

# *Task Force on the Rules of Procedure for the Juvenile Court*

## Meeting Agenda

Friday, November 20, 2020

10:00 a.m. to 4:00 p.m.

Telephonic Meeting: 602.452.3533, # 996 771 106

Item no. 1	<b>Call to Order</b>	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	<b>Approval of the October 23, 2020 meeting minutes</b>	<i>Justice Berch</i>
Item no. 3	<b>Workgroup reports and discussion of rules</b>  <b>Workgroup 1: Rule 2 [revisited]; Rule 9 [new]; Rules 107 and 107.1 [bifurcated]</b>  <b>Workgroup 2: Rules 32 and 34</b>  <b>Workgroup 3: Rules 37, 46, 46.2, and 48.1 [revisited]; Rules 46.3, 54, 55, 56, 57, and 59</b>  <b>Workgroup 4: Rule 78</b>	<i>Judge Kreamer, Judge Armstrong, Ms. Beckmann</i>  <i>Ms. Phillis, Ms. Beringhaus</i>  <i>Judge Quigley, Judge Young, Mr. Truman, Ms. Jorquez</i>  <i>Professor Atwood</i>
Item no. 4	<b>Roadmap</b>  <b>Next meetings: December 4, December 18</b>	<i>Justice Berch</i>
Item no. 5	<b>Call to the Public</b>  <b>Adjourn</b>	<i>Justice Berch</i>

*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, October 23, 2020  
(Members and guests attending telephonically)**

**Meeting Minutes**

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

**Members absent:** Dale Cardy, Kent Volkmer, Hon. Rick Williams

**Guests:** Nina Preston, Lori Ford, Beth Green

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

1. **Call to order; preliminary remarks; approval of meeting minutes.** The Chair called the eleventh Task Force meeting – its sixth consecutive virtual meeting – to order at 10:01 a.m. Although there were only four weeks between the September 25 meeting and today’s meeting, the Chair observed that there were six workgroup meetings and two Editorial Group meetings during that interval. For a longer perspective, the Chair noted that since the first workgroup meeting on October 21, 2019, which was about three weeks after the first Task Force meeting, there have been 68 more workgroup meetings, 10 more Task Force meetings, and 8 meetings of the Editorial Group. She shared staff’s calculation that during the past year, there has been a Task Force, a workgroup, or an Editorial Group meeting about once every three or four business days. Given that the Editorial Group has two pending meetings, each workgroup has set at least one more meeting, and the Task Force has 3 pending meetings, the total number of meetings by the end of December will certainly exceed 100. These numbers demonstrate the commitment and diligence of Task Force members, and the Chair expressed her appreciation for the members’ dedication.

The Chair reviewed materials for today’s meeting. In addition to the draft September 25 meeting minutes and the rules on today’s agenda, today’s materials included staff’s memo regarding Civil Rule 81.1. Attached to staff’s October 21 email to members were three Court of Appeals opinions concerning the appealability of the denial of adoption certification that are pertinent to Rule 77. That email also included a link to a Division One opinion earlier this month, *Timothy B.*, which concerned termination and parenting rights of two incarcerated fathers. Staff also provided members with a one-page progress summary, version 10.23.2020, which shows that members have now approved more than 90 rules.

The Chair next asked members to consider draft minutes of the September 25, 2020 Task Force meeting. Members had no additions or corrections.

**Motion:** A member moved to approve the September 25, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 011**

Members then proceeded with a rule presentation from Workgroup 4, followed by presentations from Workgroups 3 and 1. Workgroup 2 had no rules to present.

## **2. Report from Workgroup 4.**

*Rule 77 (“certification to adopt”).* Professor Atwood presented this rule. She noted that the current rule omits various requirements of A.R.S. § 8-105, and the workgroup accordingly added certain statutory requirements to this rule. She further noted that the first section of the current rule is “dismissal of application” and the current rule therefore omits the prerequisite of filing the application. The draft rule addresses this omission by including a new section (a) (“application for certification”) that states this initial requirement. Draft section (a) also instructs that “this requirement does not apply to individuals identified in A.R.S. § 8-105(N),” for example, a prospective adoptive parent who is the spouse of the birth parent or a licensed foster parent where the child is already placed in that person’s home.

Draft section (b) (“dismissal of the application due to insufficient information”) includes a new alternative that enhances procedural efficiency. In lieu of the court dismissing an incomplete application, draft section (b) would allow the applicant to submit supplemental information. The current rule does not mention the submission of an investigative report and recommendation, which are required by A.R.S. § 8-105; draft section (c) (“court action”) fills that gap. Draft section (c) also describes the court’s options after receiving the investigative report and recommendations. Moreover, and parallel to the above-noted change in section (b), section (c) provides the court a new alternative: it may “require further investigation if it finds that additional information is necessary for making an appropriate decision regarding certification.” Finally, although the current rule vaguely implies that the court must inform the applicant of the reasons for its denial of an application, it is not explicit on this point; the draft rule is.

Professor Atwood then reviewed remaining sections (d) through (i). The workgroup made only a few minor changes to those sections. The workgroup’s title of section (d), taken verbatim from the current rule, was “motion for reconsideration of denial of certification.” For greater accuracy, the Task Force agreed to change this to “motion for hearing on denial of certification.” The workgroup’s draft of section (h) (“findings and orders”) says that “the court may consider all reliable evidence.” After discussion, Task Force members changed “may” to “must.”

Professor Atwood then raised the issue of whether a denial of certification to adopt is an appealable final order, or whether appellate review is instead by way of special action. Court of Appeals cases provided by Professor Atwood and Ms. Beckmann indicated that the remedy was an appeal, although special action might be appropriate if an appeal was not sufficiently speedy. The next issue was whether these orders should be expressly included in the list of appealable orders in draft Rule 103, or whether they fall within the catchall provision of Rule 103(b)(2)(N) (“any other order that is final pursuant to Arizona case law”). Although it appears that appeals from these orders are rare, the intent of Rule 103 is to include every identifiable and appealable final order, and members agreed to add the denial of adoption certification to the Rule 103 list. Ms. Beckmann will draft the additional language. Members had no further comments, and they approved Rule 77 with these modifications.

### **3. Report from Workgroup 3.**

*Rule 50 (“preliminary protective hearing”).* Judge Quigley presented Rule 50, which Workgroup 3 had discussed at length.

In section (a) (“generally”), the workgroup added the word “physical” in the phrase “temporary physical custody of DCS,” because a parent challenges physical custody at a preliminary protective hearing (“PP5”). Section (b) (“ICWA”) is derived from section (a) of the current rule; it was separated into a freestanding section because it concerns a different subject than draft section (a). Judge Quigley then advised that the workgroup spent considerable time discussing and reorganizing the next three sections of the draft—sections (c) (“procedure”), (d) (“findings”), and (e) (“orders”). These three sections are derived from current sections (B) (“procedure”) and (C) (“findings and orders”). The workgroup’s draft improves on the current rule by providing a logical sequence for the PP5 proceeding. Judge Quigley noted that statutory requirements for the PP5 are spread throughout Title 8. Draft Rule 50 attempts to aggregate those requirements and include useful cross-references to pertinent statutes.

Section (c) lists the PP5 procedures. Section (c) contains 10 subparts; a few of these have further subparts. Judge Quigley reviewed all those subparts, some of which were modified or relocated during her presentation and the ensuing discussion. Judge Quigley noted that subpart (c)(2)(C), which concerns paternity, is currently in Rule 52(c)(5), but it has been relocated in Rule 50. Subpart (c)(2)(D), concerning reasonable efforts, is a new determination that is derived from A.R.S. § 8- 8-825(D), and the statute is referenced in this subpart. Subpart (c)(2)(E) was added. This subpart requires a probable cause determination (“that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the [dependency] hearing”). Although a parent may request a temporary custody hearing where that finding would be made, the requirement to find probable cause appears to apply to any PP5 proceeding, even when a parent does not request a temporary custody hearing. *See further* A.R.S. § 8- 8-824(F). Subpart (c)(2)(G), on whether the parent admits, denies, or doesn’t contest the allegations, is not

in current Rule 50(B), but it was added because it's required under A.R.S. § 8-824(I). Judge Quigley raised the issue of whether the rule could state "parent" rather than "parent, guardian, or Indian custodian." See a further discussion of this issue under Rule 53 below. The workgroup also added a subpart about whether to close the proceeding, which is also a mandatory determination under the statute and the rule cited in that subpart. The workgroup had included this subpart further down in section (c), but a member suggested that the court needed to make this determination early in the proceeding and it was relocated toward the beginning of section (c) as subpart (c)(2)(B).

Subpart (c)(3) applies if DCS is the petitioner. The workgroup was not certain about the legal basis of these provisions, some which are not even included in the current rule. However, the workgroup added three statutory references in its draft of subpart (c)(3)(B) that provide a rational basis for these requirements. Subpart (c)(4), pertaining to an Indian child, now includes the language "if any party has reason to know." The words "at issue" in the phrase "child at issue" were stricken from this subpart. Subpart (c)(5) requires the court to "review any agreements reached at the preliminary protective conference." The word "stipulations" is redundant, and it was not included in the provision. A "paramount consideration to the health and safety of the child" in current Rule 50(b)(5) was not included in the corresponding draft subpart because the phrase is included in draft Rule 50(a) and it applies throughout the rule. Draft subpart (c)(6), which concerns the temporary custody hearing, includes references to the applicable statute and rule. Subpart (c)(8), concerning the right to be heard, was modified to include a relative identified as a possible placement. *See further* A.R.S. § 8-8-824(e)(11) and (j)(2). Subpart (c)(9) contains a reference to Form 1, which Judge Quigley acknowledged might require modification. However, a reference to the form and applicable statutes in this subpart reduces the necessity of adding explanatory text in the rule itself.

The workgroup made a significant organizational change to Rule 50 by creating separate sections for findings, which are governed by section (d), and for orders, which are now addressed in section (e). The first finding in section (d) is new; subpart (d)(1) requires a finding that the court has jurisdiction over the subject matter and the persons before the court. Subpart (d)(2) requires a finding that an initial dependency hearing was held pursuant to Rule 52 for those parents who were present. (*Compare* A.R.S. § 8-8-826 ("If a parent or guardian denies the allegations at the preliminary protective hearing the court may set the date for the dependency adjudication hearing as to that parent or guardian. An initial dependency hearing shall not be held as to that parent or guardian.") with current Rule 50(C)(2) ("Make findings and enter orders as required by Rule 52(d).") Subpart (d)(3) requires the court to find that a temporary custody hearing was held, if one had been requested. A separate subpart (d)(4) addresses the probable cause finding. Issues regarding the ICWA findings required by subparts (d)(5) and (d)(6) were not resolved at the Task Force meeting. Specific ICWA standards and findings apply, and Professor Atwood and others will confer with Workgroup 3 to properly phrase those required findings; they may also relocate these provisions. In subpart (d)(7), members

separated findings that the parents were advised of and understood the consequences of (A) failing to participate in reunification services, and (B) failing to attend future proceedings. Subpart (d)(8), which requires a finding about siblings who are not placed together, is not included in the current rule, but the requirement of such a finding is implied by § 8- 8-824(G). Subpart (d)(9) is a catchall finding (“other findings as appropriate and required by law”).

Section (e), subpart (1) requires an order “returning the child to the parent, or if the child is not returned..., regarding placement pending the determination of the dependency petition, and visitation/parenting time, if any.” This differs from any orders that are found in current section (C); however, the subpart is aligned with the requirements of the referenced statutes and Rule 51. Subparts (e)(2), (e)(3), and (e)(4), which respectively concern agreements, paternity, and siblings, are straightforward and related to the previous determinations and findings. Subpart (e)(5) concerns order for reunification services and includes two subparts whose application depends on whether the child is, or is not, in DCS custody. Subparts (e)(6) and (e)(7) concern ICWA, and these provisions, like the findings noted above, are subject to further revision or relocation. The workgroup will also consider whether “tribe” should be included in pertinent provisions of section (e). Subparts (e)(10) and (e)(11) concern the setting of future hearings; subpart (e)(10) includes statutory and rule references. Subpart (e)(12) is the catchall: “enter other orders as appropriate and required by law.”

A new section (f) (“copies for the parties”) requires the court at the conclusion of the PP5 hearing to provide the parties who appeared at the hearing with a written copy of the court’s findings and orders. This provision is derived from current Rule 50(C).

Workgroup 3 will have further discussions of this rule as noted above and will present a revised draft at a future Task Force meeting.

**Rule 53 (“settlement conference”).** Judge Young, who presented Rule 53, noted that the draft rule contained no substantive changes. Although draft section (a) (“generally”) does not expressly state that a settlement conference is voluntary, she confirmed that the parties must agree to participate in the conference. Judge Young also clarified that this rule does not apply to a mediation or a conciliation conference. In draft section (b) (“settlement conference memorandum”), Judge Young noted that the workgroup deleted a current provision that requires the parties to identify “matters not in dispute” because workgroup members did not believe that this information was helpful for resolving disputed issues. Although all Task Force members did not agree with this belief, the Task Force nonetheless omitted that provision in the draft. Section (b) also requires the parties to “provide” the court with their memos, but members agreed this was insufficient and they added the words, “but not file or exchange [the memo] with other parties.” The draft also required the parties to do so at least 5 days before the conference, and members added the words, “or as otherwise provided by the court.” In section (c) (“procedure”), subpart (1), in the phrase “the assigned trial judge may only

participate in the conference,” members changed “participate” to “conduct.” In other subparts of this section, members changed settlement “discussions” or “negotiations” to “settlement conference.” Subpart (c)(4) modified the phrasing of the current provision; the draft provision now says, “the parties must inform the assigned judge of the result of the settlement conference.” In draft section (d) (“findings and orders; further proceedings”) and elsewhere, members used only the word “parent.” This change was conditioned on adding a universal definition of “parent” that includes a “guardian or Indian custodian.” Because an adjudication hearing might already be set, members changed “set” a hearing date to “set or affirm” the date.

A new section (e) (“admonitions”) was derived from current section (d). Among other things, the current provision permits the settlement conference judge to adjudicate a child dependent if the parent fails to appear for the settlement conference. Members questioned the rationale for this provision because, as noted previously, a settlement conference is a voluntary proceeding. One judge member rationalized the current provision by explaining that although the parent need not participate in the conference, the court could still require the parent to appear. But other judge members noted that an attorney could be discouraged from requesting a voluntary settlement conference if the client’s failure to appear at the conference could have such dire consequences. The members accordingly agreed to omit a default provision. (There are far fewer settlement conferences than mediations, and none of the judge members recalled conducting an adjudication following a parent’s failure to appear at a conference.) Regardless, section (e) retained the other portions of the admonition. Subpart (e)(3) requires the court to find not only that it advised the parent of the admonition, but also to find that the parent “understands” the consequences of failing to appear or to participate in reunification services. During the discussion of section (e), members agreed that the admonition should be uniform throughout the rules and they requested the Editorial Group to review the language of the admonition.

Section (f) is titled “ICWA.” Members did not revise the draft of this section other than modifying the ICWA cite. The modified cite is now ICWA followed by a section symbol and then a section number. Members adopted this as the convention for ICWA citations throughout the draft rules. This convention parallels citations to the A.R.S. and the C.F.R. Finally, in section (g) (“other findings and orders”), a reference to a Rule 56 disposition report was deleted inasmuch as the workgroup anticipates recommending a deletion of a reference to the report when it presents Rule 56. Members then approved Rule 53 as modified.

#### **4. Report from Workgroup 1.**

*Civil Rule 81.1 (“juvenile emancipation”).* Judge Kreamer presented an issue concerning Civil Rule 81.1. This single-sentence rule provides, “These rules [the Civil Rules] apply to juvenile emancipation proceedings except as provided in Part V, Rules of Procedure for Juvenile Court.” Workgroup 1 had previously presented a set of

emancipation rules that was entirely self-contained and did not require the reader to refer to the Civil Rules. Accordingly, the workgroup believed that Civil Rule 81.1 was unnecessary and possibly confusing, and it recommended the abrogation of Rule 81.1.

Although Task Force members did not know the origin of Rule 81.1, they surmised it was added because emancipation proceedings are governed by Title 12, the title on civil proceedings, and individuals looking for rules on emancipation would accordingly consult the civil rules rather than the juvenile rules. Rule 81.1 therefore might provide some useful guidance, much like recently adopted Civil Rule 16.3 serves to direct readers to a new probate rule. Members then agreed, in lieu of abrogating Rule 81.1, to instead propose that it be amended as follows: “The rules that apply to juvenile emancipation proceedings are located in Part V of the Rules of Procedure for the Juvenile Court.” The Task Force will need to include this requested amendment to the Civil Rules in its rule petition.

*Rule 8 (“service of documents by parties”).* Judge Kreamer then presented this newly proposed juvenile rule. He noted that juvenile rules have provisions for service of a case-initiating document, i.e., a petition, but these rules have no comprehensive provisions for service of subsequently filed documents. This new rule, like Civil Rule 5, Family Law Rule 43, and Justice Court Civil Rule 120, fills that void.

Section (a) (“application of this rule”) provides that the rule applies “after service of the initial petition, charging document, or other case initiating document that is assigned a new case number.” An application for adoption certification, which is assigned a case number, would fall into the third category. Section (b) (“methods of service”) requires a party to serve on the other parties or their attorneys “a complete and exact copy of every document” the party files with the court, except for documents that are “confidential,” including documents deemed confidential under Juvenile Rule 19 or Supreme Court Rule 123, or documents filed under seal. The draft rule provides that if an attorney represents a party, then service must be on the attorney unless the court orders otherwise. Judge Kreamer then reviewed the specified methods of service. While he was reviewing those methods, it became apparent that the workgroup had not appropriately distinguished which of those methods apply only to service on attorneys, which apply only to service on a party, and which methods might apply to both. The Task Force requested the workgroup to clarify these distinctions in its draft. Pending that, in section (c) (“noting the method of service”), members agreed to add “e-mail” to the service alternatives in the certificate of service. Civil Rule 5(c)(4) and Family Law Rule 43(c) include more stringent requirements for serving post-judgment motions. Members discussed but declined to include a similar requirement for post-final order motions in juvenile proceedings. Workgroup 1 will address the issue noted above and present its revisions at a future Task Force meeting.

*Rule 106 (“briefing in the Court of Appeals; transfer to the Supreme Court”) and Rule 106.1 (“dismissal and other action by the Court of Appeals; no motion for*

*reconsideration*”). Ms. Beckmann presented these two rules, which resulted from the bifurcation of current Rule 106.

Draft Rule 106, unlike the current rule, contains useful section titles. The draft rule also reverses the order of current sections (A) and (B), so the draft rule begins with provisions on due dates rather than on the length of briefs. Draft Rule 106 provides that ARCAP 13, 14, and 15 continue to apply to due dates and briefs, with specified exceptions. Draft section (b) has separate provisions on the length of briefs depending on whether the brief is filed electronically, in which case its length is based on word count, or filed in paper at the clerk’s counter, in which case the length limit is based on the number of pages. Exclusions for determining the length of a brief that are specified in ARCAP 4(b)(9) are shown in a corresponding provision in draft Rule 106(b)(3). The provision concerning a victim identifier was modified by omitting “in which the victim was a juvenile at the time of the offense” because that is subsumed under “the victim’s name,” which remains in the provision. Ms. Beckmann observed that a draft provision on the binding of paper briefs should be acceptable to both divisions of the Court of Appeals. Draft section (c) (“extensions of time”) reflects the objectives of Chief Justice Brutinel’s earlier committee on delay reduction in juvenile appeals. Under this draft section, the Court of Appeals may grant an initial extension (20 days for an opening or answering brief, 10 days for a reply) for good cause, but it will grant further extensions only for extraordinary circumstances. Section (d) (“amicus curiae brief”) clarifies that amicus may not file a reply brief.

