clarify the parties' right to be heard on modifications of directives or conditions of probation. In subpart (c)(2), the following sentence was added: "The court must give the juvenile a written copy of a modification or clarification." Subpart (c)(4) concerns the victim's rights regarding modifications. Section (d) ("termination of probation") has a statutory basis, and the workgroup reorganized and restated current section (d).

Members discussed whether the restyled juvenile rules should include a rule on set-asides. Judge Armstrong suggested that if the Task Force adopts such a rule, it could

be as simple as referring readers to the statute, which would provide the details. The workgroup will consider this suggestion and it will consult with Judge Quigley, who was involved in drafting set-aside provisions for other projects. Although Rule 31 does not mention destruction of juvenile records, a member asked whether these records should be sealed rather than destroyed, because destruction could impact a juvenile's subsequent military enlistment. Members had no consensus on this collateral issue, but otherwise approved Rule 31 as presented.

6. Roadmap; call to the public; adjourn. The Chair confirmed future Task Force meeting dates: October 23, November 20, December 4 (which is now a firm date), and December 18. The December 18 meeting is tentatively reserved for reviewing a draft rule petition and ancillary documents, so members will need to consider a significant number of rules at the next three Task Force meetings. The Task Force has a few dozen rules remaining for review, and she encouraged members to continue to be diligent in working through those rules. The Task Force has already reviewed almost 100 rules, which reflects the members' substantial investment of time and effort. The Chair reminded members of the desirability of vetting the draft rules with stakeholders, and she requested members to send to staff the names and contact information of individuals and organizations who could review the drafts and provide input to the Task Force.

Ms. Lori Ford on behalf of the Arizona DCS Oversight Group responded to a call to the public and addressed the members.

The meeting adjourned at 3:32 p.m.

TO: JRTF

RE: **Civil** Rule 81.1

DATE: October 23, 2020

Issue:

Mr. Truman brought Civil Rule 81.1 to the attention of Workgroup 1 members.

Civil Rule 81.1 provides:

> **Rule 81.1. Juvenile Emancipation**
>
> These rules apply to juvenile emancipation proceedings except as provided in Part V, Rules of Procedure for Juvenile Court.

Discussion:

Proposed Juvenile Rule 3(d) provides:

> **(d) Applicability of Other Rules of Procedure**. The Civil, Civil Appellate, Criminal, Family Law, Probate, Protective Order, and Supreme Court Rules are applicable only as specifically set forth or incorporated by reference in these rules.

Proposed Juvenile Rule 88(a) provides:

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

The proposed emancipation provisions, Rules 88 through 92, contain no references to the Civil Rules.

Conclusion:

Workgroup 1 believes that Civil Rule 81.1 is confusing and unnecessary. The workgroup recommends that the Task Force rule petition, in addition to requesting adoption of restyled juvenile rules, propose the abrogation of Civil Rule 81.1.

Rule 8. Service of Documents by Parties

(a) Application of This Rule. After service of the initial petition, charging document, [or other case-initiating document that is assigned a new case number,] a party who files a document with the court must provide a copy of that document to the other parties in the manner stated in this rule, unless another juvenile rule or a court order provides otherwise. [**NOTE:** Conform the service reference in Rule 64 on motions to terminate to specify Rule 8.]

(b) Methods of Service. Except for documents that are confidential, including documents deemed confidential under Rule 19 or Supreme Court Rule 123, or documents that are filed under seal, a complete and exact copy of every document that a party files with the court must be provided to every other party or the party's attorney, before or promptly after the document is filed, by one of the following methods. If an attorney represents a party, service under this rule must be made on the attorney and not the party unless the court orders otherwise.

(1) hand-delivery to the other party;

(2) hand-delivery to the attorney's office and leaving the document with an individual in charge, or if no one is in charge, by leaving the document in a conspicuous place at the attorney's office;

(3) hand-delivery to the other party's residence, by leaving the document with someone of suitable age and discretion who lives there;

(4) mailing the document via first-class U.S. mail to the other party's last known address, or by using a professional delivery service that produces a written confirmation of delivery of the document to that address; or

(5) delivering the document electronically. A party who is self-represented must give written consent or consent on the record in open court to electronic service of documents, unless the court orders service electronically.

(c) Noting the Method of Service. On the last page of a document that is filed with the court, the party serving the document under this rule must state the date and method used to serve the other parties. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage. A statement of service may be in the following form:

"A copy has been or will be mailed/e-mailed/hand-delivered [select one]

"on [insert date] to:

"Name of opposing party or attorney

"Address of opposing party or attorney"

(d) Documents That Are Not Filed with the Court. A party must serve copies of the following documents on every other party as required by this rule, but those documents are not filed with the court unless the court orders:

(1) subpoenas; and

(2) discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, as well as responses to these requests.

~~Copies of documents to parties in default, as defined in Rule 140, must be provided as required by Rule 140.~~ ~~**[ARCP 5(a), 5(c)(2)]**~~

(e) ~~**Service of a motion after entry of judgment.**~~ ~~Service of a motion that requests that a judgment be modified, vacated, or enforced must be served on the other party as if serving a summons and complaint under Rule 113.~~ ~~**[ARCP 5(c)(4)]**~~

Source of Rule 8: Primarily JCRCP 120, and to a lesser degree, Civil Rule 5, with modifications and reorganization.

Rule XYZ8. Service of Documents by Parties

(a) Application of This Rule. After service of the initial petition, charging document, [or other case-initiating document that is assigned a new case number,] a party who files a document with the court must provide a copy of that document to the other parties in the manner stated in this rule, unless another juvenile rule or a court order provides otherwise. [**NOTE:** Conform the service reference in Rule 64 on motions to terminate to specify Rule 8.]

(b) Party Represented by an Attorney. If an attorney represents the other party, service under this rule must be made on the attorney unless the court orders service on the party.

(b) **Methods of Service.** A Except for documents that are confidential, including documents deemed confidential under Rule 19 or Supreme Court Rule 123, or documents that are filed under seal, a complete and exact copy of every document that a party files with the court must be provided to every other other party or the party's attorneyin the action, before or promptly after the document is filed, by one of the following methods.: If an attorney represents a party, service under this rule must be made on the attorney and not the party unless the court orders otherwise.

