

Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, December 18, 2020

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

Telephonic Meeting: 602.452.3533, Access code: 991 098 862

Item no. 1	Call to Order	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Approval of the November 20, 2020 meeting minutes	<i>Justice Berch</i>
Item no. 3	Workgroup reports and discussion of rules Workgroup 1: Rules 8 [revisited]. Rules 10 [new], 11 [fka Rule 43] and 12 [fka Rule 42]. Rule 14 [a WG-2 rule revised by WG-1.] Forms 5(a), 5(b), and 6. Workgroup 2: Rule 35. Rule pairings: (a) Rules 22 and XX; (b) Rules 23 and 28; and (c) Rules 19, 30(a)(6), and 104.1(a). Workgroup 3: Rules 41.2, 48X, and 50 [revisited]. Rules 50.1 and 50.2 [new]. Rules 51, 52, 58, and 60. Workgroup 4: Rule 74 [revisited]. Rules 80, 81, 82, 83, 84, 85, and 87.	<i>Judge Kreamer, Judge Armstrong, Ms. Beckmann</i> <i>Ms. Phillis, Mr. Cardy, Ms. Beringhaus</i> <i>Judge Quigley, Mr. Truman, Ms. Avila Taylor, Ms. Jorquez</i> <i>Professor Atwood, Judge Portley</i>
Item no. 4	Roadmap Next meetings: None scheduled	<i>Justice Berch</i>
Item no. 5	Call to the Public Adjourn	<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, November 20, 2020
(Members and guests attending telephonically)**

Meeting Minutes

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

Members absent: Beth Rosenberg, Kent Volkmer

Guests: Carey Turner, Nina Preston, Lori Ford, Beth Green, Shari Anderson Head, Chanetta Curtis, Francine Macias

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the twelfth Task Force meeting – its seventh consecutive virtual meeting – to order at 10:04 a.m. The Chair noted that in the 4-week interval after the October 23rd Task Force meeting, workgroups had 10 meetings and the Editorial Group met 3 times. Because of technical issues involving the Judicial Branch website, today’s meeting packet was not posted online, but staff distributed the packet as an email attachment. The packet includes the draft October 23rd meeting minutes and the rules on today’s agenda. The rules are also accessible on SharePoint.

The Chair next asked members to review draft minutes of the October 23, 2020 Task Force meeting. Members had no additions or corrections.

Motion: A member moved to approve the October 23, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 012**

The Chair then asked for rule presentations from Workgroup 2, followed by presentations from Workgroups 1, 4, and 3.

2. Report from Workgroup 2.

Rule 32 (“revocation of probation”). Ms. Phillis noted that the workgroup added to, removed, or modified content of the current rule. Consistent with changes to Rule 31, the workgroup used the term “directive” rather than “regulation.” The workgroup also used the word “parent” to encompass “guardian or custodian” in lieu of using all three references throughout the rule. Ms. Phillis then reviewed each section. In section (a)

("initiation"), the requirement that the court provide notice to the victim is preceded in the draft by the words "if the victim requests notice." In the same sentence, the phrase "as provided by law" was changed to "as provided by victims' rights laws." Section (b) ("petition"), subpart (1) ("notice to appear") requires that the written notice to appear be given to the juvenile's attorney, in addition to the juvenile and the juvenile's parent. Subpart 2 ("service and failure to appear") requires service "as provided in Rule 26(c)," that is, in the same manner as the case-initiating petition. Subpart (3) ("amendment to the petition"), permits amendments "as provided in Rule 24(b)." The workgroup changed the title of section (c), which is currently "probable cause determination," to "warrant." This helps clarify that the judicial officer reviews the petition and makes a probable cause determination only in cases where the probation officer requests a warrant; in other circumstances, there is no need for a probable cause determination.