Draft section (e) (“notice and avowal in lieu of opening brief; *pro se* brief”) was derived from current Rule 106(G), with modifications. The current section refers to an affidavit, whereas the draft section calls this an avowal. Under the draft, counsel’s avowal can be on one or two grounds: that the appellant has failed to maintain contact with counsel (i.e., the client has abandoned the appeal), or that counsel has reviewed the record and found no non-frivolous issue to raise on appeal. If the avowal is on the second ground, the draft requires counsel to advise the appellant of two things: counsel’s intent to file this avowal, and the appellant’s opportunity to file a *pro se* brief. When counsel files an avowal on this ground, the avowal must inform the court whether the appellant requests to file a *pro se* brief. The draft goes on to say that if the appellate court grants the request, then the appellant has 15 days to file a *pro se* brief. When the appellant files that brief, the court may deem the case at issue or it may permit the appellee to file an answering brief, but it may not grant relief without providing the appellee that opportunity. If counsel’s avowal indicates that the appellant does not request to file a *pro se* brief, or if the request was made but no *pro se* brief was timely filed thereafter, the court may dismiss the appeal and immediately issue its mandate. Although the rule does not say so, if something goes awry, e.g., the appellant does not get notice that the court granted the request to file a *pro se* brief, then the court could withdraw its mandate. A member raised a due process concern about whether the 15-day limit was unduly short, but after discussion, members made no changes to the draft.

Draft section (f) (“at issue”) modestly compresses the time when an appeal is deemed to be at issue. Draft section (g) (“petition for transfer”) applies ARCAP 19 to juvenile appeals, although Ms. Beckmann noted that the Supreme Court rarely grants these petitions.

Draft Rule 106.1(a) (“dismissal”) derives from current Rule 106(E). It permits the court to dismiss an appeal for the specified reasons, including on its own motion for legal cause, such as a lack of jurisdiction or a lack of prosecution. Section (a) requires the appellate clerk to give prompt notice of the dismissal, which encompasses giving notice to the appropriate court reporters or transcript coordinator to avoid the expense of unnecessary transcript preparation. Draft section (b) (“action by the appellate court”) has four subparts that provide alternative dispositions, including number 4, suspending the appeal and re-vesting jurisdiction in the juvenile court. That fourth alternative might be useful in a myriad of circumstances, including when a brief or non-time extending motion raises a plausible issue of ineffective assistance of trial counsel that requires further testimony or findings. Draft section (c) (“no motion for reconsideration”) relocates a provision currently contained in Rule 107(A) that disallows these motions. The Task Force had previously inserted a provision in draft Rule 103.1(i)(17) concerning a motion for publication. This was relocated as draft Rule 107(d) (“motion for publication”). The revised title of draft Rule 106.1 reflects the inclusion of new sections (c) and (d).

Members agreed with the bifurcation of Rule 106. They approved Rules 106 and 106.1 as presented and modified.

**5. Roadmap.** The Chair noted that the Editorial Group is continuing to meet; it has now completed its review of about 50 rules. The Chair confirmed future Task Force meeting dates: November 20, December 4, and December 18. There are about 30 rules remaining for Task Force approval, and most of these rules are pending their initial presentation. The Chair added that the number of rules pending approval is in no way due to a lack of effort – she noted that the members’ efforts have been outstanding – but approval of rules, especially those that might be complex, takes time and requires extended discussion. The Chair will probably request an extension of the January 10, 2021 petition filing date. The issue is how long an extension might be necessary. In this regard, she noted the following:

- Members should have an opportunity to review and discuss the entire set of rules, as well as the draft rule petition and the accompanying tables and appendices, such as a table of contents, an ICWA table, and a table correlating the current and draft rule numbers.
- Administrative Order No. 2019-74, which established this Task Force, directed the Task Force to “seek input from various interested persons and entities.” The Task Force should do so as soon as a draft set of rules is available. It can advise stakeholders who might be interested in reviewing only some rules, e.g., the adoption rules, that even a partial review would be helpful. It will be easier for the Task Force to

address stakeholder comments and concerns before filing a rule petition than it would be after the filing.

- Before filing the rule petition, the Task Force should consider and address (1) the current juvenile rules' forms, as well as additional forms that could be useful; (2) the FFPSA (should the DCS director or others address the Task Force on this subject?); and (3) proposed statutory amendments.

The Task Force will continue the discussion of these roadmap issues at its upcoming meetings.

**6. Call to the public; adjourn.** Ms. Lori Ford responded to a call to the public and addressed the members.

The meeting adjourned at 2:16 p.m.

**Rule 2. Definitions.** A term defined in the singular includes the plural, and a term defined in the plural include the singular.

- (a) **“ADJC”** means the Arizona Department of Juvenile Corrections.
- (b) **“ARCAP”** means the Arizona Rules of Civil Appellate Procedure.
- (c) **“Authorized transcriber”** means a certified court reporter or a transcriber under contract with an Arizona court.
- (d) **“Child safety worker”** means a person who has been selected by and trained under the requirements prescribed by DCS, and who assists in carrying out the provisions of Title 8.
- (e) **“Civil Rule”** means a rule in the Arizona Rules of Civil Procedure.
- (f) **“Clerk”** means the superior court clerk unless specified otherwise. The Supreme Court clerk and the Court of Appeals clerk are referred to by those titles, or if the context warrants, as the “appellate clerk.”
- (g) **“Criminal Rule”** means a rule in the Arizona Rules of Criminal Procedure.
- (h) **“DCS”** means the Arizona Department of Child Safety.
- (i) **“Family Law Rule”** means a rule in the Arizona Rules of Family Law Procedure.
- (j) **“FFPSA”** means the Family First Prevention Services Act as codified in the Bipartisan Budget Package/Continuing Resolution (Public Law 115-123).
- (k) **“Guardian ad litem” (GAL)** means an attorney appointed by the court to protect the best interests of a party or as otherwise directed by the court. [**WG1 Note:** This definition is substantially similar to the definition in A.R.S. § 8-531(7). A legislative change will be necessary if we limit GALs to just attorneys.]
- (l) **“ICPC”** means the Interstate Compact on the Placement of Children under A.R.S. §§ 8-548 through 548.06.
- (m) **“ICWA”** means the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963, and Part 23 of Title 25 of the Code of Federal Regulations (“Regulations”), including any amendments to those provisions, or, if required by the context of a Juvenile Rule, either the Act or the Regulations.
- (n) **“Judicial officer”** includes a judge, a judge pro tempore, and a commissioner.
- (o) **“Juvenile”** means a person under the age of 18 years and may be referred to in these rules as a “child,” “youth,” or “minor.” For purposes of these rules, “juvenile” also includes a person within the juvenile court’s jurisdiction under A.R.S. § 8-202.

- (p) **“Juvenile court”** means a division or department of the superior court designated to preside over juvenile court proceedings, as provided in Rule 1(a).
- (q) **“Out-of-home placement”** means the placing of a child in the custody of an individual or agency other than the child’s parent or legal guardian and includes placement in temporary custody pursuant to A.R.S. § 8-821, voluntary placement pursuant to A.R.S. § 8-806 or placement due to a dependency action.
- (r) **“Parent”** means the child’s biological, adoptive, or legal mother or father whose rights have not been terminated.
- (s) **“Presiding judge”** means “presiding judge of the juvenile court,” or the judge’s designee, unless these rules specify otherwise.
- (t) **“State”** means the State of Arizona.
- (u) **“Supreme Court Rule”** means a rule in the Rules of the Supreme Court of Arizona.
- (v) **“UCCJEA”** means the Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 through 25-1067, which defines a “[c]hild custody proceeding” under the Act to include “a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.” A.R.S. § 25-1002(4).

### COMMENT TO 2022 AMENDMENT

This rule does not provide a comprehensive set of definitions. Other terms are defined throughout these rules, including Rules 22, 37, 68, and 89, as well as by statute, including A.R.S. §§ 8-101 (adoption), 8-141 (adoption subsidies), 8-161 (nonrecurring adoption expenses), 8-171 (interstate adoption assistance compacts), 8-201 (juvenile court), 8-261 (family counseling services), 8-271 (children’s mental health services), 8-291 (juvenile competency), 8-341 (disposition and commitment), 8-351 (juvenile intensive probation), 8-382 (victims’ rights), 8-501 & 502 (child welfare and placement), 8-531 (termination of parental-child relationship), 8-801 (dependent children), 8-821 & 822 (removal of child), and 8-1152 (early childhood development and health programs).

**[Staff Note:** New Family Law Rule 5.1 (“Simultaneous Dependency and Legal Decision-Making/Parenting Time Orders”) contains references to the juvenile court. If there is going to be a new Juvenile Rule that corresponds to FLR 5.1, then these definitions might need to include “Family Law Rule.”] **[WG1 Note:** A recent court of appeals case discusses the interplay between Title 8, ICWA, and the UCCJEA in the context of a private dependency case. *Holly C. v. Tohono O’Odham Nation, G.C., and Brian S.*, 2019 WL 4894123 (Ariz. App. Div. 2 2019).]

~~+Rule 2. Definitions [Staff Note: Current Rule 1 includes the word “definitions” in its title, but the rule contains only two definitions: “juvenile” and “authorized transcriber.” Draft Rule 2 is new. Other rule restyling committees found it useful to have a comprehensive set of definitions near the beginning of the rules. See, for examples, Criminal Rule 1.4, FLR 3, and Probate Rule 2.]~~

~~(a) “ARCAP” means the Arizona Rules of Civil Appellate Procedure.~~

~~(b) “Authorized transcriber” means a certified court reporter or a transcriber under contract with an Arizona court. [Staff Note: The preceding sentence was derived from current Rule 1(C).] References to a “reporter” or “transcriber” include the plural if there was more than one reporter or transcriber in a case.~~

~~(c) “Civil Rule” means a rule in the Arizona Rules of Civil Procedure.~~

~~(d) “Clerk” means the superior court clerk. For clarity in the context of rules concerning appeals from the juvenile court, the clerk is sometimes referred to as the “juvenile court clerk.” The Supreme Court clerk and the Court of Appeals clerk are referred to by those titles, or if the context warrants, as the “appellate clerk.”~~

~~(e) “Criminal Rule” means a rule in the Arizona Rules of Criminal Procedure.~~

~~—“DCS” means the Arizona Department of Child Safety. [Staff Note: Statutes also use the “DCS” abbreviation; for example, see A.R.S. §§ 8-201, 8-455, 8-456, 8-807.]~~

~~(g) “Family Law Rule” means a rule in the Arizona Rules of Family Law Procedure.~~

~~(f) (h) “FFPSA” means the Family First Prevention Services Act as codified in the Bipartisan Budget Package/Continuing Resolution (Public Law 115-123).~~

~~(a) (i) “Fiduciary” means...includes a personal representative, guardian, conservator and trustee. [Staff Note: “Fiduciary” appears for the first and only time in these rules in Rule 104, concerning appeals. The word is not defined in Rule 104 and it’s not clear what it means in the context that it is used.] [This definition comes from A.R.S. § 14-1201, the probate code definitions section.]~~

~~(b) “ICWA” means the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, and Part 23 of Title 25 of the Code of Federal Regulations (“Regulations”), including any amendments to those provisions, or, if required by the context of a Juvenile Rule, either the Act or the Regulations. [Derivation and Staff Note: This is derived from current Rule 8(A). If a current rule says that “the court must proceed pursuant to ICWA and the regulations,” a draft rule providing that “the court must proceed pursuant to ICWA” would therefore include the regulations.]~~

~~(e) “Judicial officer” includes a judge, a judge pro tempore, and a commissioner. [Staff Note: This is derived in part from current Rule 2.]~~

~~—“Juvenile” means a person under the age of 18 years and may be referred to in these rules as. “Juvenile” includes a “child,” “youth,” or “minor.” “Juvenile” also includes a person who is under the age of 19 years if the juvenile court has retained jurisdiction over that person under A.R.S. § 8-202(H). [Staff Note: This is derived from current Rule 1(B).]~~

~~(d) “Juvenile court” means a division or department of the superior court designated to preside over juvenile court proceedings, as provided in Rule 1(a).~~

~~(e) “Presiding judge” means “presiding judge of the juvenile court,” unless these rules specify otherwise.~~

~~(f) “State” means the State of Arizona.~~

~~—“Supreme Court Rule” means a rule in the Rules of the Supreme Court of Arizona.~~

~~(g) “UCCJEA” means the Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 to 25-1067, which defines a “[c]hild custody proceeding” under the Act to include “a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.” § 25-1002(4).~~

### COMMENT TO 2022 AMENDMENT

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~~**Staff Note:** New Family Law Rule 5.1 (“Simultaneous Dependency and Legal Decision-Making/Parenting Time Orders”) contains references to the juvenile court. If there is going to be a new Juvenile Rule that corresponds to FLR 5.1, then these definitions might need to include “Family Law Rule.” [WG1 Note: A recent court of appeals case discusses the interplay between Title 8, ICWA, and the UCCJEA in the context of a private dependency case. *Holly C. v. Tohono O’Odham Nation, G.C., and Brian S.*, \_\_\_\_\_ Ariz. \_\_\_\_\_ (Ariz. App. Div. 2 2019).]~~

**Rule 2. Definitions.** ~~[Staff Note: Current Rule 1 includes the word “definitions” in its title, but the rule contains only two definitions: “juvenile” and “authorized transcriber.” Draft Rule 2 is new. Other rule restyling committees found it useful to have a comprehensive set of definitions near the beginning of the rules. See, for examples,~~

Criminal Rule 1.4, FLR 3, and Probate Rule 2.] A term defined in the singular includes the plural, and a term defined in the plural include the singular.

(a) “ADJC” means the Arizona Department of Juvenile Corrections.

(b) “ARCAP” means the Arizona Rules of Civil Appellate Procedure.

(c) “Authorized transcriber” means a certified court reporter or a transcriber under contract with an Arizona court.

(d) “Child safety worker” means a person who has been selected by and trained under the requirements prescribed by DCS, and who assists in carrying out the provisions of Title 8.

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(f) “Clerk” means the superior court clerk unless specified otherwise. The Supreme Court clerk and the Court of Appeals clerk are referred to by those titles, or if the context warrants, as the “appellate clerk.”

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(j) “FFPSA” means the Family First Prevention Services Act as codified in the Bipartisan Budget Package/Continuing Resolution (Public Law 115-123).

(k) “Guardian ad litem” (GAL) means an attorney appointed by the court to protect the best interests of a party or as otherwise directed by the court. [WG1 Note: This definition is substantially similar to the definition in A.R.S. § 8-531(7). A legislative change will be necessary if we limit GALs to just attorneys.]

(l) “ICPC” means the Interstate Compact on the Placement of Children under A.R.S. §§ 8-548 through 548.06.

(m) “ICWA” means the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963, and Part 23 of Title 25 of the Code of Federal Regulations (“Regulations”), including any amendments to those provisions, or, if required by the context of a Juvenile Rule, either the Act or the Regulations.

(n) “Judicial officer” includes a judge, a judge pro tempore, and a commissioner.

(o) “Juvenile” means a person under the age of 18 years and may be referred to in these rules as a “child,” “youth,” or “minor.” For purposes of these rules, “juvenile” also includes a person within the juvenile court’s jurisdiction under A.R.S. § 8-202.

(p) “Juvenile court” means a division or department of the superior court designated to preside over juvenile court proceedings, as provided in Rule 1(a).

(q) “Out-of-home placement” means the placing of a child in the custody of an individual or agency other than the child’s parent or legal guardian and includes placement in temporary custody pursuant to A.R.S. § 8-821, voluntary placement pursuant to A.R.S. § 8-806 or placement due to a dependency action.

(r) “Parent” means the child’s biological, adoptive, or legal mother or father whose rights have not been terminated.

(s) “Presiding judge” means “presiding judge of the juvenile court,” or the judge’s designee, unless these rules specify otherwise.

(t) “State” means the State of Arizona.

(u) “Supreme Court Rule” means a rule in the Rules of the Supreme Court of Arizona.

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~~—(d) “Child safety worker” means a person who has been selected by and trained under the requirements prescribed by DCS, and who assists in carrying out the provisions of Title 8, Article 8.~~

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~~(ed) “Civil Rule” means a rule in the Arizona Rules of Civil Procedure.~~

~~(fe) “Clerk” means the superior court clerk unless specified otherwise. The Supreme Court clerk and the Court of Appeals clerk are referred to by those titles, or if the context warrants, as the “appellate clerk.”~~

- ~~(gf) “Criminal Rule” means a rule in the Arizona Rules of Criminal Procedure.~~
- ~~(hg) “DCS” means the Arizona Department of Child Safety. [Staff Note: Statutes also use the “DCS” abbreviation; for example, see A.R.S. §§ 8-201, 8-455, 8-456, 8-807.]~~
- ~~(ih) “Family Law Rule” means a rule in the Arizona Rules of Family Law Procedure.~~
- ~~(ji) “FFPSA” means the Family First Prevention Services Act as codified in the Bipartisan Budget Package/Continuing Resolution (Public Law 115-123).~~
- ~~(j) “Fiduciary” means a personal representative, guardian, conservator and trustee. [Staff Note: The definition of “Fiduciary” has been removed from this rule because it appears for the first and only time in these rules in Rule 104, concerning appeals. The word is not defined in Rule 104.02 and it’s not clear what it means in the context that it is used.] [WG 1 Note: This using the definition comes from A.R.S. § 14-1201, the probate code definitions section.]~~
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- ~~(rr) “Parent” means the natural biological or adoptive mother or father of a child.~~
- ~~(ss) “Presiding judge” means “presiding judge of the juvenile court,” or the judge’s designee, unless these rules specify otherwise.~~
- ~~(tt) “State” means the State of Arizona.~~
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## **Rule 9. Intervention**

### **(a) Generally.**

- (1) ***Of Right.*** The court must permit a person to intervene in any proceeding under Part III or Part IV of these rules if the person has a right to intervene under ICWA or other law.
- (2) ***Permissive.*** The court may permit a person to intervene in any proceeding under Part III or Part IV of these rules after considering the factors in section (b).

**(b) Factors.** The court must determine whether intervention would be in the child's best interests. In making that determination, the court should consider the following factors:

- (1) the nature and extent of the person's interest, and whether the person's interest or position is adequately represented by existing parties;
- (2) whether the person is a child's relative as defined in A.R.S. § 8-501, or is another member of the child's extended family or a person who has a significant relationship with a child under A.R.S. § 8-514(B);
- (3) whether the person seeks to file a motion for change of physical custody to that person;
- (4) the timeliness of the motion;
- (5) whether intervention will unduly prolong or delay the case;
- (6) whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented; and
- (7) any other factors the court deems appropriate.

**(c) Scope of Intervention.** The court may grant intervention for a limited purpose, and it may limit the scope and duration of intervention. Unless the court expressly limits intervention, and order granting intervention permits the intervenor to participate on all issues as a party.

### **(d) Procedure.**

- (1) ***Requirements of a Motion.*** The person who requests to intervene must file a motion that specifies facts supporting the motion. The person moving to intervene must serve the motion on all parties.

**(2) *Motion for a Change of Physical Custody.*** If intervention is for purposes of filing a motion for change of physical custody, the intervenor must file and serve the motion no later than 10 days after entry of the order granting the motion to intervene.

[Bechtel: “These relevant factors include the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case. The court may also consider whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.”]

## **Rule 9. Intervention**

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- (1) **Of Right.** The court must permit a person to intervene in any proceeding under Part III or Part IV of these rules if the person has a right to intervene under ICWA or other law.
- (2) **Permissive.** The court may permit a person to intervene in any proceeding under Part III or Part IV of these rules after considering the factors in section (b).

**(b) Factors.** The court must determine whether intervention would be in the child's best interests. In making that determination, the court should consider the following factors.

- (1) the nature and extent of the person's interest, and whether the person's interest or position is adequately represented by existing parties;
- (2) whether the person is a child's relative as defined in A.R.S. § 8-501, or is another member of the child's extended family or a person who has a significant relationship with a child under A.R.S. § 8-514(B);
- (3) whether the person's request to be placement for the child was denied by DCS, and if so, whether the person filed an administrative grievance with DCS regarding the denial;
- (3) whether the person seeks to file a motion for change of physical custody to that person;
- (6) the timeliness of the motion;
- (7) whether intervention will unduly prolong or delay the case;
- (8) whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented; and
- (9) any other factors the court deems appropriate.