(1) hand-delivery to the other party;

(2) hand-delivery to the other party's place of businessattorney's office and leaving the document with an individual in charge, or if no one is in charge, by leaving the document in a conspicuous place at the other party's businessattorney's office;

(3) if the other party has no place of business, hand-delivery to the other party's residence, by leaving the document with someone of suitable age and discretion who lives there;

(4) mailing the document via first-class U.S. mail to the other party's last known address;, or by using aany professional (?) delivery service that produces a written confirmation of delivery of the document to that address; or

(c) delivering the document by any method, including electronically, if the party who is receiving the document consents in writing, electronically, or through a court's electronic filing system to that method of service, or. if the court orders service by that method.A party who is self-represented must give written consent or consent on the record in open court to electronic service of documents, unless the court orders service electronically.

(1) Hand-delivery to the other party;

~~(2) Hand-delivery to the other party's place of business and leaving the document with an individual in charge, or if no one is in charge, by leaving the document in a conspicuous place at the other party's business;~~

~~(3) If the other party has no place of business, hand-delivery to the other party's residence, by leaving the document with someone of suitable age and discretion who lives there;~~

~~(4) Mailing the document via first-class U.S. mail to the other party's last known address; or by using any type of professional~~ (?)~~delivery service that produces a written confirmation of delivery; or~~

(5) ~~(5) Delivering the document by any method, including electronically, if the party who is receiving the document consents in writing, electronically, or through a court's electronic filing system to that method of service, or if the court orders service by that method.~~

~~(d)~~**(c)** **Noting the Method of Service.** On the last page of a document that is filed with the court, the party ~~who is~~ serving the document under ~~section (c)~~this rule must state the date and method used to serve the other parties. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage. A statement of service may be in the following form:

"A copy has been or will be mailed/e-mailed/hand-delivered [select one]

"on [insert date] to:

"Name of opposing party or attorney

"Address of opposing party or attorney"

(d) **Documents That Are Not Filed with the Court.** A party must serve ~~C~~copies of the following documents ~~must be served~~ on every other party as required by this rule, but those documents are not filed with the court unless the court ~~requests~~orders:

(1) subpoenas; and

discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, as well as responses to these requests.~~;~~

~~disclosure statements; and~~

(2) ~~disposition reports in delinquency cases~~

~~(e)~~

(1) Subpoenas;

(2) Discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, as well asand responses to these requests;

(3) Disclosure statements; and

(4) Disposition reports in delinquency cases.

(f) Copies of documents to parties in default, as defined in Rule 140, must be provided as required by Rule 140. **[ARCP 5(a), 5(c)(2)]**

(g)(e) **Service of a motion after entry of judgment.** Service of a motion that requests that a judgment be modified, vacated, or enforced must be served on the other party as if serving a summons and complaint under Rule 113. **[ARCP 5(c)(4)]**

Source of Rule XYZ8: Primarily JCRCP 120, and to a lesser degree, Civil Rule 5, with modifications and reorganization.

0Rule 50. Preliminary Protective Hearing

(a) Generally. At the preliminary protective hearing, the court must determine whether continued temporary physical custody of the child is necessary, giving paramount consideration to the health and safety of the child.

(b) ICWA. The preliminary protective hearing may be held as an emergency hearing as provided in ICWA Section 1922 and 25 C.F.R. § 23.113.

(c) Procedure. At the preliminary protective hearing, the court must:

(1) appoint counsel pursuant to Rule 38;

(2) determine whether:

(A) whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 48X;

(B) whether paternity has been established as to any father, and the court may take testimony from the mother concerning the identity and location of any potential father;

(C) whether reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would have eliminated the need for continued removal pursuant to A.R.S. § 8-825(D);

(D) whether a proposed case plan for services has been submitted and whether it is reasonable and necessary to carry out the case plan;

(E) whether the parent, guardian, or Indian custodian admits, does not contest, or denies the allegations in the dependency petition;

(F) whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41.

(3) if DCS is the petitioner, determine whether:

(A) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;

(B) whether DCS made arrangements, as provided by A.R.S. §§ 8-512, 8-512.01, and 8-514.05, for: [**10/19 WG-3 Note:** The workgroup reviewed these statutes but it is not certain whether the referenced statutes address all the items noted below.]

(i) the assembly of the child's medical records;

(ii) a medical assessment of the child;

(iii) the implementation of referrals; and

(iv) the communication of recommendations and results.

(4) inquire if any party has reason to know under 25 C.F.R. § 23.107 that the child at issue is an Indian child;

(5) identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825; [**10/19 WG-3 Note:** this provision will need to be consistent with Rule 3.1(d).]

(6) review any agreements reached at the preliminary protective conference; and approve or modify any of the parties' agreements;

(7) affirm the child's current placement, approve another placement [10/15 WG Note: for TF discussion], or, conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 51, if requested by a parent;

(8) consider as a mitigating factor the availability of reasonable services to the parent, guardian, or Indian custodian to prevent or eliminate the need for removal of the child and efforts of the parent, guardian, or Indian custodian to obtain and participate in these services;

(9) inform a foster parent, pre-adoptive parent, a member of the child's extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and

(10) provide a copy of Form 1, and request that the parent, guardian, or Indian custodian sign and return the form to the court and ensure that the parent, guardian, or Indian custodian understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6),& ((8), and (I).

(d) Findings and Orders. At the conclusion of the hearing, the court must make findings that include the following: provide the parties with a copy of the court's written findings and orders. The findings and orders must include:

(1) that the court has jurisdiction over the subject matter and persons before the court;

(2) that the initial dependency hearing was held for those parties who were present;

(3) if a parent requested a review of temporary custody, that the hearing has been held and the court has determined whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication; that the court has done so and that temporary custody and placement of the child as is required by A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d) [add: to prevent further abuse and neglect?].