Current Rule 32(d) ("advisory hearing") has two subparts, one for "time limits" and the other for "procedure." The restyled rule makes each of these subparts a separate section: section (d) ("advisory hearing: time limits") and section (e): ("advisory hearing: procedure"). The time limits for the advisory hearing are different based on whether the juvenile is detained. The section on advisory hearing procedure was reorganized to clarify that the court is required to do 6 things, as specified in the 6 subparts of this section: "advise of rights;" "confirm disclosure," which is new; "allow a victim to be heard;" advise the juvenile about "juvenile's statements at revocation proceeding;" "enter the juvenile's admission or denial," and "set an adjudication hearing." The workgroup deleted a provision found in the current rule that requires the court "to determine how a verbatim record of the probation violation hearing will be made," because the juvenile court as a court of record should have an established procedure for doing so. Section (e) ("probation violation hearing") has 7 subparts that by-and-large track the organization of current Rule 32(e). However, one of these subparts, on "amendment to conform to the evidence," is currently within another subpart; the workgroup made it a freestanding subpart (4) and renumbered the subsequent subparts accordingly.

Ms. Phillis concluded by observing that although Rule 32 is a lengthy rule (it requires three full columns of text in the current rule book), the workgroup believes the restyling and reorganization has made it more readable and user-friendly. Task Force members agreed. They had no further suggestions and approved the rule as presented.

Rule 34 ("transfer for criminal prosecution"). Ms. Beringhaus noted that section (a) of the current rule begins with the words, "if, in the opinion of the prosecutor, the juvenile is not a proper person over whom the juvenile court should retain jurisdiction, the prosecutor may file a motion...." However, the prosecutor's opinion is inherent in the prosecutor's filing of the motion. Draft section (a) ("generally") accordingly begins with the words, "the prosecutor may file a motion...." Unlike the current section, which refers to a transfer to "the appropriate court," the draft section specifies that the transfer is to "the criminal division of the superior court." Section (b) of the draft rule ("motion and complaint") provides that copies of the motion and criminal complaint "must be served

pursuant to Rule 15 [‘motions’].” Section (c) (“amending the complaint”) permits amendments, but a new sentence requires that an amended complaint “must be served upon the parties in the same manner as the original motion and complaint.” Section (d) (“time limits”) was modestly restyled.

Section (e) (“transfer investigation”) now includes a reference to the pertinent statute, A.R.S. § 8-327. Current section (E) requires the probation officer to provide a copy of the transfer investigation to the parties “not less than 5 days before the transfer hearing.” To permit counsel a full week to prepare for the hearing, draft section (e) specifies “at least 7 calendar days” before the hearing. Draft subpart (e)(1) is titled “evaluation of juvenile.” The current rule requires an expert to submit a report “within 10 working days of completion of the examination.” This can be problematic if the expert completes the exam shortly before the hearing. Accordingly, the revised rule requires the expert to submit a report “at least 7 calendar days before the transfer hearing.” The revised subpart also requires the juvenile’s counsel to “provide” an edited version of the report to the prosecutor rather than “make [it] available,” as the current provision provides. Draft subpart (e)(2) (“incompetence”) contains a reference to A.R.S. § 8-291 et seq.

Section (F) of the current rule says, “a transfer hearing shall be conducted only by a judge, except as provided in Ariz. R. Sup. Ct. 91(f).” The intent of the reference to Rule 91(f) was unclear and the reference was deleted. Members also noted that transfer hearings are frequently conducted by commissioners serving as judges pro tempore. Members considered adding a reference to pro tems in section (f) (“transfer hearing”), but another member noted that Rule 2 already defines “judicial officer” as including a commissioner or pro tem. Accordingly, members changed the reference to “judge” in section (f) to “judicial officer.” The time limit for the transfer hearing in current section (F)(1) (“time limits”) is variable. To establish a single transfer hearing time limit in subpart (f)(1) (“time limits”), members agreed that the hearing must be held no later than 30 days after the filing of a motion to transfer. Subpart (e)(3) (“probable cause determination”), subpart (B) (“evidence”) was restated and it is now identical to Criminal Rule 5.3(b) (“unlawfully obtained evidence”). If the court does not find probable cause, current subpart (F)(2)(d) requires the court to “dismiss the complaint,” and members used the same phrase in draft subpart (f)((3)(D). However, if the court determines that transfer is not appropriate, current subpart (F)(5)) requires the court to “dismiss the motion.” Members thought this phrase was inapt and changed it to “deny the motion.” In the same subpart, the running of the time limit was changed from entry of the order of dismissal to entry of the order denying the motion.

Members had no additional comments or questions and approved Rule 34.