**(c) Scope of Intervention.** The court may grant intervention for a limited purpose, and it may limit the scope and duration of intervention. Unless the court expressly limits intervention, an order granting intervention permits the intervenor to participate on all issues as a party.

### **(d) Procedure.**

(1) *Requirements of a Motion.* The person who requests to intervene must file a motion that specifies facts supporting the motion. The person moving to intervene must serve the motion on all parties.

~~(2) Filing and Serving Pleading in Intervention. Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene. A response to a pleading in intervention is not required.~~

~~(2) Motion for Change of Physical Custody. If intervention is for purposes of filing a motion for change of physical custody, the intervenor must file and serve the motion no later than 10 days after entry of the order granting the motion to intervene.~~

~~[Bechtel: “These relevant factors include the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case. The court may also consider whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.”]~~

## **Rule 9. Intervention**

~~(a) Intervention of Right. On timely motion, the court must permit a person to intervene who~~

~~(1) is a child's relative as defined in A.R.S. § 8-501, or is another member of the child's extended family or a person who has a significant relationship with a child as defined in A.R.S. § 8-514(B);~~

~~(2) requested to be placement for the child and was denied placement by the Department; and~~

~~(3) seeks to file a motion for change of physical custody to that person.~~

~~(b) Permissive Intervention. On timely motion, the court may permit a person to intervene if the court finds that the person's participation on a contested issue would be in the child's best interests. In making this determination, the court must consider whether the person has a significant relationship with a child as defined in A.R.S. § 8-514(B), and whether the person's interest or position is adequately represented by existing parties.~~

~~(c) Scope of Intervention. The court may grant intervention for a limited purpose, and may limit the scope and duration of intervention. Unless the court expressly limits intervention, an order granting intervention permits the intervenor to participate on all issues as a party.~~

~~(d) Procedure.~~

~~(1) Requirements of a Motion. Anyone moving to intervene must:~~

(A) serve the motion on all parties;

(B) attach as an exhibit to the motion a copy of a proposed pleading in intervention that sets out the purpose for which intervention is sought; and

(C) if the intervenor seeks to file a motion for change of physical custody, attach a copy of the proposed motion.

~~(2) Filing and Serving Pleading in Intervention. Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene. A response to a pleading in intervention is not required.~~

~~(2) Motion for Change of Physical Custody. If intervention is for purposes of filing a motion for change of physical custody, the intervenor must file and serve the motion within 10 days after entry of the order granting the motion to intervene.~~



## **Rule 32. Revocation of Probation**

- (a) **Initiation.** The juvenile probation officer responsible for supervising the juvenile, or the prosecutor, may petition the court to revoke probation if there is probable cause to believe that the juvenile has violated a condition or directive of probation. If the victim requests notice, the court must notify the victim of any probation revocation proceeding and afford the victim an opportunity to be heard, as provided by victims' rights laws.
- (b) **Petition.** The petition must state the substance of the conduct alleged to have violated the conditions or directives previously imposed, and in all other respects must conform to Rule 24(a).
- (1) **Notice to Appear.** Promptly after the petition to revoke probation has been filed, the juvenile, the juvenile's attorney, and the juvenile's parent must be given written notice that they are required to appear before the court. For good cause, the court may waive the parent's appearance. The notice to appear must:
- (A) contain the name and address of the person to whom the notice is directed;
  - (B) contain the location, date, and time of an advisory hearing on the petition; and
  - (C) advise that a failure to appear may result in sanctions, including contempt.
- (2) **Service and Failure to Appear.** The juvenile, the juvenile's attorney, and the juvenile's parent must be served with a copy of the petition and a copy of the notice to appear in the manner provided by Rule 26(b). The court may address a failure to appear as provided by Rule 26(c).
- (3) **Amendment to the Petition.** A petition to revoke probation may be amended as provided in Rule 24(b).
- (c) **Warrant.** If a probation officer, when or after a petition to revoke probation is filed, requests an arrest warrant for the juvenile, the court must determine based upon allegations in the petition whether there is probable cause to believe that the juvenile violated a condition or regulation of probation. ~~If the court finds probable cause, it must set the matter for an advisory hearing.~~
- (d) **Advisory Hearing: Time Limits.**
- (1) **Juvenile Who is Detained.** If the juvenile is detained on a petition to revoke probation, the court must hold an advisory hearing within 24 hours of the initial detention.

- (2) **Juvenile Who is Not Detained.** If the juvenile is not detained, the court must hold an advisory hearing within 14 days after the filing of the petition and notice to appear.

**(e) Advisory Hearing: Procedure.** At the advisory hearing:

- (1) **Advise of Rights.** The court must advise the juvenile and the juvenile's parent of the juvenile's constitutional rights, including the rights:
  - (A) to be represented by counsel, and to have the court appoint counsel if the juvenile is indigent, as provided by law;
  - (B) to remain silent throughout the proceeding;
  - (C) to an adjudication hearing on the allegations in the petition;
  - (D) to confront witnesses presented by the State; and
  - (E) to call witnesses on the juvenile's behalf.
- (2) **Confirm Disclosure.** The court must confirm that the probation officer has disclosed to the attorneys for the parties any documents, notes, and evidence related to the violation, other than confidential information protected under Supreme Court Rule 123.
- (3) **Allow a Victim to be Heard.** The court must determine whether the victim of the offense has requested to be present and to be heard.
- (4) **Juvenile's Statements at Revocation Proceeding.** The court must advise the juvenile that if the alleged violation involves a delinquent act for which the juvenile has not yet been adjudicated, regardless of the outcome of the probation revocation proceeding, the juvenile may still be adjudicated for the alleged offense, and any statement made by the juvenile at the probation revocation proceeding may be used against the juvenile at the adjudication hearing.
- (5) **Enter the Juvenile's Admission or Denial.** The court must determine whether the juvenile wishes to admit or deny the violations of probation. If the juvenile wishes to admit a violation of probation, the court may accept the admission or plea agreement as provided in Rule 28.1.
- (6) **Set an Adjudication Hearing.** If the juvenile denies the violations of probation, the court must set a probation violation hearing.
  - (A) **Determine Release Conditions.** The court may set conditions of release. It must advise the juvenile that a violation of the release conditions may result in

a revocation of the juvenile's release and the issuance of a warrant for the juvenile's arrest, and it must provide a copy of the release conditions to the juvenile and the juvenile's parent.

**(f) Probation Violation Hearing.**

- (1) **Time Limits.** The court must hold a probation violation hearing within 21 days of the advisory hearing unless, ~~upon the juvenile's written motion, it finds good cause to continue the hearing to a later date unless the juvenile waives time or time is excluded by the court under Rule 17.~~
- (2) **Burden of Proof.** The State must prove a violation of probation by a preponderance of the evidence. ~~[Staff Note: The current rule states the burden of proof but does not say which party has it.]~~
- (3) **Procedure.** Each party may present evidence. ~~and has the right to cross-examine witnesses who testify. [Staff Note: The State does not have the right to cross-examine its own witnesses; same with the juvenile.]~~ The court may admit any reliable evidence not legally privileged, which may include hearsay.
- (4) **Amendment to Conform to the Evidence.** Unless the juvenile consents to the amendment, the petition may be amended only to correct mistakes of fact or to remedy formal or technical defects that conform to the evidence presented at the probation violation hearing. [WG Note: Should the Editorial Group change this to a cross reference to Rule 29(d), i.e., a petition alleging a probation violation may be amended only as provided in Rule 29(d)?]
- (5) **Findings and Orders.** The court's findings must be in writing in the form of a minute entry or signed order and state specifically ~~for the record:~~
  - (A) whether each allegation in the revocation petition has been proven; and
  - (B) findings of fact that establish a violation of probation.
- (6) **Disposition.** If the court finds ~~that~~ a violation of a condition or directive of probation ~~has occurred~~, then the court may proceed directly to disposition, or it may set a disposition hearing pursuant to Rule 30. The court may impose any disposition provided under A.R.S. § 8-341.
- (7) **Subsequent Acts.** If a juvenile who is on probation subsequently commits a new act and is thereafter adjudicated delinquent or incorrigible, the juvenile is deemed to have violated the terms of probation. No violation petition or hearing is required, and the court may proceed directly to disposition or set a disposition hearing pursuant to Rule 30. ~~[Staff Note: Cross-reference Criminal Rule 27.8(e).]~~



## Rule 32. Revocation of Probation

- (a) **Initiation.** The juvenile probation officer responsible for supervising the juvenile, or the prosecutor, may petition the court to revoke probation if there is probable cause to believe that the juvenile has violated a condition ~~or regulation or directive~~ of probation. ~~The prosecutor must represent the State in any probation revocation proceeding. [Staff Note: Is the preceding sentence necessary?] If the victim requests notice, the~~ If the victim requests notice, the court must notify the victim of any probation revocation proceeding and afford the victim an opportunity to be heard, as provided by law ~~victims' rights laws~~.
- (b) **Petition.** The petition ~~[Staff Note: Is this next phrase that is in the current rule necessary: "shall be entitled 'Petition to Revoke Probation'"]~~, must state the substance of the conduct alleged to have violated the conditions or ~~regulations~~ directives previously imposed, and in all other respects must conform to Rule 24(Aa).
- (1) **Notice to Appear.** Promptly after the petition to revoke probation has been filed, the juvenile, the juvenile's attorney, and the juvenile's parent, ~~guardian, or custodian~~ must be given written notice that they are required to appear before the court. ~~The notice shall compel the attendance of the juvenile and the parent, guardian or custodian or other persons having custody of the juvenile.~~ For good cause, the court may waive the parent's appearance ~~of the parent, guardian, or custodian, as provided by law.~~ The notice to appear must:
- (A) contain the name and address of the person to whom the notice is directed;
  - (B) contain the location, date, and time of ~~the~~ an advisory hearing on the petition; and
  - ~~(C) contain the name of the juvenile involved in the allegation alleged in the petition; and~~
  - (C) advise the persons to whom the notice is directed that their a failure to appear will may result in sanctions being entered against them, which may include including contempt.
- (2) **Service and Failure to Appear.** The juvenile, the juvenile's attorney, and the juvenile's parent must be served with a copy of the petition and a copy of the notice to appear in the manner provided by Rule 26(b). The court may address a failure to appear as provided by Rule 26(c).
- ~~(D) **Amendment to the Petition.** A petition to revoke probation may be amended as provided in Rule 24(b).~~

~~(2) (2) Service and Failure to Appear. The notice and a copy of the petition must be served on the following persons:~~

~~(A) the juvenile's parent, guardian, or custodian;~~

~~(B) the juvenile, if the juvenile is 14 years of age or older; and~~

~~(C) counsel representing any party.~~

~~— Each party The juvenile, the juvenile's attorney, and the juvenile's parent must be personally served with a copy of the petition and a copy of the notice to appear by an authorized juvenile court officer or an officer authorized to serve process in a civil action except as otherwise provided. If the court finds that it is impracticable to personally serve the parties, it may approve service by certified or registered mail, return receipt requested. The filing of a return receipt or an affidavit of service is prima facie evidence of service, in the manner provided by Rule 26(b). The court may address a failure to appear as provided by Rule 26(c).~~

~~(3) (3) Contempt. The court may set a hearing on an order to show cause why any person who fails to appear, after being served with a notice to appear, should not be held in contempt, unless good cause for the non-appearance is presented to the court. **[Staff Note: This issue was previously noted: is the good cause showing at or before the OSC**~~

hearing? If the showing is made at the OSC hearing, then the words after the comma could be deleted.] The court shall set a hearing on an order to show cause for contempt against any parent, guardian or custodian who fails to appear after being served with a notice to appear unless good cause for the non-appearance is presented to the court. [Staff Note: Doesn't the sentence shown with strikethrough repeat the previous sentence?] The order to show cause must be served upon the parties pursuant to this rule. [Staff Note: Does that mean that the order can be served by certified mail?] Whenever it appears by affidavit or testimony that the person to be served with a notice to appear cannot be found, his the person's address cannot be ascertained after reasonable efforts have been made to locate the person, or the person will not otherwise appear, the court may issue a warrant to secure that person's appearance. The failure of a parent, guardian, or custodian to appear at a probation revocation hearing does not prevent the court from proceeding with the hearing. [Staff Note: Does this last sentence belong in the subpart on contempt?]

~~(4)(3) ***Amendment to the Petition.*** A petition to revoke probation may be amended by as provided in Rule 24(b). court order on motion of any interested party [Staff Note: Who is an “interested party?”] at any time before an adjudication a probation violation hearing, provided the parties are notified and granted sufficient time to meet the new allegations. A copy of the motion shall~~

be provided to the parties pursuant to Rule 15. ~~[Staff Note: Is the preceding sentence necessary?]~~

(c) ~~**Probable Cause Determination Warrant.**~~ ~~When~~ If a probation officer, when or after a petition to revoke probation is filed, requests an arrest warrant for the juvenile, the court must determine, based upon allegations in the petition, whether there is probable cause to believe that the juvenile violated a condition or regulation of probation. If the court finds probable cause, it must set the matter for an advisory hearing.

(d) ~~**Advisory Hearing: Time Limits.**~~ ~~At the advisory hearing on the petition, the court must inform the juvenile of the allegations and ask the juvenile to admit or deny each allegation contained in the petition to revoke probation. [Staff Note: Some language in the following sections duplicates what is in Rule 28 (“advisory hearing”) or 29 (“adjudication hearing”). Staff suggests that language should be identical or combined or cross-referenced so the language is not repeated.]~~

~~(1) Time Limits.~~

~~(A)~~(1) Juvenile Who is Detained. If the juvenile is ~~in custody~~detained ~~[Staff Note: Is the terminology being changed to “in custody” or “not in custody?”]~~ on a petition to revoke probation, the court must hold an advisory hearing within 24 hours of the initial detention.

~~(B)~~(2) Juvenile Who is Not Detained. If the juvenile is not ~~in custody~~detained, the court must hold an advisory hearing within 14 days after ~~the service of~~filing of the petition and notice to appear.

~~(e) (e) Advisory Hearing: Procedure.~~ At the advisory hearing, ~~the court must:~~

~~(2)~~

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

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

(B) to remain silent throughout the proceeding;

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

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

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

- (2) *Confirm Disclosure.* The court must confirm that the probation officer has disclosed to the attorneys for the parties any documents, notes, and evidence related to the violation, other than confidential information protected under Supreme Court Rule 123.
- ~~(A) Advise the juvenile, parent, guardian, or custodian of the right of the juvenile to be represented by counsel, including the right to be appointed counsel if the juvenile is indigent, as provided by law.~~
- ~~(B) Advise the parties of the juvenile's right to remain silent throughout the proceeding.~~
- ~~(C) Advise the parties of the juvenile's right to call witnesses on the juvenile's behalf.~~
- ~~(D) Advise the parties of the right to confront witnesses presented by the state.~~
- ~~(E) Determine whether the juvenile understands the constitutional rights set forth by the court and whether the juvenile knowingly, intelligently, and voluntarily wishes to waive those rights.~~
- ~~(F) Determine whether the victim of the offense has requested to be present and be heard if a plea agreement is to be presented to the court. The court must not accept a plea agreement unless:~~
- ~~(i) the prosecutor advises the court that reasonable efforts were made to confer with the victim concerning the proposed plea;~~
- ~~(ii) reasonable efforts were made to advise the victim of the plea proceeding and of the victim's right to be present and to be heard; and~~
- ~~(iii) the prosecutor advises the court that to the best of the prosecutor's knowledge the notice requirements were complied with and the prosecutor advises the court of the victim's position, if known, regarding the proposed plea agreement.~~
- (3) *Allow a Victim to be Heard.* The court must determine whether the victim of the offense has requested to be present and to be heard.
- (4) *Juvenile's Statements at Revocation Proceeding.* The court shall must advise the juvenile that if the alleged violation involves a delinquent or incorrigible act for which the juvenile has not yet been adjudicated, regardless of the outcome of the probation revocation proceeding, the juvenile may still be adjudicated for the alleged offense, and any statement made by the juvenile at the probation

revocation proceeding may be used against the juvenile at the adjudication hearing.

**(5) Enter the Juvenile's Admission or Denial.** The court must determine whether the juvenile wishes to admit or deny the violations of probation. If the juvenile wishes to admit a violation of probation, the court may accept the admission or plea agreement as provided in Rule 28.1.

~~(G) Determine whether the juvenile wishes to admit or deny the allegations.~~

~~(i) Admission. If the juvenile wishes to admit to allegations, the court shall accept the admission or plea if supported by a factual basis and a finding that the juvenile knowingly, intelligently and voluntarily waives the rights enumerated above. The factual basis may include evidence other than the statements of the juvenile.~~

~~(ii) Denial. If the juvenile denies the allegations in the petition, the court shall set an adjudication hearing as required by these rules.~~

**(6) Set an Adjudication Hearing.** If the juvenile denies the violations of probation, the court must set a probation violation hearing.

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

~~**(A) Determine how a verbatim record of the probation violation hearing will be made.**~~

~~**(H) —**~~

~~**(3) Statements at Revocation**~~

~~**Proceeding.** The court shall advise the juvenile that if the alleged violation involves a delinquent or incorrigible act for which the juvenile has not yet been adjudicated, regardless of the outcome of the probation revocation proceeding, the juvenile may still be adjudicated for the alleged offense~~

and any statement made by the juvenile at the probation revocation proceeding may be used against the juvenile at the adjudication hearing.

~~(e)~~**(f)** **Probation Violation Hearing.**

- (1) **Time Limits.** The court must hold a probation violation hearing within 21 days of the advisory hearing unless, ~~upon the juvenile's written motion, it finds good cause to continue the hearing to a later date.~~ unless the juvenile waives time or time is excluded by the court under Rule 17.
- (2) **Burden of Proof.** The State must prove a violation of probation by a preponderance of the evidence. ~~[Staff Note: The current rule states the burden of proof but does not say which party has it.]~~
- (3) **Procedure.** Each party may present evidence, ~~and has the right to cross-examine witnesses who testify. [Staff Note: The State does not have the right to cross-examine its own witnesses; same with the juvenile.]~~ The court may admit any reliable evidence not legally privileged, which may include hearsay.

~~(A)~~**(4)** **Amendment to Conform to the Evidence.** ~~The charge may be amended only to correct mistakes of fact or remedy formal or technical defects, unless the juvenile consents to the amendment. The charging document is deemed amended to conform to the evidence presented at any court proceeding. [Staff Note: Shouldn't this be evidence presented at this hearing?] Unless the juvenile consents to the amendment, the petition may be amended only to correct mistakes of fact or to remedy formal or technical defects that conform to the evidence presented at the probation violation hearing. [WG Note: Should the Editorial Group change this to a cross reference to Rule 29(d), i.e., a petition alleging a probation violation may be amended only as provided in Rule 29(d)?]~~

~~(4)~~**(5)** **Findings and Orders.** The court's findings of the court shall ~~must~~ be in writing in the form of a minute entry or signed order and state specifically ~~for the record:~~

- (A) whether each allegation in the revocation petition has been proven; and
- (B) ~~the findings of facts~~ which that establish a violation of probation.

~~(5)~~**(6)** **Disposition.** If the court finds ~~that~~ a violation of a condition or regulation directive of probation ~~has occurred~~, then the court may proceed directly to disposition, or it may set a disposition hearing pursuant to Rule 30. The court

may ~~revoke, modify, or continue probation~~ impose any disposition provided under A.R.S. § 8-341.