(4) that the initial dependency hearing was held for those parties who were present;

(5) that the parent, guardian, or Indian custodian was advised of, and understands the consequences of:

(A) failing to participate in reunification services, and

(B) failing to attend future proceedings;

(6) confirm, under 25 C.F.R. § 23.107 and based on a report, declaration, or testimony included in the record or by court order, that the petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;

(7) if ICWA applies, make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in accordance with ICWA Section 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by ICWA Section 1922;

(8) if applicable, the reasons why siblings have not been placed together;

(9) other findings as appropriate and required by law.

(e) Orders. At the conclusion of the hearing, the court must enter orders:

(1) returning the child to the parent, or if the child is not returned to the parent, orders regarding the placement of the child pending the determination of the dependency petition, and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);

(2) approving or modifying any of the agreements the parties reached at the preliminary protective conference;

(3) if paternity has not been established, that it be established through testing or execution of affidavits of paternity;

(4) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;

(5) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:

(A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or

(B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanent plan for the child.

(6) order if petitioner has not verified whether the child is an Indian child, that the petitioner must continue to use due diligence to make that determination;

(7) that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with child;

(8) order that the parent promptly inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;

(9) setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, or in accordance with A.R.S. § 8-842 and Rule 52(E);

(10) setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered, and

(11) entering other findings and orders as appropriate and required by law.

(f) Copies for the Parties. At the conclusion of the hearing, the court must provide a copy of the court's written findings and orders to each party who has appeared at the hearing.

Current Rule 50. Preliminary Protective Hearing

A. Purpose. At the preliminary protective hearing, the court shall determine whether continued temporary custody of the child is necessary and shall enter appropriate orders as to custody, placement, visitation and the provision of services to the child and family. The preliminary protective hearing may be held as an emergency hearing as provided in Section 1922 of ICWA and 25 C.F.R. § 23.113.

B. Procedure. At the preliminary protective hearing, the court shall:
1. Under the Regulations, inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA;
2. Appoint counsel pursuant to Rule 38(B);
3. Determine whether service has been completed pursuant to Rule 48 or waived as to each party;
4. Identify all documents the court has received and will consider;
5. Review any agreements or stipulations reached at the pre-hearing conference to determine whether the agreement gives paramount consideration to the health and safety of the child. The court may approve or modify any agreements reached by the parties and enter orders as appropriate;
6. Conduct a review of temporary custody as set forth in Rule 51 if no agreement as to placement has been approved by the court;
7. Conduct the initial dependency hearing as set forth in Rule 52 for any party who is present and has been served. The court shall set a continued initial hearing as to any party who was not served and did not appear;
8. Determine whether a proposed case plan for services has been submitted and is appropriate;
9. Determine whether the Department of Child Safety has made arrangements for the assembly of the medical records of the child, a medical assessment of the child, the implementation of referrals and the communication of recommendations and results, as provide by law;
10. Make any determinations required by Rule 47.1;
11. Inform a foster parent, pre-adoptive parent or a member of the child's extended family with whom the department has placed the child of the right to be heard in any proceeding to be held with respect to the child; and
12. Notify a relative identified as a possible placement for the child of the right to be heard in any proceeding to be held with respect to the child.

C. Findings and orders. All findings and orders, including any agreements reached by the parties shall be in the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:
1. Make findings and enter orders regarding temporary custody as required by law and Rule 51;
2. Make findings and enter orders as required by Rule 52(D);
3. Under the Regulations, confirm based on a report, declaration, or testimony included in the record or by court order that the Department of Child Safety or other petitioner has used or will use due diligence to identify and work with all tribes of which there is reason to know the child may be a member (or eligible for membership), to verify

whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership);
4. Make findings and enter orders regarding services for the child and family, including visitation, as required by law;
5. Address the parent, guardian, or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to attend the pretrial conference, the settlement conference or the dependency adjudication hearing, without good cause shown, may result in a finding that the parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the dependency petition. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in a finding of dependency based upon the record and evidence presented. The court shall also inform the parent that substantially neglecting or willfully refusing to remedy the circumstances that cause the child to be in an out-of-home placement, including refusing to participate in reunification services, is grounds for termination of parental rights to a child. The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent, guardian or Indian custodian with a copy of Form 1, request that the parent, guardian or Indian custodian sign and return a copy of the Form, and note on the record that the Form was provided;
6. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by Section 1922 of ICWA; and
7. Order the parent or guardian to provide the court with the names, the type of relationship and all available information necessary to locate persons who are related to the child or who have a significant relationship with the child unless the parent or guardian informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child. The court shall further order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of new information related to the existence or location of a relative or person with a significant relationship to the child.
8. Make findings and enter any other orders as may be appropriate or required by law, including the preparation of a disposition report as required in Rule 56.

Rule 53. Settlement Conference

(a) Generally. The court may conduct a settlement conference to help identify and resolve issues through agreement by the parties.

(b) Settlement Conference Memorandum. At least 5 days before the settlement conference, each party must provide the court with a confidential memorandum that addresses the following:

(1) a general description of the contested issues and the position of the party with respect to each issue;

(2) a general description of the evidence the party will present;

(3) a summary of any attempts to settle the matter; and

(4) any other information a party believes would be helpful to the settlement process, including acceptable settlement proposals.

(c) Procedure.

(1) The assigned trial judge may only participate in settlement discussions with the consent of the parties. In all other cases, another judicial officer must conduct the discussions.

(2) Statements made in the course of settlement negotiations must not be used in future hearings, except as permitted by Rule 408, Ariz. Rules of Evidence.

(3) The court may engage in ex parte communications with the consent of all those participating in the conference.

(4) The parties must inform the assigned judge of the result of the settlement conference.

(d) Findings and Orders; Further Proceedings. All findings and orders must be in the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may do any of the following:

(1) If the court finds the parent admits or does not contest that the child is dependent, it may adjudicate the child dependent and enter findings and orders pursuant to Rule 55, and it may set or conduct a disposition hearing pursuant to Rule 56.