3. Report from Workgroup 1. Workgroup 1 presented 4 rules.

Rule 2 (“definitions”). Judge Armstrong noted that the Task Force had considered Rule 2 at two 2019 Task Force meetings, but it deferred approving the rule pending modifications or additional definitions. Judge Armstrong noted that the revised “comment to 2022 amendment” includes references to several additional Title 8 statutes containing definitions. A member requested Judge Armstrong to also consider adding references in the comment to A.R.S. § 8-456(I). Regarding definitions in the body of Rule 2, Judge Armstrong specifically noted:

- (d), “child safety worker,” which has the meaning prescribed by statute and provides context for the term “child safety worker’s report” in Rule 3.1(d);
- (k), “guardian ad litem,” which means an attorney appointed by the court to protect the best interests of a party “or as otherwise directed by the court,” which allows flexibility concerning the nature of the appointment as particular circumstances might require; and
- (r), “parent,” which includes a “legal mother or father,” for example, someone whose child is born during the course of a marriage although a spouse is not the natural father.

“Indian child” is defined in Rule 37, but because that rule is in Part III, it does not apply to adoption proceedings under Part IV. Members discussed including this definition in Rules 2, 4, or 68; they will revisit this issue offline. Members concurred with the staff note in the draft below the comment concerning Family Law Rule 5.1 (“simultaneous dependency and legal decision-making/parenting time orders”) and the desirability of having a corresponding provision in the juvenile rules. Workgroup 1 will draft that rule. Members approved Rule 2 with the caveats noted in this paragraph.

Rule 9 (“intervention”). Judge Kreamer presented this new rule on intervention, which was proposed by Judge Randy Warner and assigned to Workgroup 1 for review. At the present time, juvenile court judges are using Civil Rule 24 (“intervention”) for guidance, but Civil Rule 24 is primarily designed for the protection of property interests and is not entirely suitable for protecting the best interests of a minor. Juvenile court judges have also relied on the 1986 Supreme Court opinion of *Bechtel v Rose*, 150 Ariz. 68, in which grandparents sought to intervene under Rule 24 in a dependency case involving their parentless grandchildren. However, some now believe that the factors cited in that case are unsuitable or incomplete. The workgroup, while mindful of the *Bechtel* factors, made significant changes to the organization and content of Judge Warner’s initial draft, which had incorporated several of those factors.

Section (a) (“generally”) of the workgroup’s draft introduces the two pathways for intervention, one “of right” and the other “permissive.” Section (b) (“factors”) requires the court to determine “whether intervention would be in the child’s best interests.” In making that determination, section (b) requires the court to determine 8 factors, some but not all of which derive from *Bechtel*. Section (b) factors that do not derive from *Bechtel* include:

- (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 has requested DCS to be placement for the child, and if so, the status of the request; and
- (4) whether the person seeks to file a motion for change of physical custody to that person.

Factor (3) as originally proposed by the workgroup included the phrase "and if so, whether the person filed an administrative grievance with DCS regarding the denial." Members disfavored that language, first, because it unduly emphasized that DCS had denied the placement request, and second, because the grievance process could take months, and denial of a motion to intervene pending resolution of a prolonged administrative process might not be appropriate. However, members also agreed that the court should be aware of the pending process. After discussion, members agreed to the modified language shown above.

Draft section (c) ("scope of intervention") permits the court to grant intervention for a limited purpose and allows it to limit the scope and duration of intervention. Section (d) ("procedure") requires a party who files a motion to intervene to include specific facts supporting the motion, and to serve the motion on all parties. If intervention is for the purpose of filing a motion for a change of physical custody, the intervenor must file and serve that motion no later than 10 days after entry of an order granting the motion to intervene.

Although draft section (a) permits intervention under Parts III and IV of the Juvenile Rules, a member asked whether it should also allow intervention under Part V, emancipation. Although members contemplated that individuals would rarely if ever request to intervene in an emancipation action, they nonetheless added a reference to Part V. Members approved Rule 9 with that addition and expressed their appreciation to Judge Warner for proposing this rule.