~~(6)~~(7) ***Subsequent Acts.*** If a juvenile who is on probation ~~If the court which placed the juvenile on probation determines that the juvenile has been adjudicated delinquent or incorrigible for an act or acts committed subsequent to being placed on probation, the juvenile is deemed to have violated the terms of probation~~ subsequently commits a new act and is thereafter adjudicated delinquent or incorrigible, the juvenile is deemed to have violated the terms of probation. No violation petition or hearing is required, and the court may proceed directly to disposition or set a disposition hearing pursuant to Rule 30. ~~[Staff Note: Cross reference Criminal Rule 27.8(e).]~~

### **Rule 34. Transfer for Criminal Prosecution**

- (a) **Generally.** The prosecutor may file a motion requesting the juvenile court to waive jurisdiction and order the transfer of the juvenile to the criminal division of the superior court for prosecution as an adult.
- (b) **Motion and Complaint.** A motion to transfer must be accompanied by a criminal complaint that identifies the offense or offenses for which transfer is sought. Copies of the motion and complaint must be served pursuant to Rule 15.
- (c) **Amending the Complaint.** On the prosecutor's motion, the court may allow amendments to the complaint to conform to the evidence, but the amendments must be made before entry of an order to transfer, and the juvenile may not be transferred or held to answer for an offense other than one for which the court found probable cause at the transfer hearing. An amended complaint must be served upon the parties in the same manner as the original motion and complaint.
- (d) **Time Limits.** The motion and complaint must be filed no later than 15 days after the date of the advisory hearing, except the court on a finding of good cause for delay may allow a later filing if the juvenile will not be substantially prejudiced as a result of the delay.
- (e) **Transfer Investigation.** Upon receipt of the motion for transfer, the juvenile probation officer must conduct a transfer investigation and prepare a written report addressing those factors specified in A.R.S. § 8-327 [**Staff Note:** Staff added a statutory reference] that the court considers in determining whether to transfer the juvenile. The juvenile probation officer must provide a copy of the report to the parties at least 7 calendar days before the transfer hearing, unless the time is waived by the parties.
- (1) ***Evaluation of Juvenile.***
- (A) ***Order.*** At any time after the filing of the motion to transfer, the court on a party's request or on its own may order the juvenile to submit to physical, psychological, or psychiatric evaluations, or any combination thereof.
- (B) ***Report.*** The experts must submit their reports to the court at least 7 calendar days before the transfer hearing. Upon receipt, court staff will provide the expert's report to the juvenile's counsel. The juvenile's counsel is responsible for editing the report by redacting any statement or summary of the juvenile's statements concerning the charged offense. Juvenile's counsel must then return the edited copy to court staff within 24 hours of receipt and provide the edited version to the prosecutor.

- (C) *Prior Transfer.* If the juvenile has previously been transferred for criminal prosecution by any juvenile court of this state, at any time before the hearing the court may waive the juvenile probation officer's transfer investigation or the experts' evaluations. Any prior orders of transfer, probation reports, or reports pertaining to physical, psychological or psychiatric evaluations conducted as part of the prior transfer proceedings must be provided to the parties and counsel.
- (2) *Incompetence.* As provided in A.R.S. § 8-291 et seq., the court must not transfer a juvenile for criminal prosecution who is not competent.
- (f) **Transfer Hearing.** A transfer hearing must be conducted by a judge. The transfer hearing must be conducted in two phases. The first phase includes a determination of probable cause that an offense was committed and whether the juvenile committed the alleged offense. The second phase determines whether public safety would best be served by the transfer of the juvenile for prosecution. The two phases may be heard consecutively or on separate dates as the court determines.
- (1) *Time Limits.* A transfer hearing must be held not later than 30 days after the filing of the motion to transfer. The court may continue the hearing for good cause.
- (2) *Waiver.* The juvenile may waive an evidentiary hearing on either phase of the transfer proceeding. A waiver of the evidentiary hearing on the probable cause phase of the transfer proceeding must be in writing and signed by the juvenile, the juvenile's counsel, and the prosecutor. Before accepting a waiver, the court must inform the juvenile of the consequences of a waiver and the rights under Criminal Rules 5.3 and 5.4(c) that the juvenile is waiving. The court must make written findings concerning the waiver by minute entry or order.
- (3) *Probable Cause Determination.*
- (A) *Applicable Rules.* The probable cause phase must be conducted on the record and as provided in Criminal Rules 5.3 and 5.4(c). The probable cause phase of the transfer hearing, or a waiver of that phase under these rules, constitutes compliance with the defendant's right to a preliminary hearing under Criminal Rule 5.1.
- (B) *Evidence.* A court must not exclude evidence during a probable cause hearing solely on the ground that it was obtained unlawfully.
- (C) *Probable Cause Finding.* If the court finds there is probable cause to believe that the charged offense has been committed and that the juvenile committed it, the court must proceed to the public safety determination. If the court does

not find probable cause for the charged offense, it may find probable cause as to lesser included offenses.

**(D) *No Probable Cause Finding.*** If the court finds that probable cause does not exist, the court must dismiss the complaint without prejudice.

**(4) *Public Safety Determination.*** In determining whether public safety would best be served by transferring the juvenile, the court must consider those factors specified in A.R.S. § 8-327. [**Staff Note:** Staff added a statutory reference and deleted the phrase, “as provided by law.”]

**(5) *Order of Transfer.*** If the court determines that transfer is appropriate, the court must state its reasons in writing in the form of a minute entry or written order. The court also must order that a certified transcript of the probable cause phase of the hearing be filed with the clerk within 20 days after the hearing was completed.

**(6) *No Transfer.*** If the court determines that transfer is not appropriate, the court must deny [**Staff Note:** Does the court ‘dismiss’ the motion or deny it?] the motion to transfer and set an adjudication hearing within 30 days after entry of the order of dismissal. The complaint will serve as the petition for purposes of further juvenile proceedings.



## Rule 34. Transfer for Criminal Prosecution

(a) **Generally.** ~~If it is the prosecutor's opinion [Staff Note: The current rule begins, "If, in the opinion of the prosecutor,..." Suggest deleting the current and restyled versions and say instead, "If the prosecutor believes...."] that the juvenile is not a proper person over whom the juvenile court should retain jurisdiction, the~~ The prosecutor may file a motion requesting ~~that~~ the juvenile court to waive jurisdiction and order the transfer of the juvenile to the appropriate criminal division of the superior court for ~~criminal~~ prosecution as an adult.

**(b) Motion and Complaint.** A motion ~~for [to?] to~~ transfer must be accompanied by a criminal complaint that ~~clearly designates~~ identifies the offense or offenses for which transfer is sought. Copies of the motion and complaint must be served pursuant to Rule 15.

~~(b)~~**(c) Amending the Complaint.** On the prosecutor's motion, the court may allow amendments to the complaint ~~[Staff Note: See the current version shown by strikethrough below; it refers to amending the petition, but it seems that it should be amending the complaint]~~ to conform to the evidence, but the amendments must be made before entry of an order to transfer, and the juvenile may not be transferred or held to answer for an offense other than one for which the court found probable cause at the transfer hearing. An amended complaint must be served upon the parties in the same manner as the original motion and complaint.

~~(1) Amendment to Complaint.~~ Upon motion by the prosecutor, the court may ~~amend the petition at any time before the transfer decision is made to conform to the evidence, but the juvenile shall not be transferred or held to answer for an offense different from the offense for which probable cause was found at the transfer hearing.~~

~~(e) Service.~~ ~~Copies of the motion and complaint must be served pursuant to Rule 15. An amended complaint must be served upon the parties in the same manner as the original motion and complaint.~~

**(d) Time Limits.** The motion and complaint must be filed ~~within no later than~~ 15 days ~~of~~ after the date of the advisory hearing, except the court on a finding of good cause for delay may allow a later filing if the juvenile will not be substantially prejudiced as a result of the delay.

**(e) Transfer Investigation.** Upon receipt of the motion for transfer, the juvenile probation officer must conduct a transfer investigation and prepare a written report addressing those factors specified in A.R.S. § 8-327 ~~[Staff Note: Staff added a statutory reference]~~ that the court considers in determining whether to transfer the

juvenile. ~~A-The juvenile probation officer must provide a~~ copy of the report ~~must be given to all the~~ parties at least 5-7 calendar days before the transfer hearing, unless the time is waived by the parties.

**(1) Evaluation of Juvenile.**

**(A) Order.** -At any time after the filing of the motion to transfer, the court on a party's request or on its own may order the juvenile to submit to physical, psychological, or psychiatric evaluations, or any combination thereof.

~~(B) Report.~~ The experts must submit their reports to the court ~~within 10 court days after completing their examinations at least 7 calendar days before the transfer hearing.~~ ~~The experts' reports will be made available to all parties, except that any statement or summary of the juvenile's statements concerning the charged offense must be made available only to the juvenile.~~ Upon receipt, court staff will ~~copy and distribute~~ provide the expert's report to the juvenile's the court and counsel for the juvenile. The juvenile's counsel is responsible for editing ~~a the report copy for the prosecutor by redacting any statement or summary of the juvenile's statements concerning the charged offense. Juvenile's counsel must then return and returning~~ the edited copy to court staff within 24 hours of receipt and provide the edited version to the prosecutor.

~~(C) Prior Transfer.~~ If the juvenile has previously been transferred for criminal prosecution by any juvenile court of this state, at any time before the hearing the court may waive the juvenile probation officer's transfer investigation or the experts' evaluations. Any prior orders of transfer, probation reports, or reports pertaining to physical, psychological or psychiatric evaluations conducted as part of the prior transfer proceedings must be provided to the parties and counsel.

~~(2) Incompetence.~~ ~~The As provided in A.R.S. § 8-291 et seq., the~~ court must not transfer a juvenile for criminal prosecution who is not competent. ~~[Staff Note: Should the rule specify what is done in that circumstance?]~~

**(f) Transfer Hearing.** A transfer hearing must be conducted by a judge, ~~except as provided in Ariz. R. Sup Ct 91(f).~~ ~~[Staff Note: SCR 91(f) is not a correct cross-reference.]~~ The transfer hearing must be conducted in two phases. The first phase includes a determination of probable cause that an offense was committed and whether the juvenile committed the alleged offense. The second phase determines whether public safety would best be served by the transfer of the juvenile for prosecution. The two phases may be heard consecutively or on separate dates as the court determines.

- (1) **Time Limits.** A transfer hearing must be held ~~within 30 days of the advisory hearing. However, if the motion for transfer was filed after the advisory hearing, the transfer hearing must be held within~~not later than 30 days after the filing of the motion to transfer. The court may continue the hearing for good cause.
- (2) **Waiver.** The juvenile may waive an evidentiary hearing on either phase of the transfer proceeding. A waiver of the evidentiary hearing on the probable cause phase of the transfer proceeding must be in writing and signed by the juvenile, the juvenile’s counsel, and the prosecutor. Before accepting a waiver, the court must inform the juvenile of the consequences of a waiver and the rights under Criminal Rules 5.3 and 5.4(c) that the juvenile is waiving. The court must make written findings concerning the waiver by minute entry or order.
- (3) **Probable Cause Determination.**
  - (A) **Applicable Rules.** The probable cause phase must be conducted on the record and as provided in Criminal Rules 5.3 and 5.4(c). The probable cause phase of the transfer hearing, or a waiver of that phase under these rules, constitutes compliance with the defendant’s right to a preliminary hearing under Criminal Rule 5.1.
  - (B) **Evidence.** ~~Objections to evidence on the basis that it was acquired by unlawful means are inapplicable at the probable cause hearing. A court must not exclude evidence during a probable cause hearing solely on the ground that it was obtained unlawfully.~~
  - (C) **Probable Cause Finding.** If the court finds there is probable cause to believe that the charged offense has been committed and that the juvenile committed it, the court must proceed to the public safety determination. If the court does not find probable cause for the charged offense, it may find probable cause as to lesser included offenses.
  - (D) **No Probable Cause Finding.** If the court finds that probable cause does not exist, the court must dismiss the complaint without prejudice.
  - ~~(E) **Certified Transcript of Proceeding.** If the court orders a transfer of the juvenile, the certified transcript of the probable cause phase of the hearing must be filed with the clerk within 20 days after the hearing was completed.~~
- (4) **Public Safety Determination.** In determining whether public safety would best be served by transferring the juvenile, the court must consider those factors specified in A.R.S. § 8-327. [Staff Note: Staff added a statutory reference and deleted the phrase, “as provided by law.”]

(5) *Order of Transfer.* If the court determines that transfer is appropriate, the court must state its reasons in writing in the form of a minute entry or written order.

~~[Staff Note: Either of these will be written.]If the court orders a transfer of the juvenile~~The court also must order that ~~e, the~~a certified transcript of the probable cause phase of the hearing ~~must~~ be filed with the clerk within 20 days after the hearing was completed.

(6) *No Transfer.* If the court determines that transfer is not appropriate, the court must ~~dismiss~~ deny [Staff Note: Does the court ‘dismiss’ the motion or deny it?] the motion to transfer and set an adjudication hearing within 30 days after entry of the order of dismissal. The complaint will serve as the petition for purposes of further juvenile proceedings.

## Rule 37. Definitions

- (a) “Parent,” as used in Part III, and in addition to the definition in Rule 2, includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian.
- (b) “Party” means a child, parent, guardian, DCS, any petitioner, and any person, Indian tribe, or entity that the court has allowed to intervene.
- (c) “Participant” includes any person permitted by the court or authorized by law to participate in the proceedings. Participants must be notified of all applicable proceedings as required by law or court order. A participant is not a party.
- (d) “Child’s Attorney” means an attorney who provides legal representation for a child and who owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child as is due an adult client.
- (e) “Guardian ad Litem” means an attorney appointed to protect the interests of a minor or an individual who may be incompetent or in need of protection. A Guardian ad Litem is not bound by the client’s expressed preferences or the attorney-client privilege.

### (f) Definitions Under ICWA.

- (1) **Parent.** The term parent means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.
- (2) **Indian Child.** The term Indian child means any unmarried person under the age of 18 and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe. The findings and elevated burden of proof required by the Indian Child Welfare Act does not apply until the court finds that the child is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe.
- (3) **Indian Child’s Tribe.** The term Indian child’s tribe means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.
- (4) **Indian Custodian.** The Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to

whom temporary physical care, custody and control has been transferred by the parent of the child.

- (5) ***Indian Tribe.*** Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c).
- (6) ***Extended Family Member.*** The term extended family member means a person as defined by law or custom of the Indian child's tribe, or, in the absence of such law or custom, means a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, sister or brother, sister-in-law or brother-in-law, niece or nephew, first or second cousin, or step-parent.
- (7) ***Foster Care or Preadoptive Placement Preferences.*** ~~Any child accepted for foster care or preadoptive placement shall be in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. The child shall be placed within a reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:~~
  - (A) ~~a member of the Indian child's extended family;~~
  - (B) ~~a foster home licensed, approved or specified by the Indian child's tribe;~~
  - (C) ~~an Indian Foster home licensed or approved by an authorized non-Indian licensing authority;~~
  - (D) ~~an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.~~

## **Rule 46. Motions**

- (a) **Form.** Motions must be in writing, unless otherwise authorized by the court, and state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.
- (b) **Filing.** A motion must be filed with the clerk. A copy of the motion must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding juvenile judge or that judge's designee. The filing party must serve all other parties with a copy of the motion by mail, hand delivery, fax, or electronic means.
- (c) **Response.** If the moving party serves the motion by hand delivery, fax, or electronic means, a response to a motion must be filed within 5 days of service. If the motion is served by mail, a response is due within 10 days of service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.
- (d) **Court Ruling.** Except as these rules or statutes provide otherwise, after the time for a response has expired or if no party objects, the court may rule on the motion with or without a hearing.
- ~~(e) **Motion for Summary Judgment.** A motion for summary judgment must conform to the requirements in Civil Rule 56, except that if the motion would dispose of an issue set for a scheduled adjudication the motion must be filed not less than 45 days before the adjudication. An opposing party must file a response within 20 days after the filing of the motion. The court may modify the time for filing the motion and response.~~
- ~~(f) **Motion to Set Aside a Final Order.** A motion to set aside a final order, must conform to the requirements of Civil Rule 60(b) (d), and be filed within 6 months of the final order unless the moving party alleges grounds under Rule 60(b)(1), (2) or (3), in which case the motion must be filed within 3 months of the final order.~~
- ~~(g) **Motion to Continue.** A motion to continue must be made in good faith and must state the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court may grant a motion to continue for good cause.~~



## Rule 46. Motions

- (a) **Form.** Motions must be in writing, unless otherwise authorized by the court, and set forth the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.
- (b) **Filing.** A motion must be filed with the clerk. A copy of the motion ~~and a notice of hearing if the matter is contested~~ must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the ~~court administrator~~ presiding juvenile judge or that judge's designee. ~~A~~ The filing party must serve all other parties ~~must be served~~ with a copy of the motion by mail, hand delivery, fax, or ~~by~~ electronic means.
- (c) **Response.** If the moving party serves the motion by hand delivery, fax, or electronic means, ~~A~~ a response to a motion must be filed within 5 days of service ~~of the motion by hand delivery, fax, or by electronic means. Service is deemed complete upon receipt if served by hand delivery, fax or by electronic means. [WG Note 5/29/2020: Save the preceding sentence for a new general rule on service of filed documents. Refer to WG-1 for a general rule on service and time computation.]~~ If the motion is served by mail, a response is due within 10 days of service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order. ~~The~~
- ~~(e)~~(d) **Court Ruling.** Except as these rules or statutes provide otherwise, ~~court after the time for a response has expired or if no party objects, the court~~ may rule on the motion with or without a hearing ~~[Staff Note: The current rule does not include a provision for requesting a hearing or oral argument on a motion], if the motion states there is no objection or the time for filing an objection has expired.~~ ~~The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.~~
- ~~(d)~~(e) **Motion for Summary Judgment.** ~~A motion for summary judgment must conform to the requirements set forth in Civil Rule 56, except that if the motion would dispose of an issue set for a scheduled adjudication the motion must be filed not less must be filed not less than 30 45 days before the trial adjudication or within the time set by the court. An opposing party must file a response within 20 days after the filing of the motion. The court may modify the time for filing the motion and response.~~

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

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

**Rule 46.2. Motions to Continue, for Summary Judgment, and to Set Aside a Final Order**

- (a) **Continue.** A motion to continue must be made in good faith and must state the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court may grant a motion for good cause.
- (b) **Motion for Summary Judgment.** A motion for summary judgment must conform to the requirements in Civil Rule 56, except that if the motion would dispose of an issue set for a scheduled adjudication, the motion must be filed **not less than** 45 days before the adjudication hearing. An opposing party must file a response within 20 days after the filing of the motion. The court may modify the time for filing the motion and response.
- (c) **Motion to Set Aside a Final Order.** A motion to set aside a final order must conform to the requirements of Civil Rule 60(b) – (d), except that the motion must be filed within 6 months of the final order unless the moving party alleges grounds under Rule 60(b)(1), (2), or (3), in which case the motion must be filed within 3 months of the final order.

**Rule 46.2 Motions to Continue, for Summary Judgment, and Motion to set Set Aside a Final Order, Motion to Continue and Motion for Judgement as a Matter of Law**

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

(a)

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

**b. Motion to Set Aside a Final Order.** A motion to set aside a final order, must conform to the requirements of Civil Rule 60(b)-(d), except that the motion shall must be filed within 6 months of the final order unless the moving party alleges grounds under Rule 60(b)(1), (2) or (3), in which case the motion must be filed within 3 months of the final order.-

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

**Rule 46.3. Motion for Judgement as a Matter of Law.-**

**Generally.-**

~~A party may make a motion for judgement as a matter of law may be made as to some or all of the allegations in a petition or motion at any time after at the conclusion of a petitioner's presentation of evidence, or after the moving party's presentation of evidence during evidence during an adjudication. When used in this~~

rule, “petitioner” includes the party who initiated a dependency or termination action, or who filed a motion for permanent guardianship.—

A party making a motion under this rule must identify the specific allegation or ground that the motion addresses, and the law and facts that support the motion.,—  
the court may resolve the issue against the petitioner or the moving party as follows:

When considering a motion for judgment as a matter of law, the court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party.

The court may grant the motion only if the facts in support of the petition have so little probative value that no reasonable judge could find for the petitioner.

**Required Inquiry.** Before granting a motion under this rule, the court must inquire if any party other than the petitioner wishes to present evidence in support of the allegations of the petition, and if so, the court must allow the party to present their evidence.