(2) If the court finds that the parent had notice of the hearing and failed to appear at the settlement conference without good cause, it may adjudicate the child dependent and enter findings and orders pursuant to Rule 55, and it may set or conduct a disposition hearing pursuant to Rule 56. Before doing so, the court

must find that the parent was properly served pursuant to Rule 48x and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in their absence, and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition. The court may adjudicate the child dependent based upon the record and evidence presented if the petitioner has established grounds upon which to adjudicate the child dependent.

(3) If the parties are unable to reach agreement, it must set or affirm a dependency adjudication hearing and may set a pretrial conference.

(e) Admonitions.

(1) If the court sets a further hearing, it must address the parent in open court and advise that their failure to attend the pretrial conference or the dependency adjudication hearing without good cause may result in a finding that the parent, guardian, or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the dependency petition. The court also must advise the parent, guardian, or Indian custodian that the hearings may go forward in their absence and may result in a finding of dependency based on the record and evidence presented.

(2) The court must also advise the parent that failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child.

(3) The court must find that the parent was advised of, and understands the consequences of failing to particpate in reunification services and failing to attend future proceedings. The court may provide the parent with a copy of Form 1, request that they sign and return a copy of the form and note on the record that the form was provided.

(f) ICWA. If ICWA applies, the court must make findings pursuant to the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

(g) Other Findings and Orders. The court may make other findings and enter any other orders as may be appropriate or required by law.

Current Rule 53. Settlement Conference

A. Purpose. A settlement conference may be held for the purpose of identifying and resolving issues in a non-adversarial manner. In order to facilitate the conference, counsel shall meet with their clients prior to the conference.

B. Settlement Conference Memorandum. At least five days prior to the settlement conference, each party shall provide the court with a confidential settlement conference memorandum, which shall address the following:
1. A general description of the issues to be litigated and the position of each party with respect to each issue;
2. A general description of the evidence to be presented by each party;
3. A summary of any attempts to settle the matter;
4. An assessment by each party of the anticipated result if the matter did proceed to trial; and
5. Any other information a party believes would be helpful to the settlement process, including acceptable settlement proposals.

C. Procedure.
1. The assigned trial judge shall only participate in settlement discussions with the consent of the parties. In all other cases, the discussions shall be held before another judicial officer.
2. Statements made in the course of settlement negotiations shall not be used in future hearings, except as permitted by Rule 408, Ariz. Rules of Evidence;
3. The court may engage in ex parte communications with the consent of all those participating in the conference; and
4. If the parties are unable to reach agreement as to all issues, the parties shall advise the court of those issues which will be litigated and the time needed to conduct the dependency adjudication hearing.

D. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may:
1. Adjudicate the child dependent and enter findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56, if the court finds the parent, guardian or Indian custodian admits or does not contest that the child is dependent;
2. Adjudicate the child dependent and enter findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56 if the court finds that the parent, guardian or Indian custodian failed to appear at the settlement conference without good cause shown, had notice of the hearing, was properly served pursuant to Rule 48 and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in the absence of the parent, guardian or Indian custodian and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition. The court may adjudicate the child dependent based upon the record and evidence

presented if the petitioner has established grounds upon which to adjudicate the child dependent;

3. Set a dependency adjudication hearing and may set a pretrial conference if the parties are unable to reach agreement;

4. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to attend the pretrial conference or the dependency adjudication hearing, without good cause shown, may result in a finding that the parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the dependency petition. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in a finding of dependency based upon the record and evidence presented. The party shall also be advised that failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child. The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent, guardian or Indian custodian with a copy of Form 1, request that the parent, guardian or Indian custodian sign and return a copy of the Form, and note on the record that the Form was provided;

5. If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences; and

6. Make findings and enter any other orders as may be appropriate or required by law, including the preparation of a disposition report as required in Rule 56.

Rule 77. Certification to Adopt

(a) Application for Certification. Any prospective adoptive parent must submit a written application for certification and be certified by the court as acceptable to adopt children, as provided by A.R.S. § 8-105, before filing a petition to adopt. This requirement does not apply to individuals identified in A.R.S. § 8-105(N).

(b) Dismissal of the Application Due to Insufficient Information. If the court is unable to certify the applicant as acceptable to adopt a child because the application lacks the information required by A.R.S. § 8-105, the court may dismiss the application or permit the applicant to submit supplemental information. If the court dismisses the application, the applicant may submit a subsequent application, in which event the court may consider information contained in the original application.

(c) Court Action. Within 60 days after receiving the investigative report and recommendation required by A.R.S. § 8-105, the court may

(1) certify that the applicant is acceptable to adopt children;

(2) require further investigation if it finds that additional information is necessary for making an appropriate decision regarding certification; or

(3) determine that the applicant is unacceptable to adopt children, in which event it must notify the applicant and the person, department, agency, or entity responsible for preparing the certification report of the court's determination, the reason for the denial, and the applicant's right to a hearing on the denial of certification.

(d) Motion for Reconsideration of Denial of Certification. The applicant may file a motion requesting a hearing on the denial of certification. The motion must be filed within 30 days after entry of the minute entry or order denying certification. The court must set an evidentiary hearing that begins within 60 days after the filing of the motion. The court must notify the applicant and the person, division, agency, or entity responsible for preparing the certification report of the location, date, and time of the hearing.

(e) Pretrial Conference. Upon request of a party or on its own, the court may set a pretrial conference.

(f) Access to Information. The applicant may obtain a copy of the information contained in the court's file as prescribed by law. Before providing a copy, the clerk must redact the results of the criminal background check, information obtained from DCS records, and information provided by references, other than their names.

(g) Burden of Proof. The burden is on the applicant, or any other party ordered by the court, to present evidence of acceptability to adopt.

(h) Procedure. The hearing must be informal, and the court may consider all reliable evidence, including hearsay. Documents that the parties want the court to consider must be marked and entered into evidence. The court for good cause may continue the hearing.

(i) Findings and Orders. The court must make specific findings of fact concerning the applicant's acceptability to adopt based upon the evidence presented at the hearing. All findings and orders must be in an order or signed minute entry. The court must advise the applicant of the right to appeal an adverse ruling.