Rule 107 ("petition for review"). Ms. Beckmann began her presentation of Rule 107 by observing that the current rule is not particularly easy to follow. The draft rule is clearer, in part because it includes section titles. The draft also harmonizes with provisions of other juvenile appellate rules and with ARCAP 23 ("petition for review"). For example, revised Rule 107(a) ("purpose") now parallels the language of ARCAP 23(a) ("purpose").

Section (b) ("place and time for filing") has two subparts. The subpart on the place of filing was uncontroversial, but the other on timing necessitated some discussion. The current rule gives a party 30 days to file a petition for review; the revised rule reduces that time to 20 days. Ms. Beckmann explained the rationale for the reduction. The Court

of Appeals cannot issue a mandate until the time for filing a petition for review has passed. However, parties file petitions for review in relatively few juvenile appeals. The result is that in the majority of juvenile appeals, the finality of the appeal and the permanency determination for the child is unnecessarily delayed pending the running of the time for filing a petition for review. Therefore, to reduce that time in the majority of cases, the workgroup shortened the time for filing a petition for review to 20 days. Some members questioned this reduction of the time to for filing a petition, noting that the additional 10 days can be significant to appellate practitioners, and the Court does not favor requests for extension of time in juvenile cases. However, a straw vote indicated that about three-fourths of the members supported the 20-day time limit. The draft will accordingly specify 20 days, but the petition should note the minority view.

Section (c) (“form and length of the petition or cross-petition”) is substantively similar to the current provision, although there is a new subpart (c)(6), which requires references to case law to comply with ARCAP 13(f). Ms. Beckmann reviewed the other sections of draft Rule 107. In section (g) (“service of the petition, cross-petition, and response”), members agreed that the filing party should serve not only all parties who appeared in the Court of Appeals, but also any person who filed a notice of non-participation under Rule 104.2. Ms. Beckmann suggested, and members agreed, to add to section (k) (“dispositions”) an introductory sentence that says, “If the Supreme Court grants review, it may decide the appeal in any manner specified in ARCAP 28(a). The Supreme Court may also do the following...” Members had no other questions or comments and approved Rule 107 as presented.

Rule 107.1 (“appellate court mandates”). Ms. Beckmann also presented Rule 107.1, a new freestanding rule that was derived from current Rule 107(H). The draft rule is straightforward and effectively organized, and members readily approved it.

4. Report from Workgroup 4.

Rule 78 (currently, “temporary custody,” and as proposed, “petition for child’s custody by a non-certified person”). Professor Atwood presented this rule, which relates to A.R.S. § 8- 108. She noted the proposed change in the title of the rule to more accurately reflect its contents. Moreover, practitioners have reported that “temporary custody” is a problematic term for a prospective adoptive parent who is seeking insurance coverage for the child, and the draft rule therefore avoids use of that term. Draft section (a) (“petition”) has two subparts. Subpart (a)(1) concerns a petition filed by a prospective adoptive parent who has custody of the child but who is not yet certified to adopt, unless there is a statutory exception. Subpart (a)(2) concerns other petitioners, including DCS or an agency. In section (b) (“notice of hearing”), the draft attempts to accommodate local practices for providing a hearing notice by including the phrase, “unless otherwise provided by a local rule or practice.” Section (c) (“service”) includes an ICWA service requirement “if there is reason to know that the child who is the subject of the petition under this rule is an Indian child.” The section uses the word “involuntary” rather than

“not placed voluntarily,” which is used in the current rule. Section (d) (“procedure”) reorganizes the provisions of the current rule.

Draft section (e) (“findings and orders”) provides more detail than the current section, particularly in subpart (e)(3), which concerns the time for applying for adoption certification and the identification of the agency who will prepare the report and recommendations required by A.R.S. § 8-105. Subpart (e)(4), which concerns ICWA, includes the alternative phrases, “if the child is an Indian child or if there is reason to know that the child is an Indian child.” Sections (f) (“expiration of custody order”) and (g) (“revocation of custody”) were restyled but not substantively changed. The workgroup recommended the deletion of the “committee comment” to the current rule. Members had no questions or comments and approved the rule as presented.

5. Report from Workgroup 3. Workgroup 3 presented 10 rules.

Rule 37 (“definitions”). Judge Quigley presented this rule. Although members approved Rule 37 at a previous meeting, it was on today’s agenda because the workgroup added a new and significant definition. The definition says, “‘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.” The intent of the definition is to avoid saying “parent, guardian, or Indian custodian” multiple times in the Part III rules, and to simply say “parent” as a reference to all three.