**d.——**

1.—— **Dependency Adjudication.** If The court may grant the motion if it finds the court finds that thereat the petitioner has not provided is not a legally sufficient evidentiary evidence basis to find (1) to prove the one or more of allegations in the dependency petition proven, or and that (2) to establish that the child is not a dependent child pursuant to A.R.S. § 8-201(15)(a), the court may resolve the issue against the petitioner and grant a motion for judgment as a matter of law against the petitioner or moving party.

2.—— **Termination Adjudication.** If The court may grant the motion if the court fiinds that there is not athe petitioner has not provided legally sufficient evidentiary evidence (1) to provebasis to find one or morean allegation or allegations in the motion or petition proven, or (2) to establish that termination would serve be ina the child’s best interest, the court may resolve the issue against the movant or petitioner and grant a motion for judgment as a matter of law against the petitioner or moving party..

3.—— **Guardianship Adjudication.** If The court may grant the motion if the court finds that there is not a legally sufficient evidentiary evidence basis to prove the allegations in a motion for guardianship, the court may resolve the issue against the

movant and grant a motion for judgment as a matter of law against the petitioner or moving party.;

4. ~~ICWA. When ICWA applies, the court may resolve the issue against the movant or petitioner if the court finds that there is not a legally sufficient evidentiary basis to find if the court finds the standards and burdens of proof have been met as required by § 1911 et. seq. of ICWA and 25 C.F.R. part 23. there is not a legally sufficient evidentiary basis for the findings required under ICWA.~~

~~ICWA. If ICWA applies to/in any of the adjudications described in sections (c), (d), or (e), any party make move for judgment as a matter of law on whether the petitioner has provided sufficient evidence the court may resolve the issue against the petitioner if the court finds that there is not sufficient evidence to find that the standards and burdens of proof have been met as required by § 1911 et. seq. of ICWA and 25 C.F.R. part 23.~~

~~**Findings.** If the court grants a motion under this rule in whole or in part, the court must make findings that support granting the motion.~~

(c)

### **Rule 46.3. Motion for Judgment as a Matter of Law**

#### **(a) Generally.**

- (1) A party may make a motion for judgment as a matter of law as to some or all of the grounds or allegations in a petition or motion at the conclusion of a petitioner's presentation of evidence. When used in this rule, "petitioner" is the party who initiated a dependency, permanent guardianship, or termination action, either by petition or motion.
- (2) A party making a motion under this rule must identify the specific ground or allegation the party is challenging and the law and facts that support the motion.
- (3) When considering a motion under this rule, the court must view the evidence and all reasonable inferences in the light most favorable to the petitioner.
- (4) The court may grant the motion only if the facts in support of the petition have so little probative value that no judge could reasonably find for the petitioner.

**(b) Required Inquiry.** Before granting a motion under this rule, the court must inquire if any party other than the petitioner wishes to present evidence in support of the grounds or allegations in the petitioner's motion or petition, and if so, the court must allow the party to present evidence.

**(c) Dependency Adjudication.** The court must grant the motion if it finds that the petitioner has not provided sufficient evidence to establish that the child is a dependent child pursuant to A.R.S. § 8-201(15)(a).

**(d) Termination Adjudication.** The court must determine whether to grant a motion under this rule based on the sufficiency of the evidence for each allegation or ground challenged by the motion.

- (1) **Grounds.** The court must dismiss each ground for which there is insufficient evidence. It must proceed with the adjudication on any remaining ground.
- (2) **Best Interests.** If the court finds sufficient evidence on any of the remaining grounds, it must grant the motion if it determines that the petitioner has failed to provide sufficient evidence to establish that the termination would be in the child's best interests.

**(e) Guardianship Adjudication.** The court must grant the motion if the court finds that there is not sufficient evidence to prove the grounds for permanent guardianship.

**(f) ICWA.** If ICWA applies **in** any of the adjudications described in sections (c), (d), or (e), any party may move for a judgment under this rule on whether the petitioner has

provided sufficient evidence as required by 25 U.S.C. § 1912 and 25 C.F.R. part 23.101 et seq.

**(g) Findings.** If the court grants a motion under this rule in whole or in part, the court must make findings that support granting the motion.

### Rule 46.3. Motion for Judgment as a Matter of Law

~~(a)~~—**Generally.**

(a)

~~(1)~~ A party may make a motion for judgment as a matter of law as to some or all of the grounds or allegations in a petition or motion at the conclusion of a petitioner’s presentation of evidence. ~~or after the moving party’s presentation of evidence during an adjudication.~~ When used in this rule, “petitioner” ~~includes~~ is the party who initiated a dependency, permanent guardianship, or termination action, either by petition or motion. ~~or who filed a motion for permanent guardianship.~~

(1)

~~(2)~~ A party making a motion ~~FOR JUDGMENT AS A MATTER OF LAW~~ under this rule must identify the specific ground or allegation ~~or the party is challenging~~ ground that the motion addresses, and the law and facts that support the motion.

(2)

~~(3)~~ When considering a motion ~~for judgment as a matter of law~~ under this rule, the court must view the evidence and all reasonable inferences in the light most favorable to the ~~non-moving party~~ petitioner.

(3)

~~(4)~~ The court may grant the motion ~~FOR JUDGMENT AS A MATTER OF LAW~~ only if the facts in support of the petition have so little probative value that no ~~reasonable~~ judge could reasonably find for the petitioner.

(4)

~~(b)~~—**Required Inquiry.** Before granting a motion under this rule, the court must inquire if any party other than the petitioner wishes to present evidence in support of the grounds or allegations in the petitioner’s motion or ~~of the~~ petition, and if so, the court must allow the party to present ~~their~~ evidence.

(b)

~~(e)~~—**Dependency Adjudication.** The court ~~may~~must grant the motion if it finds that the petitioner has not provided sufficient evidence ~~(1) to prove one or more of THE allegations in the dependency petition, and (2)~~ to establish that the child is a dependent child pursuant to A.R.S. § 8-201(15)(a).

(c)

~~(d)~~—**Termination Adjudication.** The court must determine whether to grant a motion under this rule based on the sufficiency of the evidence for each allegation or ground challenged by the motion.

—**Grounds.** The court must dismiss each ground for which there is insufficient evidence. The court may grant the motion ON ONE OR MORE OF THE GROUNDS FOR TERMINATION if THE COURT finds that the petitioner has not provided sufficient evidence ON THOSE GROUNDS. IF THE COURT FINDS THERE IS SUFFICIENT EVIDENCE It must proceed with the adjudication TO SUPPORT ONE OR MORE OF THE GROUNDS, THE ADJUDICATION MUST PROCEED on any remaining ground. ON THE REMAINING GROUNDS

(1)

—**Best Interests.** If the court finds sufficient evidence on any of the remaining grounds, it UNLESS THE COURT THEN must grant the motion if it determines that the petitioner has failed to provide sufficient evidence to establish that the termination would be in the child's best interest.

(2)

~~(e)~~ **Guardianship Adjudication.** The court ~~may~~must grant the motion if the court finds that there is not sufficient evidence to prove the ~~allegations~~ grounds for permanent guardianship.

~~(f)~~ **ICWA.** If ICWA applies ~~to/in~~ IN in any of the adjudications described in sections (c), (d), or (e) ~~INVOLVING AN INDIAN CHILD AS DEFINED BY ICWA~~, any party may move for judgment as a matter of law under this rule on whether the petitioner has provided sufficient evidence ~~the court may resolve the issue against the petitioner if the court finds that there is not sufficient evidence~~ to find that ~~(1) ACTIVE EFFORTS HAVE BEEN MADE TO PROVIDE REMEDIAL SERVICES AND REHABILITATIVE PROGRAMS DESIGNED TO PREVENT THE BREAKUP OF THE INDIAN FAMILY AND THAT THOSE EFFORTS HAVE BEEN~~

~~UNSUCCESSFUL, OR AND (2) FOR FOSTER CARE PLACEMENT, THERE IS CLEAR AND CONVINCING EVIDENCE OR, FOR TERMINATION OF PARENTAL RIGHTS, IT IS BEYOND A REASONABLE DOUBT THAT THE PARENT'S CONTINUED CUSTODY OF THE CHILD IS LIKELY TO WILL RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD, the standards and burdens of proof have been met as required by 25 U.S.C. § 1912 1 et. seq. of ICWA and 25 C.F.R. part 23.101 et seq.:-~~

**(g) Findings.** If the court grants a motion under this rule in whole or in part, the court must make findings that support granting the motion.



### **Rule 48.1. In-home Intervention**

- (a) Generally.** In-home intervention allows a child to stay in the home after the filing of a dependency petition, while remaining under the supervision of DCS and the court and subject to criteria established in A.R.S. § 8-891 and subpart (b)(2) of this rule.
- (b) Procedure.** The petitioner may request in-home intervention in the dependency petition. Regardless of whether the petitioner made the request in the dependency petition, the court may order in-home intervention if the court makes all the findings required by subpart (b)(2) of this rule.
- (1) Hearing.** The court may consider in-home intervention at any time prior to the dependency adjudication. At a hearing when in-home intervention is considered, the court must ask whether the parent, guardian, or Indian custodian agrees to in-home intervention and to participate in services. In open court, the court must provide Form 1A, request that the parent, guardian, or Indian custodian return the signed form, and note on the record that the form was provided. If the parent, guardian, or Indian custodian does not agree to in-home intervention, the court may allow the petitioner to file an amended dependency petition.
- (2) Findings.** Before ordering in-home intervention, the court must find all the following:
- (A)** The child has not been removed from the home pursuant to Article 9, Chapter 4, Title 8 of the Arizona Revised Statutes.
  - (B)** In-home intervention appears likely to resolve the risk issues described in subpart (b)(2)(D).
  - (C)** The parent, guardian, or Indian custodian agrees to a case plan and participation in services.
  - (D)** One of the following conditions exists:
    - (i)** the child is at risk of harm because the parent, guardian, or Indian custodian is unable or unwilling to provide food, clothing, shelter, or medical care; or
    - (ii)** the parent, guardian, or Indian custodian is unable to provide proper care, control, and supervision of the child.
- (3) Orders.** The in-home intervention order may include a training or treatment plan for the parent, guardian, or Indian custodian and the child. The order must include a specific time for completion of in-home intervention, which may not exceed one year **from the date of the filing of the petition** without the court's review and approval. The petitioner must file a status report with

recommendations at least two weeks before the review hearing. The court must dismiss the dependency petition if the time for completing in-home intervention has expired without a court extension or a dependency adjudication hearing has not been set.

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

## **Rule 54. Pretrial Conference**

**(a) Generally.** The court may hold a pretrial conference before the dependency adjudication hearing to determine whether the parties are prepared and intend to proceed to the dependency adjudication hearing, or whether it is still possible for the parties to agree on a resolution of the remaining issues without a hearing.

**(b) Procedure before the conference.** Prior to the pretrial conference the parties must confer and determine:

- (1) whether the parties have completed disclosure under Rule 44(B)(2);
- (2) the amount of time needed for trial;
- (3) the scheduling of witnesses;
- (4) any other issues raised by the parties; and
- (5) whether the trial will be closed to the public.

**(c) Procedure at the pretrial conference.** At the pretrial conference:

- (1) The parties will advise the court of the status of the issues listed in (1) above.
- (2) If the parties wish to discuss possible settlement, the court may schedule a settlement conference pursuant to Rule 53 or a mediation.
- (3) The court may accept an admission or a no contest plea and proceed with disposition pursuant to Rule 56.
- (4) The court may proceed with adjudication if there is a failure to appear pursuant to A.R.S. § 8-844(F).
- (5) The court may affirm or modify trial dates.
- (6) The court may limit the issues to be litigated at the dependency adjudication hearing.

**(d) Findings and Orders.** All findings and orders must be in a signed order or in a minute entry.

**(e) Admission/No Contest.** If the court finds the parent, guardian, or Indian custodian admits or does not contest that the child is dependent, the court may adjudicate the child dependent and enter its findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56.

- (1) ***Respondent's Failure to Appear.*** The court may proceed with the dependency adjudication and disposition if it finds on the record specific facts upon which to

adjudicate the child dependent and finds that the parent, guardian, or Indian custodian had notice of the hearing;

- (2) was properly served pursuant to Rule 48X;
- (3) had been admonished regarding the consequences of failing 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; and
- (4) failed to demonstrate good cause for the failure to appear, has waived their rights, and is deemed to have admitted the allegations in the dependency petition.
- (5) **ICWA.** If ICWA applies, to complete an adjudication, the court must 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.

**(f) Affirm Dependency Adjudication.** If the parties are unable to reach agreement, the court shall affirm a dependency adjudication hearing date or may set another proceeding to facilitate settlement. The court may order the parties to file pretrial statements pursuant to Rule 44, or proposed findings of fact and conclusions of law to each other and the court prior to trial.

**(g) Admonition.** The court must:

- (1) 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, responsibilities, and the consequences of failing to appear if the adjudication is affirmed.
- (2) Provide future court dates and ensure that the parent, guardian, or Indian custodian is advised of, and understands the consequences of failing to participate in reunification services and failing to attend future proceedings after accepting an admission or no contest plea. ~~Make findings and enter any other orders as may be appropriate and required by law, including limiting the issues to be litigated at the dependency adjudication hearing and ordering the preparation of a disposition report as required in Rule 56.~~ (Deleted the findings and orders and put the language re: limiting the issues at trial above in procedures – Deleted the comment.)

## Rule 54. Pretrial Conference

**Generally.** The court may hold a pretrial conference before the dependency adjudication hearing to determine whether the parties are prepared and intend to proceed to the dependency adjudication hearing, or whether it is still possible for the parties to agree on a resolution of the remaining issues without a hearing.

### (a)

—Procedure before the conference.

(b) Prior to the pretrial conference the parties must confer and determine:

—

(1) whether the parties have completed disclosure under Rule 44(B)(2);

—

(2) the amount of time needed for trial;

—

(3) the scheduling of witnesses;

—

(4) any other issues raised by the parties; and

—

(5) whether the trial will be closed to the public.

(c) Procedure At the pretrial conference. At the pretrial conference::

—

(1) The parties will advise the court of the status of the issues listed in (1) above.

—

(2) If the parties wish to discuss possible settlement, the court ~~must~~ may schedule a settlement conference pursuant to Rule 53 or a mediation.

—

(3) The court may accept an admission or a no contest plea and proceed with disposition pursuant to Rule 56.

—

(4) The court may proceed with adjudication if there is a failure to appear pursuant to A.R.S. § 8-844(F).

—

(5) The court may affirm or modify trial dates.

—

(6) -The court may limit the issues to be litigated at the dependency adjudication hearing.

~~(A) —~~

~~(2) — If the parties advise the court that the matter will not settle and will proceed to trial, the parties and the court must confer and determine:~~

~~(A) — Whether the parties have completed disclosure under Rule 44(B)(2);~~

~~(B) the amount of time needed for trial;~~

~~(C) — the scheduling of witnesses;~~

~~(D) — any other issues raised by the parties as may be appropriate;~~

~~(E) whether the trial will be closed to the public; and~~

~~(F) how a verbatim record of the dependency adjudication hearing will be made.~~

~~— (3) The court may limit the issues to be litigated at the dependency adjudication hearing.~~

~~— ~~(d) e~~ Findings and Orders. All findings and orders must be in a signed order or in a minute entry. writing. the form of a signed order or contained in a minute entry.~~

(d)

~~(b) Respondent Admission/No Contest. Admits or Does Not Contest. If the court finds the parent, guardian, or Indian custodian admits or does not contest that the child is dependent, the court may adjudicate the child dependent and enter its findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56.~~

(e)

—

~~— (2) Respondent Respondent's Failures to Appear. The court may proceed with the dependency adjudication and disposition if it finds on the record specific~~

facts upon which to adjudicate the child dependent and finds that the parent, guardian, or Indian custodian:

(1) had notice of the hearing;

---

(2) was properly served pursuant to Rule 48X;

---

(3) had been admonished regarding the consequences of failing 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; and

---

(4) failed to demonstrate good cause for the failure to appear, has waived their rights, and is deemed to have admitted the allegations in the dependency petition.

---

~~(D) If the court finds that the parent, guardian, or Indian custodian failed to appear at the pretrial conference without good cause, had notice of the hearing, 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 and enter findings and orders pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56. 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.~~

(5) (3) ICWA. If ICWA applies, to complete an adjudication, the court must 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.

---

~~(f)~~

~~(e) **Affirm Dependency Adjudication. Setting a Dependency Adjudication Hearing.** If the parties are unable to reach agreement, the court shall affirm ~~may set~~ a dependency adjudication hearing date ~~or may set another proceeding to facilitate settlement.~~ ~~Or a mediation.~~ The court may order the parties to ~~submit file individual~~ pretrial statements pursuant to Rule 44, or proposed findings of fact and conclusions of law to each other and the court prior to trial, ~~or to submit a joint pretrial statement to the court. The pretrial statement must contain the information set forth in Rule 44(B)(2)(a-e).~~~~

~~(f)~~

---

~~(g) **Admonition.** The court must:~~

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~~(1) **(a)** Provide a copy of Form 1 If the court sets a dependency adjudication hearing, it must address the parent, guardian, or Indian custodian in open court 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, responsibilities, and the consequences of failing to appear if the adjudication is affirmed. ~~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. The court must also advise the parent, guardian, or Indian custodian 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 must 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.~~~~

---

~~(A) **(b)** Provide future court dates and ensure that the parent, guardian, or Indian custodian is advised of, and understands the consequences of failing to~~

participate in reunification services and failing to attend future proceedings after accepting an admission or no contest plea.

~~(2) ICWA. If ICWA applies, the court must 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.~~

~~(3) Make findings and enter any other orders as may be appropriate and required by law, including limiting the issues to be litigated at the dependency adjudication hearing and ordering the preparation of a disposition report as required in Rule 56. (Deleted the findings and orders and put the language re: limiting the issues at trial above in procedures – Deleted the comment.)dering the preparation of a disposition report as required in Rule 56.~~

(2)



## **Rule 55. Dependency Adjudication Hearing**

(a) **Generally.** At the dependency adjudication hearing, the court will determine whether the petitioner has met the burden of proving the child dependent.

(b) **Time.**

(1) **Requirement.** The dependency adjudication hearing must be completed no later than 90 days after service of the dependency petition on the parent.

(2) **Continuance.** The court may continue a dependency adjudication hearing beyond the time prescribed by A.R.S. § 8-842(C) for 30 days on a showing of good cause, and for a longer period upon a finding of extraordinary circumstances. The court's finding of extraordinary circumstances must be in writing and state the factual basis for the continuance.

(c) **Burden of Proof.**

(1) **Cases Not Subject to ICWA.** The petitioner must prove the allegations in the petition by a preponderance of the evidence.

(2) **ICWA Cases.** In addition to the proof required by subpart (c)(1), as provided by ICWA § 1912 and 25 C.F.R. § 23.121, and even when a parent admits or does not contest the allegations in a dependency petition, if the child is an Indian child, the petitioner must prove by clear and convincing evidence, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The petitioner must also satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have proven unsuccessful.

(d) **Admission/No Contest.** A parent may waive the right to trial on the allegations contained in the dependency petition by admitting or not contesting the allegations orally or in writing. In accepting an admission or if the parent does not contest the allegations in the petition, the court must:

(1) determine whether the parent understands the rights being waived;

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

(3) determine a factual basis to support a finding of dependency; and

(4) proceed with entering the findings and orders as set forth in section (g).