Rule 77. Certification to Adopt

(a) Application for Certification. Before aAny prospective adoptive parent may petition to adopt a child, the person must submit a n written application for certification and be certified by the court as acceptable to adopt children, as provided by A.R.S. § 8-105, before filing a petition to adopt. This requirement does not apply to individuals identified in A.R.S. § 8-105(N).[**Staff Note:** Staff added this new section because although the rule is titled "certification to adopt," the text of the current rule begins not with the application for certification, but with denial of the application.]

(b) Dismissal of the Application Due to Insufficient Information. If the court is unable to certify the applicant as acceptable to adopt a child because the application lacks the information as required by A.R.S. § 8-105law, the court must may dismiss the application. If the or permit the applicant to submits a subsequentsupplemental request to be certified information. ,If the court dismisses the application, the applicant may submit a subsequent application, in which event the court may consider information contained in the original application.

(c) Court Action. Within 60 days after receiving the investigative report and recommendation required by A.R.S. § 8-105, the court may

(1) certify that the applicant is acceptable to adopt children;

(2) require further investigation if it finds that additional information is necessary for making an appropriate decision regarding certification; or

(b) (3) determine that the applicant is unacceptable to adopt children, in which event it must

Motion to Reconsider a Denial of the Application. I f the court determines that an applicant is unacceptable to adopt,notify the applicant and the person, department, agency, or entity responsible for preparing the certification report of the court's determination, the reason for the denial, and the applicant's right to a hearing on the denial of certification.

(c)(d) Motion for Reconsideration of Denial of Certification. Tthe applicant may file a motion requesting a hearing on the denial of certification. on the denial of the application for certification. The motion must be filed within 30 days after entry of the minute entry or order denying certification. Upon receipt of the motion, tThe court must set an evidentiary hearing that begins within 60 days of after the filing of the motion., andThe court must notify the applicant and the person, division, or

agency, or entity responsible for preparing the certification report of ~~the reason for denial of certification and~~ the location, date, and time of the hearing.

~~(d)~~(e) **Pretrial Conference.** Upon request of a party or on its own, the court may set a pretrial conference.

~~(e)~~(f) ~~**Discovery**~~**Access to Information.** The applicant may obtain a copy of the information contained in the court's file as prescribed by law. Before providing a copy, the clerk must redact the results of the criminal background check, information obtained from DCS records, and information provided by references, other than their names.

~~(f)~~(g) **Burden of Proof.** The burden ~~shall be~~is on the applicant, or any other party ordered by the court, to present evidence of acceptability to adopt. ~~[**Staff Note:** What does this mean? Can the court shift the burden of proof to someone other than the applicant? If so, when and how does the court do that?]~~

~~(g)~~(h) **Procedure.** The hearing must be informal, and the court may consider all reliable evidence, including hearsay. Documents that the parties ~~wish~~ want the court to consider must be marked and entered into evidence. The court for good cause may continue the hearing.

~~(h)~~(i) **Findings and Orders.** The court must make specific findings of fact ~~as to~~concerning the applicant's acceptability to adopt based upon the evidence presented at the hearing. All findings and orders must be in an order or signed minute entry. The court must advise the applicant of the~~ir~~ right to appeal an adverse ruling.

Rule 106. Briefing in the Court of Appeals; Transfer to the Supreme Court.

(a) Generally. ARCAP 15 ("Due Dates; Filing and Service of Briefs") applies in appeals from the juvenile court, except that:

(1) the opening brief must be filed with the Court of Appeals no later than 20 days after the appellate clerk sends the notice of completion of the record required by Rule 105(e), unless the appellate court orders otherwise;

(2) any answering brief must be filed with the Court of appeals no later than 20 days after service of the opening brief; and

(3) a reply brief must be filed no later than 10 days after service of appellee's answering brief or a notice stating that no reply brief will be filed. The Court of Appeals encourages the appellant to file the notice as soon as possible after the answering brief is filed.

(b) Length and Content of Briefs. ARCAP 13 ("Content of Briefs"), 13.1 ("Appendix"), and 14 ("Length and Form of Briefs") apply in appeals from the juvenile court, except:

(1) *Word Limit for an Electronically Filed Brief*. An electronically filed opening, answering, or amicus curiae brief must not exceed 7,000 words, and a party's reply brief must not exceed 3,500 words.

(2) *Page Limit for a Paper Filed Brief*. If a brief is submitted for filing at the appellate clerk's filing counter, an opening, answering, or amicus curiae brief must not exceed 22 pages, and a reply brief must not exceed 12 pages.

(3) *Exclusions from Word or Page Limits*. The word and page limits specified in this rule do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any appendix.

(4) *Victim Identification*. Appellate briefs must use a victim identifier in place of the victim's name in any case in which a delinquent act is alleged. "Victim identifier" means a victim's initials, a pseudonym, or other substitute for the victim's true full name

(5) *Binding a Paper Brief*. A party permitted to file a brief in paper under ARCAP 4.1(c) must securely bind the brief (for example, the pages of the brief may be clipped or banded), but the binding must not use adhesives, staples, or two-pronged fasteners that perforate the pages of the brief.

(c) Extensions of Time.

(1) A party seeking an extension of time for filing a brief must file a motion stating the reasons the extension is needed, and whether any party objects, or that the moving party's attempts to communicate with the other parties have been unsuccessful.

(2) The Court of Appeals may grant a party an initial extension of 20 days for the filing an opening or answering brief and 10 days for a reply brief for good cause.

(3) The Court of Appeals may grant further extensions only for extraordinary circumstances.

(d) Amicus Curiae Brief. ARCAP 16 ("amicus curiae") applies to appeals from final orders of the juvenile court. Amicus curiae may not file a reply brief.

(e) Notice and Avowal in Lieu of Opening Brief; Pro se Brief.

(1) When or before the opening brief is due in an adoption, dependency, Title 8 guardianship, or severance appeal, a court-appointed attorney may file a Notice and Avowal in Lieu of Opening Brief, avowing either or both of the matters in subparts (e)(1)(A) and (e)(1)(B).