Professor Atwood raised an issue about the definition of “Indian child” in this rule that the members had approved earlier. The second sentence of the definition said, “The findings and elevated burden of proof required by the Indian Child Welfare Act shall 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.” She believed this definition was not accurately aligned with the requirements of 25 C.F.R. § 23.107. After further discussion members agreed, and they substituted this sentence: “If there is reason to know that the child is an Indian child, the court must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child pursuant to 25 C.F.R. § 23.107.”

Rule 46 (“motions”). Mr. Gilmore presented Rule 46, the general rule on motions. The rule as previously presented at the July Task Force meeting consisted of sections (a) through (g). At that time, members had approved sections (a) (“form”), (b) (“filing”), (c) (“response”), and (d) (“court ruling”). Mr. Gilmore noted that sections (e), (f), and (g) were relocated to a new Rule 46.2, which is the next rule on today’s agenda. Members made one change to Rule 46(a). The draft required the filing party to serve all other parties with a copy of the motion “by mail, hand delivery, fax, or by electronic means.” Members changed that to “pursuant to Rule 8,” which is a new and general rule on service. Members then approved Rule 46.

Rule 46.2 (“motions to continue, for summary judgment, and to set aside a final order”). As noted previously, these three sections of Rule 46.2 derive from sections (e), (f), and (g) of the former draft of Rule 46, although these sections have now been sequenced in the order in which these motions are most likely filed. Members had no questions concerning section (a) (“motion to continue”). Mr. Gilmore noted that while section (b) (“motion for summary judgment”) generally incorporates Civil Rule 56 by reference, it modifies the deadline for filing the motion (to no fewer than 45 days before the adjudication hearing, compared to 90 days before the trial date under Rule 56 and 30 days under current Rule 46(D)), and it shortens the time for responding to the motion (20 days, versus 30 days in the Civil Rule and not specified in current Rule 46(D).)

Section (c) (“motion to set aside a final order”) was not by itself controversial, but the section led to a discussion about whether a Rule 46.2(c) motion that is filed within 12 days after entry of a final order should be a time-extending motion, as provided by draft Rule 104. One member observed that new Rule 46.1, which allows motions only to correct a clerical error or add omitted findings, is based on a sound rationale for extending the time for filing a notice of appeal. On the other hand, a Rule 46.2(c) motion could raise a multitude of grounds specified in Civil Rule 60 and therefore could be much broader in scope than a Rule 46.1 motion. The member suggested that even when a Rule 46.2(c) motion is filed within 12 days after entry of a final order, the time-extending feature of Rule 104 could delay the filing of a notice of appeal in that case by as long as two or three months. The member contended that Rule 46.2(c) motions should not be time extending. Another member acknowledged that the time-extending feature will result in some delay in the trial court but believed that not extending time would ultimately result in even more delay. The reasoning was that the filing party in many instances would first be required to file a motion in the Court of Appeals requesting it to re-vest jurisdiction in the superior court. If the Court of Appeals grants that motion, jurisdiction would then be returned to the trial court for consideration of a Rule 46.2(c) motion that it otherwise could have considered without the extra time-consuming step of going to the Court of Appeals. Moreover, the time-extending feature only applies to Rule 46.2(c) motions that are filed within 12 days after entry of a final orders, and that should limit the number of these motions that trigger a Rule 104 extension of time. Members concluded the discussion by approving Rule 46.2 and without making any changes to Rule 104.

Rule 46.3 (“judgment as a matter of law”). Judge Quigley presented this rule, which allows a party to move for judgment when the petitioner has not met the burden of proof. The proposed rule has no counterpart in the current juvenile rules; the closest analog is Civil Rule 50, but that rule applies only to jury trials. Judge Quigley reviewed each section of proposed Rule 46.3. Section (a) (“generally”) has four subparts. Subpart (a)(1) permits a party to make the motion “on some or all of the grounds or allegations” at the conclusion of the petitioner’s presentation of evidence. This subpart also clarifies that when used in this rule, “petitioner” is “the party who initiated a dependency, permanent guardianship, or termination action, either by petition or motion.” Subpart

(a)(2) requires the party moving for judgment as a matter of law to specifically identify the basis of the motion and supporting law and facts. When considering the motion, subpart (a)(3) requires the court to view the evidence and reasonable inferences in the light most favorable to the petitioner. Finally, subpart (a)(4) permits the court to 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.”