- (e) **Failure to appear.** The court may proceed with the dependency adjudication hearing if a parent fails to appear at the hearing without good cause and the court finds:
- (1) the parent had notice of the hearing;
  - (2) the parent was properly served pursuant to Rule 48x; and
  - (3) the notice of hearing advised the parent of the consequences of failing 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 allegation contained in the dependency petition.
- (f) **Procedure After Denial.** If a parent appears at the dependency adjudication hearing and continues to deny the allegations of the petition, the court must conduct a contested adjudication hearing.
- (g) **Amendments to Conform to the Evidence.** An amendment to conform to the evidence may be made during or after the presentation of evidence pursuant to Civil Rule 15(b).
- (h) **Findings and Orders.** Findings and orders must be in writing. As to each parent and based on the record and evidence presented, the court must:
- (1) Enter findings that the court has jurisdiction over the subject matter and persons before the court.
  - (2) If the petitioner failed to meet the required burden of proof, dismiss the petition and return the child to the parent.
  - (3) If the parent failed to appear, made the findings required by section (e).
  - (4) If the petitioner met the burden of proof, state specific facts that support a finding of dependency and adjudicate the child dependent, as defined by law.
  - (5) Enter orders concerning the placement and custody of the child pending disposition.
  - (6) If ICWA applies, 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 ICWA § 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.
  - (7) Conduct the disposition hearing pursuant to Rule 56, or set the disposition hearing no later than 30 days after the adjudication;
  - (8) address the parent in open court and advise them that failure to attend further proceedings without good cause or 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 must advise the parent that hearings may go forward in their absence. The court must make specific findings that it advised the parent of the consequences of failing to attend subsequent proceedings or participate in reunification services. The court may provide the parent with a copy of Form 1, request that the parent sign and return a copy of the form, and note on the record that the form was provided; and

- (9) make findings and enter any other orders as appropriate or required by law.



## Rule 55. Dependency Adjudication Hearing

(a) **Generally.** At the dependency adjudication hearing, the court will determine whether the petitioner has met the burden of proving the child dependent.

### (b) Time Limits.

(1) **Requirement.** The dependency adjudication hearing must be completed no later than within 90 days after of service of the dependency petition on the parent, guardian, or Indian custodian.

~~(b)(2)~~ **Continuance.** The court may continue a dependency adjudication hearing beyond the time prescribed by ~~law~~ A.R.S. § 8-842(C) for 30 days on a showing of good cause, and for a longer period only upon a finding of extraordinary circumstances. ~~[Staff Note: How do courts interpret the preceding sentence if parents were served on different days? See 8-844(D)]~~ Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. [Staff Note: Is the preceding sentence instructive?] ~~Any party requesting a continuance must file a motion stating extraordinary circumstances to support a continuance. The party must file the motion no later than within 5 days after discovering extraordinary circumstances.~~ The court's finding of extraordinary circumstances must be in writing and state the factual basis for the continuance.

### (c) **Burden of Proof.**

(1) **Cases Not Subject to ICWA.** The petitioner must prove the allegations in the petition by a preponderance of the evidence.

(2) **ICWA Cases.** In addition to the proof required by subpart (c)(1), as provided by ICWA § 1912 and 25 C.F.R. § 23.121, and even when a parent admits or does not contest the allegations in a dependency petition, if the child is an Indian child, the petitioner must prove by clear and convincing evidence, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The petitioner must also satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have proven unsuccessful.

~~(d) Procedure.~~ ~~The presentation of evidence at the dependency adjudication hearing should be as informal as the requirements of due process and fairness permit and shall~~

generally proceed in a manner similar to the trial of a civil action before the court without a jury. ~~[Staff Note: This provision repeats what is in draft Rule 3.]~~

~~(e) Admission/No Contest.~~ A parent, ~~guardian, or Indian custodian~~ may waive the right to trial on the allegations contained in the dependency petition by admitting or not contesting the allegations. ~~An admission or plea of no contest [Staff Note: Is a “plea of no contest” appropriate terminology in a civil dependency action?] may be orally or in writing. In accepting an admission or plea of if the parent does not contest the allegations in the petition no contest, the court must: [Staff Note: This section (D) is confusing because it mixes the subject of taking a party’s admission with the subject of taking evidence. Also, is an admission—especially the part about a factual basis—taken while a party is under oath? The rule does not address this.]~~

(d)

- (1) determine whether the party parent understands the rights being waived;
- (2) determine whether the parent knowingly, intelligently, and voluntarily admits or does not the admission or contest the allegations; plea of no contest is knowing, intelligent and voluntarily made;
- (3) determine a factual basis to support a finding of dependency; and
- (4) proceed with entering the findings and orders as set forth in subsection section (Eg).

~~—THE FOLLOWING PROVISION IS IN RULE 52. IS IT NECESSARY TO REPEAT IT HERE?~~

~~(2)(e) Failure to appear.~~ ~~If a parent, guardian, or Indian custodian fails without good cause to appear at the initial hearing, and the court finds the following, then~~ the court if based upon the record may adjudicate the child dependent proceed with the dependency adjudication hearing if a parent fails to appear at the hearing without good cause and the court finds:

- (1) the parent, ~~guardian, or Indian custodian~~ had notice of the hearing;
- (2) the parent, ~~guardian, or Indian custodian~~ was properly served pursuant to Rule 48~~x~~; and
- (3) the notice of hearing advised the parent, guardian, or Indian custodian of the consequences of failing 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 allegation contained in the dependency petition; ~~and~~

~~(3)~~**(f) Procedure After Denial.** If a parent appears at the dependency adjudication hearing and continues to deny the allegations of the petition, the court must conduct a contested adjudication hearing.

~~(4) the petitioner has established grounds upon which to adjudicate the child dependent.~~

**(g) Amendments to Conform to the Evidence.** An amendment to conform to the evidence may be made during or after the presentation of evidence is made under pursuant to Civil Rule 15(b).

~~(3) — [Staff Note: A Rule 15(b) motion is made during or after trial.]~~

~~(f)~~**(h) Findings and Orders.** Findings and orders must be in a signed order or contained in a minute entry writing. As to each parent, guardian, or Indian custodian, and based on the record and evidence presented, the court must:

(1) Enter findings that the court has jurisdiction over the subject matter and persons before the court.

(2) If the petitioner failed to meet the required burden of proof, dismiss the petition and return the child to the parent.;

~~(1)(3)~~ If the parent failed to appear, made the findings required by section (e).;

~~(2) If the petitioner failed to meet the required burden of proof, dismiss the petition and return the child to the parent, guardian, or Indian custodian; or in the alternative.~~

(4) If the petitioner met the burden of proof, state specific facts that support a finding of dependency and adjudicate the child dependent, as defined by law.

(5) Enter orders concerning the placement and custody of the child pending disposition.;

~~(3)(6)~~ If ICWA applies, make findings pursuant to the standards and burdens of proof as required under ICWA and ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section ICWA § 1915 of ICWA and 255 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences. (how to incorporate with burden of proof above.)

~~(4)(7)~~ Conduct the disposition hearing pursuant to Rule 56, or set the disposition hearing no later than within 30 days after the adjudication; and may order the preparation of the disposition report required by Rule 56(C);

~~(5) enter orders concerning the placement and custody of the child pending disposition;~~

~~(6)~~**(8)** aAddress the parent, ~~guardian, or Indian custodian~~ in open court and advise them that failure to attend further proceedings without good cause or 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 must advise the parent, ~~guardian, or Indian custodian~~ that hearings may go forward in their absence. The court must make specific findings that it advised the parent, ~~guardian, or Indian custodian~~ of the consequences of failing to attend subsequent proceedings or 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; and

~~(7) If ICWA applies, make findings pursuant to the standards and burdens of proof as required under ICWA or whether there is good cause to deviate from the preferences.~~

~~(8)~~mMake findings and enter any other orders as appropriate or required by law.

#### ~~— COMMITTEE COMMENT~~

~~(9) It is the recommendation of the committee that, in addition to the admonition set forth in this rule, the court should consider providing the parent, guardian, or Indian custodian with a separate written copy of the admonition in order to protect the due process rights of the parent, guardian, or Indian custodian. See Forms 2 and 3.~~

## **Rule 56. Disposition Hearing**

- (a) **Generally.** The court must conduct a disposition hearing for a dependent child pursuant to A.R.S. § 8-845.
- (b) **Time Limits.** The court must hold a disposition hearing no later than 30 days after the dependency adjudication hearing that was held pursuant to A.R.S. § 8-844 (E) and Rule 55.
- (c) **Considerations.** To determine the appropriate disposition, including the placement of the child and the case plan, the court may consider the parties' positions, any reliable statements or documents, and any testimony or other evidence, including information the court may have considered at a previous hearing.
- (1) ~~the parties' oral or written disposition reports;~~
  - (2) ~~documents entered into evidence at prior proceedings;~~
  - (3) ~~expert testimony or reports;~~
  - (4) ~~documents agreed upon by the parties; and~~
  - (5) ~~any other evidence admitted by the court.~~
- (d) **Court Action.** At the conclusion of the hearing, in a minute entry or signed order, the court must:
- (1) if DCS is a party, enter orders that DCS make reasonable efforts to provide services to the child and child's parent pursuant to A.R.S. § 8-846(A);
  - (2) if DCS is not a party, direct the parties, in the court's discretion, to participate in reasonable services that will facilitate reunification of the family or another permanent plan for the child pursuant to A.R.S. § 8-825(D)(2);
  - (3) enter orders concerning the placement and custody of the child;
  - (4) ~~enter orders concerning concurrent planning if required by A.R.S. § 8-845(D).~~
  - (5) set a review hearing within 6 months and set the permanency hearing;
  - (6) advise the parties present at the hearing and those identified in Rule 58(b)(1) of their right to participate in periodic review hearings; and
  - (7) address the parent, guardian, or Indian custodian in open court and advise them that failing to attend further proceedings without good cause or to participate in reunification services may result in termination of their parental rights or the establishment of a permanent guardianship of the child. The court must advise

the parent, guardian, or Indian custodian that the hearings may go forward in their absence. It must make specific findings that it advised them of these consequences and that they understand their rights and responsibilities pursuant to A.R.S. § 8-824 (E)(6) & (8).

The court may provide the parent, guardian, or Indian custodian with a copy of Form ##, request the parent, guardian, or Indian custodian to sign and return a copy of the Form, and note on the record that the Form was provided.

- (8)** If ICWA applies, make findings regarding 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 placement preferences.
- (9)** Make any other findings and enter any other orders as may be appropriate or required by law.

## **Rule 56. Disposition Hearing**

(a) **Generally.** ~~The court must conduct a disposition hearing for a dependent child pursuant to A.R.S. § 8-845. At a disposition hearing, the court determines the appropriate placement of a child who has been adjudicated dependent and reviews the child's permanent case plan.~~

(b) **Time Limits.** The court must hold a disposition hearing within no later than 30 days after the of the dependency adjudication hearing that was held pursuant to A.R.S. § 8-844 (E) and Rule 55. ~~Alternatively, the court may hold a disposition hearing in conjunction with a preliminary protective hearing, initial dependency hearing, mediation [Staff Note: Why is mediation included? Doesn't mediation refer to settlement facilitated by a private practitioner, who would not be authorized to conduct a disposition hearing?], settlement conference, pretrial conference, or dependency adjudication hearing~~

(c) **Disposition Report.** ~~The court may order the petitioner to prepare and file a disposition report that contains recommended dispositions and the basis for each recommendation. The petitioner must provide the report to the court and the parties 5 days before the hearing, unless the court orders otherwise.~~ **Procedure Considerations.** To determine the appropriate disposition, including the placement of the child and the case plan disposition, the court may consider the parties' positions, any reliable statements or documents, and testimony or documentary evidence, including any testimony or other evidence, including information the court may have considered at a previous hearing. (WK#3 Note 10/20/20: Consider Rule 3.1 to be consistent)

- (1) ~~the parties' oral or written disposition reports;~~
- (2) ~~documents entered into evidence at prior proceedings;~~
- (3) ~~expert testimony or reports;~~
- (4) ~~documents agreed upon by the parties; and~~
- (5) ~~any other evidence admitted by the court.~~

(d) **Court Action.** At the conclusion of the hearing, in ~~issue~~ a signed minute entry or signed order, the court must address the following:

- (1) ~~(A) services to achieve the case plan~~ if DCS is a party, enter orders that DCS to make reasonable efforts to provide services to the child and child's parent pursuant to A.R.S. § 8-846(A);

- (2) ~~ii)~~ if DCS is not a party, ~~the court~~ direct the parties, in the court's discretion, to participate in reasonable services that will facilitate reunification of the family or another permanent plan for the child pursuant to A.R.S. § 8-825(D)(2);
- (3) enter orders concerning the placement and custody of the child;
- (4) enter orders ~~concerning~~ concurrent planning ~~if required~~ if required by A.R.S. § 8-845(D). ~~concernin~~
- (5) set a review hearing within 6 months and set the ~~permanency hearing~~ permanency hearing;
- (6) advise the parties present at the hearing and those identified in Rule 58(b)(1) of their right to participate in periodic review hearings; and
- (7) address the parent, guardian, or Indian custodian in open court and advise them that failing to attend further proceedings without good cause or to participate in reunification services may result in termination of their parental rights or the establishment of a permanent guardianship of the child. The court must advise the parent, guardian, or Indian custodian that the hearings may go forward in their absence. ~~and~~ It must make specific findings that it advised them of these consequences and that ~~the parent~~ they understand their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6) & (8).

The court may provide the parent, guardian, or Indian custodian with a copy of ~~Form of Form 1##~~, request ~~that~~ the parent, guardian, or Indian custodian to sign and return a copy of the Form, and note on the record that the Form was provided.

- (8) If ICWA applies, ~~the court must~~ make findings regarding 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 placement preferences.
- (9) Make any other findings and enter any other orders as may be appropriate or required by law.

## **Rule 57. Motion to Determine the Provision of Reunification Services**

### **(a) Generally.**

- (1) A party may move the court to determine whether reunification services are required to be provided pursuant to A.R.S. § 8-846.
- (2) If the child is an Indian child, the court's granting of the motion does not determine whether active efforts are necessary under ICWA § 1912 and 25 C.F.R. § 23.121.

**(b) Procedure.** Upon a party's motion to relieve DCS of the requirement to provide reunification services, the court must consider whether one or more of the statutory circumstances in A.R.S. § 8-846(D) - (F) exist.

- (1) The court may rule on the motion without a hearing unless a hearing is requested.
- (2) If a party requests a hearing, evidence may be presented concerning whether reunification services are required, which may include:
  - (A) the parties' oral or written disposition reports;
  - (B) documents entered into evidence at prior proceedings;
  - (C) expert testimony or reports;
  - (D) documents agreed upon by the parties; and
  - (E) any other evidence admitted by the court.

**(c) Findings.** If the court finds by clear and convincing evidence that reunification services are not required, the court must set forth the specific factual basis for its findings, in a signed minute entry or written order and, if the child is an Indian child, include findings pursuant to the standards and burdens of proof required by Section 1912 of ICWA and 25 C.F.R. § 23.121.

### **(d) Orders.**

- (1) If the court denies the motion and the child is:
  - (A) in the custody of DCS, the court must order that the department make reasonable efforts to provide services to the child and the child's parent as provided by A.R. S. § 8-825(D)(1).

(B) not in the custody of DCS, the court must order that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time as provide by A.R.S. § 8-825(D)(2).

(2) If the court grants the motion, the court must order that the petitioner is relieved of providing reunification services and must enter other orders as required by A.R.S. § 8-845(C) (ii)If the child has been adjudicated dependent, set a permanency hearing as required by A.R.S. § 8-862(A)(1). (Note: removed because 8-846(C) requires the court to order a permanent plan and/or severance motion to be filed if aggravating circumstances are found.)

(3) Enter any other orders that may be appropriate or required by law.

~~Admonition. Address and advise the parent, guardian, or Indian custodian that failure to attend further proceedings without good cause may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent, guardian, or Indian custodian that the hearings may go forward in the absence of the parent, guardian, or Indian custodian. The court must make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings. 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.~~

### COMMITTEE COMMENT

In cases involving Indian children, the discontinuation of services may adversely impact any future attempt to terminate parental rights. ICWA requires that prior to terminating parental rights, the court must be satisfied that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.

**0**Rule 57. Motion to Determine the Provision of Reunification Services~~Consideration~~

~~(a)~~

~~(b)~~(a) **Generally.**

- (1) A party may move the court to determine whether reunification services are required to be provided pursuant to A.R.S. § 8-846.
- (2) If the child is an Indian child, the court's granting of the motion does not determine whether active efforts are necessary under ICWA § 1912 and 25 C.F.R. § 23.121.

~~(e)~~(b) **Procedure.** Upon a party's motion to relieve DCS of the requirement to provide reunification services, the court must consider whether one or more of the statutory circumstances in A.R.S. § 8-846(D) - (F) exist.

- (1) The court may rule on the motion without a hearing unless a hearing is requested.
- (2) If a party requests a hearing, the evidence may be presented court concerning whether reunification services are required, which may include:
  - (A) the parties' oral or written disposition reports;
  - (B) documents entered into evidence at prior proceedings;
  - (C) expert testimony or reports;
  - (D) documents agreed upon by the parties; and
  - (E) any other evidence admitted by the court after a hearing by clear and convincing evidence finds the existence of certain aggravating circumstances specified in A.R.S. § 8-846, services to the child and the parent designed to facilitate the reunification of the family are not required[Staff Note: Staff added the statutory reference and the "clear and convincing" standard contained in the statute. But staff questions whether "after hearing," which is in the current rule, is required. For example, is a hearing required if the court simply takes judicial notice of what is already in the court's file? Would that be considered a hear

~~(d)~~**Procedure.** ~~The court may[?] hear evidence concerning whether reunification services are required~~ [Staff Note: It seems that the first portion of this sentence would be more appropriate in the "purpose" provisions of section (A).] ~~and may consider evidence as set forth in Rule 56(D).~~ [Staff Note: The current provision

~~lacks information about who can request a reunification services hearing, and if the court has discretion to set a hearing.]~~

~~(e)(c) Findings and Orders. If the court finds by clear and convincing evidence that reunification services are not required, the court's findings must be the court must set forth the specific factual basis for its findings, included in a signed minute entry or a written order and, if the child is an Indian child, include findings pursuant to the standards and burdens of proof required by Section 1912 of ICWA and 25 C.F.R. § 23.121.~~

~~(f) If the court finds, by clear and convincing evidence, that reunification efforts are not required, the court must set forth the specific factual basis for its findings. Orders.~~

~~(g)(d) Order~~

~~(1) If the court denies the motion and the child is:~~

~~(A) in the custody of DCS, the court must order that the department make reasonable efforts to provide services to the child and the child's parent as provided by A.R. S. § 8-825(D)(1).~~

~~(B) not in the custody of DCS, the court must order that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time as provide by A.R.S. § 8-825(D)(2).~~

~~(2) If the court grants the motion, the court must order that the petitioner is relieved of providing reunification services and must enter other orders as required by A.R.S. § 8-845(C) (ii) If the child has been adjudicated dependent, set a permanency hearing as required by A.R.S. § 8-862(A)(1). (Note: removed because 8-846(C) requires the court to order a permanent plan and/or severance motion to be filed if aggravating circumstances are found.)~~

~~(3) Enter any other orders that may be appropriate or required by law.~~

~~(4) Admonition. Address and advise the parent, guardian, or Indian custodian that failure to attend further proceedings without good cause may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent, guardian, or Indian custodian that the hearings may go forward in the absence of the parent, guardian, or Indian custodian. The court must make specific findings that it advised the parent, guardian, or Indian custodian of the consequences of failure to attend subsequent proceedings. 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.

~~If ICWA applies, the court must 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.~~

~~Enter any other orders that may be appropriate or required by law.~~

### COMMITTEE COMMENT

In cases involving Indian children, the discontinuation of services may adversely impact any future attempt to terminate parental rights. ICWA requires that prior to terminating parental rights, the court must be satisfied that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.