(A) The appellant has failed to maintain contact with counsel, and despite diligent efforts, counsel has been unable to locate appellant. Counsel must state the last date on which the appellant and counsel had contact, and the efforts counsel has made to locate the appellant. Counsel must avow that for this or any other reason, which counsel must specify, counsel believes the appellant has abandoned the appeal.

(B) Counsel has reviewed the entire record on appeal and finds no non-frivolous issue to raise. Counsel must include avowals that counsel has informed the appellant of the intent to file a notice under this rule, and the appellant's opportunity to file a pro se brief.

(2) If appellant's attorney files a notice under subpart (e)(1)(B), the attorney must provide the appellate court with appellant's contact information and inform the court in its notice whether appellant requests to file a pro se brief.

(3) If the Court of Appeals grants appellant's request to file a pro se brief, it must order appellant to file the brief no later than 15 days after the date of the order. No extensions may be granted absent extraordinary circumstances. Upon appellant's filing of the pro se brief, the court may deem the case at issue or permit an appellee to file an answering brief or, if DCS is an appellee, direct DCS to file an answering brief. The court may not grant relief without

permitting the appellee to file an answering brief. No pro se reply brief may be filed.

(4) If the appellant's attorney files a Notice and Avowal in Lieu of Opening Brief and avows that the appellant does not request to file a pro se brief, or if the appellant notwithstanding the request fails to timely file a pro se brief, the Court of Appeals may dismiss the appeal. If the court dismisses the appeal, it may accelerate and immediately issue its mandate.

(f) "At issue." Except as otherwise provided in subpart (e)(3), an appeal will be deemed "at issue" upon the filing of the reply brief, the filing of a notice that no reply brief will be filed, or the expiration of the time for filing the reply brief, whichever occurs first.

(g) Petition for Transfer. ARCAP 19 applies in appeals from final orders of the juvenile court, except that a party's petition for transfer of the appeal to the Supreme Court must be filed before the case is at issue under section (f).

Rule 106.1. Dismissal and Other Action by the Court of Appeals; No Motion for Reconsideration

(a) Dismissal. Before or after briefing is completed, the appellate court may dismiss an appeal:

- **(1)** if it is withdrawn by the appellant, or
- **(2)** on its own or appellee's motion, for any legal cause, including lack of jurisdiction or lack of prosecution, unless the appellant shows good cause why the appeal should not be dismissed.

The Court of Appeals clerk must give prompt notice of a dismissal to the parties, the juvenile court clerk, and if certified transcripts have not yet been filed, to the appropriate court reporters or the court's designated transcript coordinator.

(b) Action by the Appellate Court. The appellate court may:

- **(1)** affirm the action of the juvenile court;
- **(2)** vacate or reverse, and remand for appropriate action by the juvenile court;
- **(3)** take the matter under advisement and order the filing of additional matters in the appellate court; or
- **(4)** take such other actions the court deems just and proper under the circumstances, including suspending the appeal and re-vesting jurisdiction in the juvenile court for further proceedings in that court.

(c) No Motion for Reconsideration. A party may not file a motion for reconsideration in the Court of Appeals.

Rule 106. Briefing, Consideration, and Disposition in the Court of Appeals; Transfer to the Supreme Court. [**Staff Note:** Because they are different topics, staff suggests that Briefing and Disposition be addressed by separately numbered rules.][I made a new 107 below in response to staff suggestion]

(a) Generally. ARCAP 15 ("Due Dates; Filing and Service of Briefs") applies in appeals from the juvenile court, except that:

(1) the opening brief must be filed with the Court of Appeals no later than 20 days after the appellate clerk sends the notice of completion of the record required by Rule 105(e), unless the appellate court orders otherwise;

(2) any answering brief must be filed with the Court of appeals no later than 20 days after service of the opening brief; and

(3) a reply brief must be filed no later than 10 days after service of appellee's answering brief or a notice stating that no reply brief will be filed. The Court of Appeals encourages the appellant to file the notice as soon as possible after the answering brief is filed.

(a)(b) Length and Content of Briefs by Parties. ARCAP 13 ("Content of Briefs"), 13.1 ("Appendix"), and 14 ("Length and Form of Briefs") apply in appeals from the juvenile court, except:

(1) *Paper Briefs*. A party permitted to file a brief in paper under ARCAP 4.1(c) must securely bind the brief (for example, the pages of the brief may be clipped or banded), but the binding must not use adhesives. The Supreme Court and Division One discourage the use of devices such as staples or two-pronged fasteners that perforate the pages of the brief.briefs submitted in paper format must be bound or fastened in the top margin by a two-pronged fastener and need not have covers; adhesive bindings or bindings using numerous holes may not be used; [**Staff Note:** The requirement of a two-pronged fastener is curious. ARCAP 14(c) provides that the Supreme Court and Division One "discourage" two-pronged fasteners and similar bindings, and staff sees no need to include a requirement to bind or fasten briefs in the juvenile rules.]

(2)(1) *Word Limitation for an Electronically Filed Brief or Typed Briefs*. an An electronically filed opening or, answering, or amicus curiae brief prepared in a proportionately spaced typeface must not exceed 7,000 words, and a party's reply brief so prepared must not exceed 3,500 words. [**Staff Note:** ARCAP eliminated the distinction between proportional and monospaced type, and the juvenile rules should as well.]; and

(2) *Page Limitation for a Hand-Written Paper Filed Briefs*. aA hand-writtenIf a brief is submitted for filing at the appellate clerk's filing counter, an opening or, answering, or amicus curiae brief principal [**Staff Note**: If principal means "opening" or "answering," it should say so] brief prepared in a monospaced typeface must not exceed 20 22 pages, and a hand-written reply brief so prepared must not exceed 10 12 pages. Hand-written briefs must be legible. [**Staff Note:** If, as noted above, the distinction is eliminated, then this provision should possibly refer to handwritten briefs.]

(3) *Exclusions from Word or Page Limitations*. The word and page limits specified in this rule do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any appendix.