There might be instances where a party other than the petitioner would like to present evidence in support of the petition before the judge considers the motion, for example, when a child’s and the petitioner’s interests align, and the child would like to present evidence. Accordingly, section (b) (“required inquiry”) requires the court, before granting a motion, to inquire if any party other than the petitioner wishes to present evidence in support of the petition, and if so, the court must allow the party to present evidence. Sections (c) (“dependency adjudication”), (d) (“termination adjudication”), and (e) (“guardianship adjudication”) contain the standard for granting the motion in each of those respective proceedings. Section (d) contains a bifurcated standard, one for insufficient evidence on the alleged grounds for termination, and the other for insufficient evidence that termination would be in the child’s best interests. Section (f) (“ICWA”) permits a motion under this rule on whether the petitioner has presented sufficient evidence as required by federal law. The reference to the 25 C.F.R. is to the entirety of that part, and not merely to a single section. Section (g) (“findings and orders”) requires the court to make written findings when granting a motion under this rule in whole or in part.

Members had no suggested revisions or questions, and they approved Rule 46.3 as presented.

Rule 48.1 (“in-home intervention”). The August 21 meeting minutes say, “One member asked how the FFPSA will affect in-home intervention. This is a matter that will require the workgroup’s further consideration and Ms. Jorquez will make additional inquiries.” Mr. Truman and Ms. Jorquez advised members today that they have made that inquiry, which included consultation with the DCS Family First administrator. They concluded that no further changes to Rule 48.1 are necessary, and the rule is accordingly approved.

Rule 54 (“pretrial conference”). Judge Young, who presented Rule 54, noted that the workgroup reorganized portions of the current rule. Unlike the current rule, for example, the draft rule includes separate sections (b), “procedure before the conference” and (c) “procedure during the conference.” Judge Young reviewed sections (c) through (i) of the draft, whose content was primarily derived from a lengthy section (C) (“findings and orders”) in the current rule. Although a parent is required to appear at the pretrial conference (and there are consequences for a non-appearance), a member reported that DCS occasionally does not appear at a pretrial conference and asked whether the petitioner can be similarly sanctioned. The member proposed a sanction of dismissal, but

other members believed that was draconian and declined to make that change. Moreover, A.R.S. § 8-844(F) mentions only a parent's failure to appear. Members had no other questions or comments and approved the rule.

Rule 55 (“dependency adjudication hearing”). Judge Quigley, who presented this rule, noted that the draft is generally clearer and more readable than the current rule. She reviewed each section. Section (b) (“time limits”) now has separate subparts, one stating the general requirement and the other addressing a continuance. Section (c) (“burden of proof”) was also broken into subparts, the first concerning “cases not subject to ICWA,” and the second concerning “ICWA cases.” The draft subpart on ICWA cases includes a “clear and convincing” burden of proof for showing active efforts. Judge Quigley noted that draft section (h) (“findings and orders”) includes a new subpart (h)(2) for addressing cases in which the petitioner has failed to meet the required burden of proof, in which event the court must dismiss the petition and return the child to the parent. Members concurred with the addition of this new subpart and approved Rule 55 as presented.

Rule 56 (“disposition hearing”). Judge Quigley noted that the workgroup added pertinent statutory references to draft sections (a) (“generally”) and (b) (“time limits”). The workgroup believed that courts were no longer using disposition reports, as provided in section (C) of the current rule, and they omitted that section from the draft. Section (c) (“considerations”), which corresponds to current section (d) (“procedure”), specifies what the court can consider in determining an appropriate disposition, including placement of the child and the case plan. The restyled provision provides that 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.” Section (E) of the current rule, titled “findings and orders,” is now draft section (d), “court action.” Current subpart (E)(1) was inadequate to address services when DCS was not the petitioner; the workgroup remedied this by drafting subparts (d)(1) and (d)(2), one of which concerns services when DCS is a party and the other when DCS is not a party. Judge Quigley suggested creating a new form that the court would provide to the parent at the conclusion of the disposition hearing. Members had no questions and approved Rule 56 as presented.