## **Rule 59. Motion for Return of the Child**

- (a) **Generally.** At any time after the temporary custody hearing, a parent, guardian, or Indian custodian may file a motion with a supporting factual basis that asks the court to return the child to their custody pursuant to A.R.S. § 8-861. The court must set a hearing to determine whether return of the child would create a substantial risk of harm to the child's physical, mental, or emotional health or safety.
- (b) **Time Limits.** The court must set a hearing no later than 30 days after the filing date of the motion unless the parties agree otherwise.
- (c) **Burden of Proof.** The moving party has the burden of establishing by a preponderance of the evidence that the return of the child would not create a substantial risk of harm to that child's physical, mental, or emotional health or safety.
- (d) **Report and Response.**
- (1) ***DCS is the Petitioner.*** When DCS is the petitioner, it must file a report with the court at least 15 days before the hearing and provide copies to all parties. The report must address the following:
    - (A) the current case plan and goals of the case plan;
    - (B) the parent, guardian, or Indian custodian's compliance with the case plan; and
    - (C) the petitioner's opinion on whether returning the child to the parent, guardian, or Indian custodian would create substantial risk of harm to the child's physical, mental, or emotional health, or safety.
  - (2) ***DCS is not the Petitioner.*** When DCS is not the petitioner, the petitioner must file a response to the motion at least 15 days before the hearing.
- (e) **Procedure.** The court may consider evidence in the form of testimony or documents, which may include hearsay, to determine whether the child can be returned to the parent, guardian, or Indian custodian. The court must consider any failure of the parent, guardian, or Indian custodian to comply with the terms of the case plan as evidence that return of the child would create a substantial risk of harm to the child.
- (f) **Findings and Orders.** The court must make factual findings even when no party objects to the motion. All findings and orders must be in a minute entry or a signed order. The court must:
- (1) return the child to the parent, guardian, or Indian custodian if the court finds that the moving party met its burden of proof under section (c); or if the moving party

did not meet its burden of proof under section (c), the court must deny the motion;

- (2) set or affirm future hearing dates; and
- (3) address and advise the parent, guardian, or Indian custodian in open court that their failure to attend further proceedings without good cause and their failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent, guardian, or Indian custodian that the hearings may go forward in their absence. The court must 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.
- (4) ~~provide a copy of Form ## and request that the parent, guardian, or Indian eustodian sign the form and return it to the court; ensure that the parent, guardian, or Indian custodian understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6),(E)(8), and (I); and find 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;~~
- (5) If ICWA applies and the court has not yet done so, 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.
- (6) Make findings and enter any other orders.

**Rule 59. Motion for Return of the Child**

(a) **Generally.** At any time after the temporary custody hearing, temporary custody preliminary protective hearing, or the initial dependency, a parent, guardian, or Indian custodian may ~~move~~ file a motion with a supporting factual basis that asks asking the court to return the child to their custody pursuant to A.R.S. § 8-861. ~~of the parent, guardian, or Indian custodian.~~ The court must set a hearing to determine whether return of the child would create a substantial risk of harm to the child's physical, mental, or emotional health, or safety.

(b) **Time Limits.** ~~A~~ The court must set a hearing must be set no no later than within 30 days ~~after~~ of the filing date of the motion unless the parties agree otherwise.

~~(b)~~(c) **Burden of Proof.** The moving party has the burden of establishing, by a preponderance of the evidence, that the return of the child would not create a substantial risk of harm to that child's physical, mental, or emotional health, or safety.

**(d) Petitioner's Report and Response or Response.**

~~(e)~~(1) DCS is the Petitioner. ~~The petitioner~~ When DCS is the petitioner and if it objects to the motion, it must file a report with the court at least 15 days before the hearing and provide copies to all parties. The report must address the following:

~~(1)~~(A) the current case plan and goals of the case plan;

~~(2)~~(B) the parent, guardian, or Indian custodian's compliance with the case plan;  
and

~~(3)~~(C) the petitioner's opinion on whether returning the child to the parent, guardian, or Indian custodian would create substantial risk of harm to the child's physical, mental, or emotional health, or safety.

~~(3)~~(2) DCS is not the Petitioner. When DCS is not the petitioner, the petitioner must file a response to the motion at least 15 days before the hearing.

~~(d)~~(e) **Procedure.** The court ~~must~~ may consider evidence in the form of testimony or documents, ~~admitted into evidence and that which~~ which may include hearsay, to determine whether the child can be returned to the parent, guardian, or Indian custodian. ~~[Staff Note: See further the staff note in Rule 60(D) that pertains to a similar provision.]~~ The court must consider any failure of the parent, guardian, or Indian custodian to comply with the terms of the case plan as evidence that return of the child would create a substantial risk of harm to the child.

**(f) Findings and Orders.** The court must make factual findings even when no party objects to the motion. All findings and orders must be in a minute entry or a signed order or contained in a minute entry. The court must:

(1) return the child to the parent, guardian, or Indian custodian if the court finds that the moving party met its burden of proof under section (c); or if the moving party did not meet its burden of proof under section (c), the court must deny the motion;-

~~(e)~~

~~(1) The court must:~~

~~(A) return the child to the parent, guardian, or Indian custodian if the court finds inds, by a preponderance of the evidence, that the movant met its burden of proof under section (c) that return of the child would not create a substantial risk of harm to the child's physical, mental or emotional health or safety; or~~

~~(B) affirm prior custody orders if the petitioner sustains movant idid not meet its burden of proof under section (c)ts burden by a preponderance of the evidence that the return of the child would create a substantial risk of harm to the child's physical, mental or emotional health, or safety.~~

(2) Set or affirm future hearing dates; and-

~~(2) If the court affirms prior custody orders, it must:~~

~~(A) Set additional hearings as required by law.~~

(3) Address and advise the parent, guardian, or Indian custodian in open court that their failure to attend further proceedings without good cause and their failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent, guardian, or Indian custodian that the hearings may go forward in their absence. The court must 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.

(4) provide a copy of Form ## and request that the parent, guardian, or Indian eustodian sign the form and return it to the court; ensure that the parent, guardian, or Indian custodian understands their rights and responsibilities

pursuant to A.R.S. § 8-824(D), (E)(6), (E)(8), and (I); and find 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;

~~(B)~~—

~~(3)~~(5) If ICWA applies and the court has not yet done so, the court must 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.

~~(4)~~(6) Make Mmake findings and enter any other orders ~~as may be appropriate or required by law.~~



## **Rule 78. Petition for Child's Custody by a Non-Certified Person**

### **(a) Petition.**

- (1) ***By a Prospective Adoptive Parent.*** Except as provided in A.R.S. § 8-108(C), a prospective adoptive parent who is not yet certified to adopt, but who has custody of a child the person intends to adopt, must petition the court for an order permitting the person to keep custody of the child pending certification. The person must do so within 5 days of obtaining custody. The petition must set forth how and when the child came into the petitioner's care, why continued custody is in the child's best interests, and whether there is reason to know the child is an Indian child.
- (2) ***By Others.*** An agency, DCS, or person other than a prospective adoptive parent may petition the court for custody of a child pending placement of the child for adoption. Upon the filing of the petition, the court must set the matter for hearing and order the person currently having custody to show cause why the court should not grant the petition.

**(b) Notice of Hearing.** Unless otherwise provided by a local rule or practice, a notice of hearing must accompany the petition and include the location, date, and time of the hearing. The notice must require the attendance of persons or entities identified in subpart (d)(1).

**(c) Service.** The petitioner must serve the petition and notice of hearing in any manner reasonably designed to ensure the attendance at the hearing of the persons and entities identified in subpart (d)(2). If there is reason to know that the child who is the subject of the petition under this rule is an Indian child and the proceeding is involuntary under ICWA, the child's parent, Indian custodian, and tribe must be notified of the hearing as provided by Rule 79.1.

### **(d) Procedure.**

- (1) ***Time.*** The court must set a hearing no later than 10 days after the petition was filed, but the court may waive this time limit for good cause.
- (2) ***Attendance.*** The following persons or entities must attend the hearing, unless the court for good cause waives their attendance: the prospective adoptive parent, the child, and any person or representative of DCS or the agency responsible for preparing reports for the court pursuant to A.R.S. § 8-105.

**(e) Findings and Orders.** All findings and orders must be contained in a minute entry or signed order. The court must:

- (1) determine whether the custody requested by the petitioner is in the child's best interests;
- (2) grant the petition, or deny the petition and order that custody of the child be given to another person or agency if it is in the child's best interests;
- (3) if the court grants custody to a prospective adoptive parent who has not been certified to adopt, order that the prospective adoptive parent file an application for certification to adopt within 30 days. If the prospective adoptive parent or agency has not identified at the hearing who will prepare a report and recommendations pursuant to A.R.S. § 8-105, the court must set a status hearing within 30 days to determine the status of the certification; and
- (4) [if the child is an Indian child, or if there is reason to know that the child is an Indian child,] [**WG-4 note 11/9/2020:** which or both of the preceding?] make findings required under ICWA, including whether there is compliance with the placement preferences or whether there is good cause to deviate from the placement preferences under ICWA § 1915 and 25 C.F.R. §§ 23.130 through 23.132.

**(f) Expiration of Custody Order.**

- (1) ***Expiration and Extension.*** The order granting custody of a child to the prospective adoptive parent under this rule expires 6 months after it is entered. The court may extend the temporary custody order for good cause.
- (2) ***Status Hearing.*** Before the expiration of the order, the court must set a status hearing to determine whether the prospective adoptive parent has been certified and has filed a petition to adopt. The court may waive the attendance of the parties at the status hearing if the court has sufficient information showing that the prospective adoptive parent is proceeding with the adoption in a timely manner. The court may vacate the hearing upon the filing of a petition to adopt.

**(g) Revocation of Custody.** The court for good cause may rescind a custody order it has entered under this rule prior to the expiration date, but before doing so it must provide notice and an opportunity to be heard to the prospective adoptive parent and DCS or any agency that placed the child.

**COMMITTEE COMMENT**

~~It was the opinion of the Committee that procedures should exist to ensure that once temporary custody is granted, the prospective adoptive parent follow through with the certification and adoption process. By requiring the attendance of the person, division or agency responsible for preparing reports for the court, such as the certification report or~~

home study, those entities provide an additional safeguard. There may be circumstances where a hearing is not required if it appears to the court that the prospective adoptive parent has substantially completed the certification process but requires a temporary custody order for the purpose of obtaining insurance coverage for the child or in order to travel with the child. Pursuant to this rule, the court could issue the temporary custody order in the absence of a hearing.



**Rule 78. Petition for Temporary Child's Custody Custody by a Non-Certified Person** ~~[Staff Note: Staff added the words "petition for" to the title of this rule.]~~

**(a) Petition.**

**(1) *By a Prospective Adoptive Parent.*** ~~A~~ Except as provided in A.R.S. § 8-108(C), a person prospective adoptive parent who is not yet certified to adopt, but who has custody of a child the person intends to adopt, must petition the court for an order permitting the person to keep custody of the child pending certification. The person must do so within 5 days of obtaining custody. The petition must set forth how and when the child came into the petitioner's care, why continued custody is in the child's best interests, and whether there is reason to know the child is an Indian child.

~~**(a)(2) *By Others.*** An agency, DCS, or person other than a prospective adoptive parent ~~[Staff Note: Isn't "the person" the same as the "prospective adoptive parent?"]~~, seeking may petition the court for temporary custody of a child pending placement of the child for adoption ~~must file a petition and a notice of hearing with the clerk within 5 days of obtaining custody of the child. Upon the filing of the petition, the court must set the matter for hearing and order the person currently having custody to show cause why the court should not grant the petition.~~ ~~[Staff Note: Consider replacing "5 days" with "promptly." On the one hand, the petitioner should be encouraged to file as soon as possible. On the other hand, there might be circumstances where a maximum of 5 days would be impractical.]~~ The petition must set forth how and when the child came into the prospective adoptive parent's care, why continued custody is in the child's best interests, and whether there is reason to know the child is an Indian child as defined by ICWA.~~

**(b) Notice of Hearing.** Unless otherwise provided by a local rule or practice, a notice of hearing must accompany the petition and include the location, date, and time of the hearing. The notice must require the attendance of persons or entities identified in subpart ~~(Dd)~~ (d)(1).

**(c) Service.** The ~~person seeking custody~~ petitioner must serve the petition and notice of hearing in any manner reasonably designed to ensure the ~~parties'~~ attendance at the hearing of the persons and entities identified in subpart (d)(2), which may include faxed, electronic or telephonic notice. ~~In addition to service as required by this rule, if an Indian child is~~ there is reason to know that the child who is the subject of the temporary custody order petition under this rule is an Indian child and the child was not placed voluntarily by the parent or Indian custodian the proceeding is involuntary

under ICWA, the child's parent, Indian custodian, and tribe must be notified of the hearing pursuant to as provided by Rule 76B-79.1.

**(d) Procedure.**

~~(d)(1)~~ **Time.** The court must set a hearing within no later than 10 days after the petition was filed, but the court may waive this time limit for good cause. ~~The court must determine at the hearing whether continued custody by the prospective adoptive parent is in the child's best interests.~~

~~(1)(2)~~ **Attendance.** The following persons or entities must attend the hearing, unless the court for good cause waives their attendance: the prospective adoptive parent, the child, and any person or; representative of the department DCS or the agency responsible for preparing reports for the court pursuant to A.R.S. § 8-105.

~~(2)~~ **Granting of Custody.** ~~If the court grants temporary custody and the prospective adoptive parent has not been certified to adopt, the court also must order that the prospective adoptive parent to file an application for certification to adopt within 30 days. If no person or representative of a department or agency has been identified to prepare reports for the court, the court must set a status hearing within 30 days to determine the status of the certification.~~

**(e) Findings and Orders.** All findings and orders must be contained in a minute entry or a signed order or minute entry. The court must:

~~(e)(1)~~ The court must determine at the hearing whether continued the custody requested by the petition by the prospective adoptive parenter is in the child's best interests.;

~~(2)~~ grant the petition, or deny the request for temporary custody the petition and order that custody of the child be given to another person or agency if it is in the child's best interests; and [Staff Note: The rule does not mention what the court must do regarding the child if it denies the request for temporary custody.]

~~(1)(3)~~ If the court grants temporary custody and the to a prospective adoptive parent who has not been certified to adopt, the court also must order that the prospective adoptive parent to file an application for certification to adopt within 30 days. If the prospective adoptive parent or agency has not identified at the hearing no person or representative of a department or agency has been identified to who will prepare a report and recommendations pursuant to A.R.S. § 8-105, the court must set a status hearing within 30 days to determine the status of the certification.; and

~~(2)~~(4) [if the child is an Indian child, or if there is reason to know that the child is an Indian child,] [WG-4 note 11/9/2020: which or both of the preceding?] ICWA applies, ~~the court must~~ make findings required under ICWA, including whether there is compliance with the placement preferences or whether there is good cause to deviate from the placement preferences under ICWA § 1915 and 25 C.F.R. §§ 23.130 through 23.132.

**(f) Expiration of Custody Order.**

(1) Expiration and Extension. ~~The order granting temporary custody of a child to the prospective adoptive parent under this rule expires 6 months after it is entered. The court may extend the temporary custody order for good cause.~~

~~(2)~~(2) Status Hearing. ~~Before the expiration of the order, the court must set a status hearing to determine whether the prospective adoptive parent has been certified and has filed a petition to adopt. The court may extend the temporary custody order for good cause.~~ ~~The court may waive the attendance of the parties at the status hearing if the court has sufficient information showing that the prospective adoptive parent is proceeding with the adoption in a timely manner. The court may vacate the hearing upon the filing of a petition to adopt.~~

(g) **Revocation of Temporary Custody.** The court for good cause may rescind a ~~temporary custody order it has entered under this rule~~ prior to the expiration date, but before doing so it must provide notice and an opportunity to be heard to the prospective adoptive parent and DCS or any agency ~~or the division~~ that placed the child.

**COMMITTEE COMMENT**

~~It was the opinion of the Committee that procedures should exist to ensure that once temporary custody is granted, the prospective adoptive parent follow through with the certification and adoption process. By requiring the attendance of the person, division or agency responsible for preparing reports for the court, such as the certification report or home study, those entities provide an additional safeguard. There may be circumstances where a hearing is not required if it appears to the court that the prospective adoptive parent has substantially completed the certification process but requires a temporary custody order for the purpose of obtaining insurance coverage for the child or in order to travel with the child. Pursuant to this rule, the court could issue the temporary custody order in the absence of a hearing.~~

## **Rule 107.0. Petition for Review**

**(a) Purpose.** A petition for review or cross-petition for review asks the Supreme Court to review a decision of the Court of Appeals. [BCB: I took this from ARCAP 23; probably not necessary but it was in the ARCAP and makes sense to have it in both]**Generally; Time to File.**

### **(a)(b) Place and Time for Filing.**

**(1) -Place for Filing.** A party must file any petition or cross-petition for review, a response to a petition or cross-petition for review, or cross-petition for review, or a motion to extend the time for filing any of these documents, must be filed with the Supreme Court clerk.

### **(2) Timing.**

**(A) Petition for Review.** A party must file a petition for review no later than 20 days after Court of Appeals files its decision or any final order disposing of the appeal.

—Cross-petition for review. A party must file a cross-petition for review no later than 15 days after service of a petition for review or no later than 20 days after the Court of Appeals files its decision or final order, whichever is later.

—A.(A) Petition for Review. A party must file a petition for review Within no later than 30 20 days after entry of the Court of Appeals files its' clerk has given notice that a decision, including or any or final order disposing of the appeal, has been rendered [Staff Note: How does someone determine the date of "rendering?" Shouldn't "rendered" be "entered" or "filed?"], any party may, file with the Supreme Court clerk a petition for review of the case. No motion for reconsideration in the Court of Appeals [shall be/is] permitted. [Staff Note: What is the rationale for not permitting motions for reconsideration?

**(B) B.(B) A cCross-petition for review. A party must may be filedfile a cross-petition for review with the Supreme Court clerk withinno later than 15 15 days after service of a petition for review or withinno later than 20 days after entry of the Court of Appeals files its final decision or final order, whichever is later.[BCB: If we don't shorten the PR time to 15 days, the 10 would be 15 and the later date would be 30]**

**(1) C. Extensions.** Motions for extensions of time for filing a petition or cross-petition for review must be filed with the Supreme Court clerk.

**(c) Form and Length of the Petition or Cross-petition; Service.**

- (1) Application of ARCAP 4.** The petition and cross-petition must comply with the provisions of ARCAP 4(a) through (c), (f), and (g), unless the Supreme Court suspends a requirement of that rule.
- (2) Designation of Parties.** The parties must be designated as they were designated in the Court of Appeals.
- (3) Word Limit for Electronic Filing.** An electronically filed petition for review, response, or cross-petition must not exceed 3,500 words. However, a cross-petition combined with a response to a petition must not exceed 6,500 words.
- (4) Page Limit for Paper Filing.** A petition, response, or cross-petition filed in paper must not exceed 12 pages.
- (5) Exclusion from Word or Page Limit.** 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.
- (6) References to Case Law.** References to case law must comply with ARCAP 13(f).

—**Certificate of Compliance.** The petition or cross-petition for review must be accompanied by a certificate of compliance, as provided by ARCAP 23(g)(3).

—~~(1) **Application of ARCAP 4. (b).** The petition for review and cross-petition for review must comply with the provisions of ARCAP 4(ba) through (e), (f), and (g), unless such the Supreme Court suspends thea requirements are otherwise suspendedof that rule. [Staff Note: Are the words beginning with “unless” necessary in the preceding sentence? And is the next sentence necessary?]~~

—~~(2) **Designation of Parties.** The parties must be designated as they were designated in the Court of Appeals. A copy of the decision of the Court of Appeals must accompany the petition.~~

—~~(3) **Word Limit for Electronically Filed Petition Filing.** Unless otherwise ordered, (1) aAn electronically filed petition for review, response, or cross-petition for review must not exceed prepared in a proportionately spaced typeface may not exceed 3,500 words and must may not have an average of more than 280 words per page, including footnotes and quotations.; AHowever, a cross-petition combined with a response to a petition must not exceed 6,500 words.~~

—~~(4) **Page Limit for Paper Fileding. Petition or Cross-Petition for Review.** (2) a petition for review or cross-petition prepared in a monospaced typeface may not~~

exceed 10 pages and may not exceed an average of 350 words per page, including footnotes and quotations; and (3) a handwritten petition, response, for review or cross-petition filed in paper ~~may~~ must not exceed 12 pages.