(4) *Victim Identification*. Appellate briefs must use a victim identifier in place of the victim's name in any case in which a delinquent act is alleged or in which the victim was a juvenile at the time of the offense. "Victim identifier" means a victim's initials, a pseudonym, or other substitute for the victim's true full name

(3)(5) *Binding a Paper Brief*. A party permitted to file a brief in paper under ARCAP 4.1(c) must securely bind the brief (for example, the pages of the brief may be clipped or banded), but the binding must not use adhesives, staples, or two-pronged fasteners that perforate the pages of the brief. ; supreme court rule 111 talks about this in context of decisions and orderd

(b) Due Dates. ARCAP 15 ("Due Dates; Filing and Service of Briefs") applies in appeals from the juvenile court, except that:

(1) the opening brief must be filed with the Court of Appeals no later than 20 days after the clerk sends the notice of completion of the record required by Rule 105(e), unless the appellate court orders otherwisethe appellant's opening brief must be filed with the Court of Appeals within 20 days after the clerk sends the notice required by Rule 105(D);

(2) any answering brief must be filed with the court of appeals no later than 20 days after service of the opening briefeach appellee must file an answering brief with the Court of Appeals within 20 days after service of the appellant's opening brief; and

the appellant may file a reply brief must be filed within no later than 10 days after service of appellee's answering brief, or appellant may file a notice stating that no reply brief will be filed. An appellant is encouraged to file who intends the notice as soon as possibleto file a notice of no reply brief is encouraged to file

~~the notice before or immediately upon~~ after ~~the filing of an~~ the answering brief is ~~filed~~.

(c) Extensions of Time.

(1) A party seeking an extension of time for filing a brief must ~~do so by filing~~file a motion stating the reasons the extension is needed, and whether ~~the other party or parties~~any party objects, or that the moving party's attempts to communicate with the other ~~party or~~ parties have been unsuccessful.

(2) The Court of Appeals may grant a party an initial extension of 20 days for the filing an opening or answering brief and 10 days for a reply brief for good cause.

(3) The Court of Appeals ~~will~~ may grant further extensions only ~~if~~for extraordinary circumstances ~~justify the extension~~.

~~The word and page limits specified in this section do not include the table of contents, table of citations, certificate of service, certificate of compliance, and any appendix. [**Staff Note:** Suggest that this rule simply refer to ARCAP 4(c)(9).] If a brief is filed electronically, and if the appendices contain multiple documents, such documents must be electronically bookmarked in the appendices' table of contents. [**Staff Note:** ARCAP 4.2(d) "encourages" the use of bookmarks, but it does not make them mandatory.] The appellate court may strike a brief that does not substantially conform to the requirements of this rule.~~

(d) Amicus Curiae Brief. ARCAP 16 ("amicus curiae") applies to appeals from final orders of the juvenile court. Amicus curiae may not file a reply brief. ~~, except that briefs submitted by amicus curiae in paper format must be bound or fastened and need not have a cover. An amicus curiae brief must not exceed 6,000 words or 20 pages if submitted in paper copy, exclusive of pages containing the table of contents, the table of citations, certificate of service, certificate of compliance, and any appendix.~~

~~(c)~~(e) Notice and Avowal in Lieu of Opening Brief; Pro se Brief. ~~[WG Stopped here 9/14]~~

(1) ~~On or before~~When or before the opening brief is due in ~~I~~an adoption, dependency, Title 8 guardianship, or severance appeal, a court-appointed attorney may file a Notice and Avowal in Lieu of Opening Brief, avowing either or both of the ~~following:~~matters in subparts (e)(1)(A) and (e)(1)(B).

(A) ~~2.~~ The appellant has failed to maintain contact with counsel, and despite diligent efforts, counsel has been unable to locate appellant. Counsel must state the last date on which ~~the~~ the appellant and counsel ~~contacted counsel~~had contact, and the efforts counsel has made to locate the appellant. Counsel

must avow that for this or any other reason, which counsel must specify, counsel believes the appellant has abandoned the appeal.

(B) ~~1.~~ Counsel has reviewed the entire record on appeal and finds no non-frivolous issue to raise. Counsel must include avowals that counsel has informed the appellant ~~appellant that counsel~~of the intent ~~was filing~~intends to file ~~the~~a notice under this rule, and the appellant's opportunity to file a pro se brief.

(2) ~~a~~If appellant's ~~wishes to file a pro se brief~~attorney files a notice under subpart (e)(1)(B), the attorney must provide the appellate court with appellant's contact information and inform the court in its ~~Notice and Avowal in Lieu of Opening Brief~~notice whether appellant requests to file a pro se brief~~and provide the court with contact information for appellant~~.

(3) ~~The~~ If the~~e~~ Court of ~~appeals~~ Appeals ~~may permit~~grants appellant's request to file a pro se brief, ~~but if the court grants the request, it~~ ~~and~~ must order ~~enter an order directing~~ appellant to file the ~~pro se~~ brief no later than 15 days after~~from~~ the date of the order. No extensions may be granted absent extraordinary circumstances. Upon appellant's filing of the pro se brief, t~~T~~he court may deem the case at issue ~~upon the filing of the pro se brief~~ or ~~the court of appeals may either~~ permit an~~y~~ appellee to file an answering brief or, if DCS is an appellee, direct DCS to file an answering brief. The court may not grant relief without permitting the appellee to file an answering brief. No pro se reply brief may be filed. ~~[BCB: Staff recommended below that we use the terms no colorable claim as opposed to no non-frivolous claim. But colorable claim in the R32/33 context is different; colorable claims warrant evidentiary hearings. The non-frivolous language comes from *Anders* and progeny in criminal cases. Arguable is used as well, interchangeably with non-frivolous, but those are less meritorious than colorable. What prompted the rule was no *Anders* in dependency and severance cases, *see Denise H. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 257, 258, ¶ 1, 972 P.2d 241 (App. 1998) (rejecting the proposition that appellate review in severance cases should include fundamental error review under *Anders*, 386 U.S. 738 (1967)).]~~

~~**2. The appellant has failed to maintain contact with counsel, and despite diligent efforts, counsel has been unable to locate appellant. Counsel must state the last date on which the appellant contacted counsel and the efforts counsel has made to locate the appellant. Counsel must avow that for this or any other reason, which counsel must specify, counsel believes the appellant has abandoned the appeal.**~~

3. Upon the fi(4) lingIf the appellant's attorney files of a Notice and Avowal in Lieu of Opening Brief and avows that the appellant does not request to file a pro se brief,, or if the appellant notwithstanding the request fails to timely file a pro se brief, the eCourt of aAppeals may dismiss the appeal, unless it permits the filing of a pro se brief. If the court dismisses the appeal, it may accelerate and immediately issue its mandate.