Rule 57 (currently, “provision of reunification services hearing,” and as proposed, “motion to determine the provision of reunification services”). Judge Quigley presented this rule, which is based on A.R.S. § 8-846. The title of the current rule is not entirely accurate, because the rule actually permits the court to determine if DCS is not required to provide of reunification services. The workgroup revised the current rule to align with this refocused title and objective. Draft section (a) (“generally”) includes two subparts. Subpart (1) is a general provision and includes a statutory reference. Subpart (2) contains a caveat that if the child is an Indian child, the granting of a motion under this rule does not determine whether active efforts are necessary under ICWA. Draft section (b) (“procedure”) is more detailed than the current section; the draft section advises that the court may rule on a motion without a hearing, and it lists the types of evidence that may

be presented at the hearing. Current section (C) is titled “findings and orders.” The draft rule has separate sections (c) (“findings”) and (d) (“orders.”) Subpart (d)(2) clarifies that the petitioner is relieved of the duty to provide services only when the court enters an order granting the motion. Members found that the current comment was instructive and retained it in the draft. Members then approved Rule 57 as presented.

Rule 59 (“motion for return of the child”). Judge Quigley also presented Rule 59. The workgroup added the words “motion for” at the beginning of the rule’s title. In section (a) (“generally”), the workgroup added a requirement that a motion must include “a supporting factual basis.” Section (b) (“time limits”) retains the current 30-day requirement but adds, “unless the parties agree otherwise.” A new section (c) (“burden of proof”) provides that the moving party has the burden of establishing by a preponderance of the evidence that return of the child would not create a substantial risk of harm to the child. Draft section (d) (“report and response”) corresponds with current section (C) (“reports”) but contains separate subparts that apply based on whether DCS is the petitioner. Current section (D) (“procedure”) provides that the court “shall” consider evidence; draft section (e) uses the word “may” in this instance. Factual findings are expressly required under draft section (f) (“findings and orders”) even when no party objects to the motion. If the court denies the motion, it does not need to affirm the prior placement. Members had no questions for Judge Quigley and approved the rule as presented.

6. Roadmap. The Chair noted that the Editorial Group has now completed its review of about half of the rules, and it will proceed to review the rules the members approved today. Including today’s rules, the Task Force has now approved about 115 rules, and it has about 21 rules remaining, as well as several forms. The Chair added that the number of remaining rules is not definite because new rules have recently been added. Although the Task Force has set a meeting on December 4, which is only two weeks away, it is unlikely, especially with the intervening Thanksgiving holiday, that workgroups will have sufficient time to meet and prepare additional rules during that interval. The Chair and the members discussed setting another meeting in late December, however, that appeared improbable. In any event, the Chair with the members’ agreement **vacated the December 4 meeting date. She also confirmed the meeting on December 18.**

The Chair then proposed the following roadmap. First, within the next two weeks, staff will draft a motion for the Chair to submit on behalf of the Task Force that requests the Court to extend the petition filing deadline until the end of March. After members and the Editorial Group have completed their respective reviews of the rules, Ms. Pennington will format the entire set and distribute the complete set to the members for further review. The Task Force might reconvene in early January to discuss the set and any necessary revisions. We will then circulate the draft set to stakeholders with a request for comments. We will reconvene in late February or early March to review stakeholder comments and a draft rule petition. We will file a petition in late March, which the Court

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will then open for public comments. We will file a reply to the comments about a month thereafter, as specified by the Court, with the expectation that the Court will consider the petition in August.

This roadmap has some gaps, one of which is setting another meeting if the members cannot conclude the entire set of rules and forms on December 18. As previously discussed, the Task Force must also address proposed legislative changes. The Chair reminded members that their terms under Administrative Order No. 2019-79 continue until December 31, 2021.

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

The meeting adjourned at 2:52 p.m.

To: JRTF
From: Staff
Re: December 18, 2020 meeting agenda
Date: December 16, 2020

The December 18, 2018 is the most complex Task Force meeting agenda to-date. This memo will preview the agenda, with the objectives of making the agenda more understandable and, as a result, shortening discussions during the meeting.