~~(5) **Exclusion from Word or Page Limit.** 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.~~

~~(6) **References to Case Law.** References to case law must comply with ARCAP 13(f).~~

~~(b)(7) **Certificate of Compliance.** The petition or cross-petition for review shall ~~must be~~ accompanied by a certificate of compliance, as provided by ARCAP 23(g)(3), that states either (1) that the petition or cross-petition for review uses a proportionately spaced typeface of 14 points or more, is double spaced using a roman font, and contains [blank] words, or if handwritten, (2) that the petition or cross-petition uses a monospaced typeface of no more than 10.5 characters per inch and does not exceed 10 pages, or (3) that the petition or cross-petition was handwritten and does not exceed 12 pages. [Staff Note: The foregoing sentences need to be modified if Task Force members conclude that the distinction between proportional and modified type no longer has meaning.]~~

~~(e)(d) **Contents of the Petition or Cross-Petition for Review.** A copy of the decision of the Court of Appeals must accompany the~~ The party who files a petition for review must include with the filing a copy of the Court of Appeals decision or final order/petition for review. In addition, a petition for review or cross-petition for review must contain concise statements of ~~include~~ the following information:

~~**Decision by Court of Appeals.** A copy of the decision of the Court of Appeals must accompany the petition for review.~~

~~(1) **Statement of the Issues.** The petition or cross-petition for review must include, without argument, a list of the ~~Issues~~ issues decided by the Court of Appeals that the petitioner or cross-petitioner wishes to present to the Supreme Court for review.~~

~~(1) The petition or cross-petition for reviewer shall ~~must~~ also list also list, separately and without argument, any additional issues that were presented to but not decided by the Court of Appeals, which the Supreme Court may need to ~~be~~ decide if review is granted.~~

~~(2) **Material Facts.** The petition or cross-petition for review must specify ~~The~~ f ~~F~~ facts material to the issues presented to the Supreme Court for review, ~~with~~ appropriate references to the record on appeal.~~

~~(2) No evidentiary matter may be included if it is not material to proper consideration of these issues. Evidence may be included only if it is material to a proper consideration of the issues presented, and then it must include a reference to the record or page of the certified transcript where the material evidence appears.~~ The party must include a reference to the record or page of the certified transcript where such evidence appears.

~~(3) Reasons the Supreme Court Should Grant Review. The petition or cross-petition for review must state the reasons why the Supreme Court should be granted~~ grant review, which may include the following:

~~(3) That, which may include, among others, the fact that no Arizona decision controls the point of law in question; that a decision of the Supreme Court should be overruled or qualified; that conflicting decisions have been rendered by different departments of the Court of Appeals; or that important issues of law have been incorrectly decided.~~

~~(4) Appendix.~~

~~(A) Necessity. If there are documents in the record on appeal that are necessary for determination of the issues raised by the petition or cross-petition, and hyperlinking to the record is unavailable, the petitioner and cross-petitioner must file with the petition or cross-petition an appendix that contains only those documents.~~

~~(A)~~

~~— Form. An appendix must comply with the requirements of ARCAP 13.1. (A) Necessity. If there are documents in the record on appeal that are necessary for determination of the issues raised by the petition or cross-petition, and hyperlinking to the record is unavailable, the petitioner and cross-petitioner must file with the petition or cross-petition an appendix that contains only those documents.~~

~~— (B) Form. An appendix must comply with the requirements of ARCAP 13.1. General requirements.~~

~~i. The petitioner or cross-petitioner must file an appendix simultaneously with the petition or cross-petition that includes any If the record on appeal contains documents from the record on appeal that are necessary for a determination of the issues raised by the petition or cross-petition for review. The appendix must not include portions of the record that are not necessary for a determination of the issues, the petitioner or cross-petitioner shall file, simultaneously with the petition or cross-petition, an appendix that contains only those documents.~~

- ~~—ii. If there is more than a single item in the appendix, the appendix must begin with a table of contents that identifies each item included in the appendix. The table of contents must identify the item's location in the appendix by page number or by volume and page number.~~
- ~~—iii. If the item in the appendix is included in the record on appeal, the table of contents must identify where each item is located in the record, such as by item number in the superior court clerk's index of the record, by transcript date, or by exhibit number.~~
- ~~—Appendix Filed Electronically With Petition or Cross-Petition for Review. If the petition or cross-petition for review and appendix are filed electronically, may file the petition or cross-petition for review and appendix as a single document or separately. If and if the appendix contains multiple documents, such the documents in the appendix shall be electronically bookmarked in the appendixes' table of contents.~~

~~(4)(B) Paper-filed Appendix. In the case of If a party files a petition or cross-petition for review in hard copy or papersubmitted in hard copy, rather than electronically, the party may attach to it an, if the appendix that does not exceed 15 pages ces exceed 15 pages in length. If the appendix is longer than 15 pages, it must be filed separately. In either case, a party must bind the petition and cross-petition for review and the appendix (for example, the pages may be clipped or banded), but the binding must not use adhesives, staples, or two-pronged fasteners that perforate the pages and, they shall be bound or fastened in the top margin by a two-pronged fastener and shall must be submitted separately from the petition and the copy of the decision of the Court of Appeals or from the cross-petition. No adhesive bindings or bindings using numerous holes shall be used. An original and two copiesone copy of any separately bound or fastened appendixces shall must be filed with the petition or cross-petition. If the petition or cross-petition for review is filed electronically, and if the appendixes contain multiple documents, such documents shall be electronically bookmarked in the appendixes' table of contents.~~

~~[Staff Note: Items (1) through (4) above are substantially similar to ARCAP 23(d) and (e), which might easily be incorporated by a cross-reference.]~~

~~(5) *Rejection of Petition or Cross-Petition for Review.* The ~~The~~ Supreme Court clerk may return to the petitioner or cross-petitioner any petition ~~for review~~ or cross-petition for review presented for filing that does not substantially comply with this rule. The Supreme Court clerk must include with the returned petition written instructions to the petitioner or cross-petitioner to file a proper petition or~~

cross-petition ~~within 30-15 (20?) days from~~ no later than the date on which ~~specified in the clerk sends the~~'s instructions.

~~(d)~~**(e) Availability of Briefs.** When the Court of Appeals clerk is notified that a petition for review has been filed, the clerk must make available to the Supreme Court clerk the briefs filed in the Court of Appeals.

~~(e) Service of the Petition or Cross-Petition for Review.~~ The petitioner or cross-petitioner must serve a copy of the petition or cross-petition for review and any appendices on all parties who appeared in the Court of Appeals.

**(f) Response to the Petition or Cross-Petition for Review.**

~~(1) i.~~ **i. Timing.** Any party ~~wishing to oppose~~ opposing the petition or cross-petition for review may file a response with the Supreme Court ~~within no later than 30-20~~ days ~~from~~ after the date ~~upon which~~ the petition or cross-petition for review was served. However, the Supreme Court will not consider a failure to file a response as an admission that the petition or cross-petition for review should be granted.

~~ii.~~ **ii. Service.** The response must comply with the provisions of ~~[service rule]~~ Rule 107(B) and ARCAP Rule 6(c) not otherwise suspended by any Administrative Order of the Supreme Court. ~~[Staff Note: There is no ARCAP 6(c)]~~ and must be served as provided in Rule ~~1087(E)~~.

~~(2) iii.~~ **iii. Contents.** If a response is filed, it must list, separately and without argument, any additional issues not listed by the petitioner or cross-petitioner that were presented to but not decided by the Court of Appeals and may need to be decided if review is granted. If the record on appeal contains documents that are necessary for a determination of the issues raised by the petition or cross-petition for review, and hyperlinking to the record is unavailable, the respondent a party must simultaneously file with the response an appendix that complies with the requirements set forth in section (5)subpart (d)(4) of this rule and that. An appendix to a response may contains only those documents not included in the appendix filed with to the petition or cross-petition for review ~~the petitioner and cross-petitioner must file with the petition or cross-petition an appendix that contains only those documents.~~ the respondent must simultaneously file with the response an appendix that complies with the requirements set forth in section (B) of this rule and that contains only those documents not included in the appendix filed with the petition or cross-petition. ~~it must list, separately and without argument, any additional issues not listed by the petitioner or cross-petitioner that were presented to but not decided by the Court of Appeals and may need to be decided if review is granted.~~

~~iv. Failure to File Response. The Supreme Court will not consider a failure to file a response as an admission that the petition or cross-petition for review should be granted.~~

~~(3) v. Reply. If a response is filed, it must list, separately and without argument, any additional issues not listed by the petitioner or cross-petitioner that were presented to but not decided by the Court of Appeals and may need to be decided if review is granted. No reply can be filed by neither the petitioner nor cross-petitioner may file a reply unless the Supreme Court has so directed by specific order ordered otherwise, in which event a reply may be filed within the time set by the order.~~

(g) Service of the Petition, Cross-Petition, and Response. The petitioner or cross-petitioner must serve a copy of the petition, cross-petition, response, and any appendices, on all parties who appeared in the Court of Appeals and on any person who filed a notice of non-participation under Rule 104.2.

~~(f)~~

(g)(h) Order Granting Review. If the Supreme Court grants review, its ~~order shall~~ must promptly notify the parties and the Court of Appeals Clerk and specify the issue or issues to be reviewed. The Supreme Court may ~~order that~~ require the parties to file additional briefs, it may that it order will hear oral argument, or it may do both. If the order granting review does not provide for supplementation of briefs or for oral argument, either party ~~may, within no later than~~ 15 days after the Supreme Court clerk sends notice of the court's order, may request the court to do so by filing a motion ~~specifying that specifies~~ the reasons ~~for supplementation or for oral argument, or both.~~

(h)(i) Availability of the Record. Upon notification by the Supreme Court clerk that a petition ~~for review~~ or cross-petition for review has been granted, the Court of Appeals clerk must make the remaining record available to the Supreme Court clerk and the Supreme Court's staff attorneys.

(i)(j) Order Denying Review. If the Supreme Court denies review, its order must specify those justices, if any, who voted to grant review. The Supreme Court must notify the Court of Appeals and the parties when all petitions and cross-petitions for review have been decided and must return any original paper copies of the briefs to the Court of Appeals clerk. Unless ~~permitted by specific order of the~~ the Supreme Court permits otherwise, a party may not file a motion for reconsideration of an order denying a petition ~~for review~~ or cross-petition for review.

~~(j) Mandate.~~ The Court of Appeals will issue a mandate in the manner and at the times provided in this section, except as provided in Rule 106(e)(4). If there has been no

~~petition for review, the clerk Court of Appeals clerk will issue the mandate at the expiration of the time for the filing of a petition for review. If a petition for review is filed, the Court of Appeals clerk will issue a mandate upon receiving an order of the Supreme Court denying the petition for review. If the Supreme Court grants a petition for review, the Supreme Court will issue the mandate. Any exhibits or other objects transmitted as originals by the juvenile court clerk to the appellate court will be returned with the mandate to the juvenile court clerk. Any papers, exhibits, or other objects which were transmitted as certified copies to the appellate court may either be returned with the mandate to the juvenile court clerk, or destroyed pursuant to rule or the appellate court's administrative orders.~~

**(k) Dispositions.**

- (1) ~~If, a~~After a petition for review has been filed, if the parties to the appeal resolve the issues by agreement, the Supreme Court may vacate the decision of the Court of Appeals or designate a Court of Appeals opinion as a memorandum decision.
- (2) When the Supreme Court grants review it may remand the appeal to the Court of Appeals for reconsideration in light of authority identified in the Supreme Court's order.

~~—~~If issues were raised in, but not decided by, the Court of Appeals and the Supreme Court ~~has granted~~grants review, the Supreme Court may consider and decide those issues, may remand the appeal to the Court of Appeals to decide those issues, or may otherwise dispose of those issues as it deems appropriate.

~~—~~

~~—Rule 107.1. Appellate Court Mandate [new]~~

~~—Generally. The Court of Appeals will issue a mandate in the manner and at the times provided in this section, except as provided in Rule 106(e)(4).~~

~~—No Petition for Review. If there has been no petition for review, the Court of Appeals clerk will issue the mandate at the expiration of the time for the filing of a petition for review.~~

~~—Petition for Review Denied. If a petition for review is filed, the Court of Appeals clerk will issue a mandate upon receiving an order of the Supreme Court denying the petition for review.~~

~~—Petition for Review Granted. If the Supreme Court grants a petition for review, the Supreme Court will issue the mandate.~~

~~—Return of Exhibits and Other Objects. The appellate court clerk must return to the juvenile court with the mandate any exhibits or other objects the juvenile court transmitted as originals. The appellate court may either return to the juvenile court with the mandate or destroy pursuant to rule or the appellate court's administrative orders any papers, exhibits, or other objects that the juvenile court transmitted as certified copies.~~

~~(3)~~

~~(1)(3) Motions to Extend Time. Motions to extend the time to file petitions for review and cross petitions for review must be filed in, and decided by, the Supreme Court.~~

## **Rule 107.0. Petition for Review**

(a) **Purpose.** A petition for review or cross-petition for review asks the Supreme Court to review a decision of the Court of Appeals.

### **(b) Place and Time for Filing.**

(1) **Place for Filing.** A party must file a petition or cross-petition for review, a response to a petition or cross-petition for review, or a motion to extend the time for filing any of these documents, with the Supreme Court clerk.

### **(2) Timing.**

(A) **Petition for Review.** A party must file a petition for review no later than 20 days after Court of Appeals files its decision or any final order disposing of the appeal.

(B) **Cross-petition for review.** A party must file a cross-petition for review no later than 15 days after service of a petition for review or no later than 20 days after the Court of Appeals files its decision or final order, whichever is later.

### **(c) Form and Length of the Petition or Cross-petition; Service.**

(1) **Application of ARCAP 4.** The petition and cross-petition must comply with the provisions of ARCAP 4(a) through (c), (f), and (g), unless the Supreme Court suspends a requirement of that rule.

(2) **Designation of Parties.** The parties must be designated as they were designated in the Court of Appeals.

(3) **Word Limit for Electronic Filing.** An electronically filed petition for review, response, or cross-petition must not exceed 3,500 words. However, a cross-petition combined with a response to a petition must not exceed 6,500 words.

(4) **Page Limit for Paper Filing.** A petition, response, or cross-petition filed in paper must not exceed 12 pages.

(5) **Exclusion from Word or Page Limit.** 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.

(6) **References to Case Law.** References to case law must comply with ARCAP 13(f).

(7) **Certificate of Compliance.** The petition or cross-petition for review must be accompanied by a certificate of compliance, as provided by ARCAP 23(g)(3).

**(d) Contents of the Petition or Cross-Petition for Review.** The party who files a petition for review must include with the filing a copy of the Court of Appeals decision or final order. In addition, a petition or cross-petition must include the following information:

- (1) ***Statement of the Issues.*** Without argument, a list of the issues decided by the Court of Appeals that the petitioner or cross-petitioner wishes to present to the Supreme Court for review.

The petition or cross-petition for review must also list separately and without argument any additional issues that were presented to but not decided by the Court of Appeals, which the Supreme Court may need to decide if review is granted.

- (2) ***Material Facts.*** The facts material to the issues presented to the Supreme Court for review.

No evidentiary matter may be included if it is not material to proper consideration of these issues. The party must include a reference to the record or page of the certified transcript where the material evidence appears.

- (3) ***Reasons the Supreme Court Should Grant Review.*** The reasons the Supreme Court should grant review, which may include the following:

That no Arizona decision controls the point of law in question; a decision of the Supreme Court should be overruled or qualified; conflicting decisions have been rendered by different departments of the Court of Appeals; or important issues of law have been incorrectly decided.

- (4) ***Appendix.***

- (A) ***Necessity.*** If there are documents in the record on appeal that are necessary for determination of the issues raised by the petition or cross-petition, and hyperlinking to the record is unavailable, the petitioner and cross-petitioner must file with the petition or cross-petition an appendix that contains only those documents.

- (B) ***Form.*** An appendix must comply with the requirements of ARCAP 13.1.

- (5) ***Rejection of Petition or Cross-Petition.*** The Supreme Court clerk may return to the petitioner or cross-petitioner any petition or cross-petition for review presented for filing that does not substantially comply with this rule. The Supreme Court clerk must include with the returned petition written instructions to the petitioner or cross-petitioner to file a proper petition or cross-petition no later than the date specified in the clerk's instructions.

- (e) **Availability of Briefs.** When the Court of Appeals clerk is notified that a petition for review has been filed, the clerk must make available to the Supreme Court clerk the briefs filed in the Court of Appeals.
- (f) **Response to the Petition or Cross-Petition.**
- (1) **Timing.** Any party opposing the petition or cross-petition for review may file a response with the Supreme Court no later than 20 days after the date the petition or cross-petition for review was served. However, the Supreme Court will not consider a failure to file a response as an admission that the petition or cross-petition for review should be granted.
  - (2) **Contents.** If a response is filed, it must list, separately and without argument, any additional issues not listed by the petitioner or cross-petitioner that were presented to but not decided by the Court of Appeals and may need to be decided if review is granted. If the record on appeal contains documents that are necessary for a determination of the issues raised by the petition or cross-petition for review, and hyperlinking to the record is unavailable, a party must file with the response an appendix that complies with the requirements set forth in subpart (d)(4). An appendix to a response may contain only those documents not included in the appendix to the petition or cross-petition for review.
  - (3) **Reply.** If a response is filed, neither the petitioner nor cross-petitioner may file a reply unless the Supreme Court has ordered otherwise.
- (g) **Service of the Petition, Cross-Petition, and Response.** The petitioner or cross-petitioner must serve a copy of the petition, cross-petition, response, and any appendices, on all parties who appeared in the Court of Appeals and on any person who filed a notice of non-participation under Rule 104.2.
- (h) **Order Granting Review.** If the Supreme Court grants review, it must promptly notify the parties and the Court of Appeals clerk and specify the issue or issues to be reviewed. The Supreme Court may require the parties to file additional briefs, it may order oral argument, or it may do both. If the order granting review does not provide for supplementation of briefs or for oral argument, either party, no later than 15 days after the Supreme Court clerk sends notice of the court's order, may request the court to do so by filing a motion that specifies the reasons.
- (i) **Availability of the Record.** Upon notification by the Supreme Court clerk that a petition or cross-petition for review has been granted, the Court of Appeals clerk must make the remaining record available to the Supreme Court clerk and the Supreme Court's staff attorneys.

**(j) Order Denying Review.** If the Supreme Court denies review, its order must specify those justices, if any, who voted to grant review. The Supreme Court must notify the Court of Appeals and the parties when all petitions and cross-petitions for review have been decided and must return any original paper copies of the briefs to the Court of Appeals clerk. Unless the Supreme Court permits otherwise, a party may not file a motion for reconsideration of an order denying a petition or cross-petition for review.

**(k) Dispositions.**

- (1)** After a petition for review has been filed, if the parties to the appeal resolve the issues by agreement, the Supreme Court may vacate the decision of the Court of Appeals or designate a Court of Appeals opinion as a memorandum decision.
- (2)** When the Supreme Court grants review it may remand the appeal to the Court of Appeals for reconsideration in light of authority identified in the Supreme Court's order.
- (3)** If issues were raised in, but not decided by, the Court of Appeals and the Supreme Court grants review, the Supreme Court may consider and decide those issues, may remand the appeal to the Court of Appeals to decide those issues, or may otherwise dispose of those issues as it deems appropriate.

**Rule 107.1. Appellate Court Mandate [new]**

- (a) Generally.** The Court of Appeals will issue a mandate in the manner and at the times provided in this section, except as provided in Rule 106(e)(4).
- (b) No Petition for Review.** If there has been no petition for review, the Court of Appeals clerk will issue the mandate at the expiration of the time for the filing of a petition for review.
- (c) Petition for Review Denied.** If a petition for review is filed, the Court of Appeals clerk will issue a mandate upon receiving an order of the Supreme Court denying the petition for review.
- (d) Petition for Review Granted.** If the Supreme Court grants a petition for review, the Supreme Court will issue the mandate.
- (e) Return of Exhibits and Other Objects.** The appellate court clerk must return to the juvenile court with the mandate any exhibits or other objects the juvenile court transmitted as originals. The appellate court may either return to the juvenile court with the mandate or destroy pursuant to rule or the appellate court's administrative orders any papers, exhibits, or other objects that the juvenile court transmitted as certified copies.