(d)(f) **"At issue."** Except as otherwise provided in this rulesubpart (e)(3), an appeal will be deemed "at issue" upon the filing of the reply brief, upon the filing of a notice that no reply brief will be filed, or the expiration of the time for filing the reply brief, 10 days after service of the answering brief, whichever occurs first occurs. [**Staff Note:** If appellant has only 10 days to file a reply, couldn't the purpose of this rule be accomplished simply by saying the appeal is "at issue" upon the expiration of the time for filing the reply brief? See further ARCAP 15(b), it's short and simple and says it well: the appeal is at issue when the reply brief is filed or due, whichever is earlier. Note also that staff included the "at issue" provision as a separate section of this rule.][BCB: we want these at issue as soon as possible, which is why we want these options; if a party files a notice of no RB, it can save time for processing the appeal. In div 2, when the AB is filed, the court sends out a notice asking appellant to state immediately if no reply is to be filed. That can save a week of waiting for the RB or the RB due date to pass. Every day saved before a case can be submitted for decision is time worth saving.]

(e) **Petition for Transfer.** ARCAP 19 applies in appeals from final orders of the juvenile court, except that a party's petition for transfer of the appeal to the SsSupreme CeCourt shall must be filed before the case is at issue as provided in this ruleunder section (f).on or before the earlier of the date the reply brief is due or filed. [**Staff Note:** Why not simply require that the petition to transfer be filed before the reply is at issue? If that's done, the rule mirrors ARCAP 19(b).][BCB: The problem here is that it can be at issue upon the filing of a notice of intent not to file a reply brief, which is most often before the reply brief is due, which defines at issue under the ARCAP. But this should work]

Rule 1076.1. Dispositionismissal and Other Action by the Court of Appeals; No Motion for Reconsideration

(a)a. Dismissal for Withdrawal of the Appeal or Legal Cause. Before or after briefing is completed, tThe appellate court may dismiss an appeal: if

(1) if it is withdrawn by the appellant, or

(2) on its own or appellee's motion, for any legal cause, including lack of jurisdiction or lack of prosecution, on the appellee's motion or on its own may dismiss an appeal for any legal cause, including lack of prosecution, unless the appellant an affected party [**Staff Note:** Why "an affected party?" Isn't this "the appellant?"] makes a showing ofshows good cause why the appeal should not be dismissed.

The Court clerk of the cCourt of Appeals Apappeals clerk clerk must give prompt notice of a dismissal to the parties, the juvenile court clerk, and if the certified transcripts has have not yet been filed, to the appropriate court reporters or the court's designated transcript coordinator.

b.(b) Disposition of the AppealDisposition and other Action by the Appellate Court. The appellate court may: [**Staff Note:** Does this provision add anything? These dispositions are inherent in the appellate court's authority (although (3) is not a disposition because it does not "dispose" of the appeal.) There is no corresponding rule in the ARCAP concerning action by the Court of Appeals, although there is an analogous provision in ARCAP 23(m) concerning disposition by the Supreme Court.][The juvenile rules are actually modeled after the criminal rules and Rule 31.19(c) provides that the appellate court may reverse, affirm, or modify the action of a lower court, and it may issue any necessary and appropriate order in connection with its decision. And I like (4) because it permits the court to suspend and revest for further findings or further proceedings.]

(1) affirm the action of the juvenile court;

(2) vacate or reverse, and remand for appropriate action by the juvenile court;

(3) take the matter under advisement and order the filing of additional matters in the appellate court; or

(4) take such other actions as to the court may appeardeems just and proper under the circumstances, including suspending the appeal and re_vesting jurisdiction in the juvenile court for further proceedings in that court. [BCB: This is where we might want to add a subsection stating no motion for reconsideration may be filed, or not, depending on what the group/task force wants to do about that. It is also in Rule 107, which will be numbered as 108]

(5) Counsel has reviewed the entire record on appeal and finds no non-frivolous [**Staff Note:** Should this be "colorable?" That is the term used in Criminal Rule 32 for an analogous filing] issue to raise.

(6) The appellant has failed to maintain contact with counsel, and despite diligent efforts, counsel has been unable to locate the appellant. Counsel must specify the last date on which the appellant contacted [communicated with?] counsel and the efforts counsel has made to locate the appellant. Counsel must avow for this reason, or any other reasons counsel specifies, that counsel believes the appellant has abandoned the appeal.

Upon the filing of the affidavit, the Court of Appeals may dismiss the appeal. [**Staff Note:** In the criminal rule, if counsel files a notice of no colorable claims (i.e., the first ground in section (G)), the defendant is given an opportunity to file a pro se brief. Should that process also apply in a juvenile appeal?]

(f)(g) Victim Identification. Appellate briefs must use a victim identifier in place of the victim's name in any case in which a delinquent act is alleged against a juvenile for an offense listed in A.R.S. Title 13, chapters 14, 32, 35, or 35.1 or in which the victim was a juvenile at the time of the offense. For purposes of this rule, "victim identifier" means a victim's initials, a pseudonym, or other substitute for the victim's true full name. [**Staff Note:** Suggest relocating this section closer to the provisions on the content of briefs.][BCB This is where we might state no motion for reconsideration may be filed. If we put it here, then we don't need it in the rule on petitions for review]**(c) No Motion for Reconsideration.** A party may not file a motion for reconsideration in the Court of Appeals.