Section One. The December 18, 2020 Task Force meeting agenda has two notable characteristics.

First, there are more than the usual number of rules on the agenda. Workgroups have done an outstanding job during the past several weeks in addressing all of the pending rules, and the large number of rules on the agenda – perhaps twice the number of rules that were on previous agendas – is a product of these efforts.

Second, some of the rules have been renumbered and relocated. The Editorial Group requested Workgroup 1 to review rules concerning the same subjects that were duplicated within Parts II, III, and IV, and to determine if a single rule could suffice for multiple ones. Workgroup 1 devised solutions for a few of these redundancies, as explained below, but it could not do so for the rules on motions, which will continue to be three separate rules (now Rule 15 for delinquency, Rule 46 for Part III proceedings, and Rule 74 for adoptions.) As for the others:

- Rules on time. A proposed general rule on computing time is now a new Rule 11. The starting point for this new rule was Rule 43 in SharePoint (computing and extending time.) If members approve new Rule 11, we will have two rules on time (Rule 11 and Rule 17) rather than three (Rules 17, 43, and 72.)
- Rules on virtual proceedings. Rule 42, as proposed by Judge Agne’s workgroup and as further presented by Workgroup 3, is limited to Part III proceedings. There continued to be separate provisions for virtual appearances in the delinquency rules (Rule 13) and the adoption rules (Rule 71). To address this, Rule 43 has been renumbered as Rule 12 (virtual proceedings; declared emergencies.) As proposed, new Rule 12 would be a Part I rule. If it’s

approved, new Rule 12 will allow Rules 42 and 71 to be deleted. More importantly, the new rule will allow the detailed procedures of draft Rule 42 to be broadly applied to any juvenile proceeding, with the limitations contained in the cross-referenced delinquency rules. New Rule 12 also will provide a single rule for virtual proceedings in all juvenile matters during a declared emergency.

- Rules on combining hearings. Draft Rule 14 permits the court to combine delinquency hearings. That draft provision has been renumbered as Rule 14(a). Proposed Rule 14(b), which is new, concerns the combination of hearings for cross-over youth (by setting the dependency and delinquency hearings on the same date and at the same time, but not by consolidating the cases.) A newly proposed Rule 14(c) would allow the court to combine Part III hearings. Rule 14 would eventually be relocated as a Part I rule.

Section Two. In addition,

- A new Rule 10 concerns children who are the subject of simultaneous dependency and family law proceedings. New Rule 10 is the juvenile rule analog to Family Law Rule 5.1.
- A new Rule 50.1 is entitled “placement preferences.” Former Rule 50.1 has been renumbered as Rule 50.2, which is now titled “deviation from ICWA placement preferences.”

Please also note that on the December 18 agenda, three sets of Workgroup 2 rules have been paired because they involve related issues or subject matters.

- Pairing (a): Rule XX (definitions), which contained only a single definition (“parent”) has been relocated as a new Rule 22(a) (definitions).
- Pairing (b): Rules 23 and 28 both involve issues regarding the collection and processing of DNA samples taken from juveniles. Please see the hyperlink to the Mario W. case in Section Four.
- Rules 19, 30, and 104.1 concern the distinction between a legal file and a social file (aka the red file [Maricopa] or the blue file [Pima]), and ways to assure that the appellate record includes social file items the trial court considered in determining the disposition.

Section Three. Here are three rules that don't appear on the agenda.

- Rule 3.1 (applicability of the Arizona Rules of Evidence; admissibility of evidence and reports). This rule was on Task Force agendas in December 2019 and January 2020. The minutes of the January meeting say, "Judge Kreamer suggested that members who oppose the draft language of subpart (d)(7) prepare a written alternative, and the Chair agreed with that suggestion. Members then approved Rule 3.1, except for subpart (d)(7)." Members proposed no suggested alternatives to subpart (d)(7) thereafter, and the Editorial Board has now completed its review of Rule 3.1.
- Rule 45 (currently, admissibility of evidence). In conjunction with the approval of Rule 3.1, Rule 45, which was not presented to the Task Force, is now shown as abrogated.
- Rule 47 (release of information). This rule was recently amended following the recommendations of a Supreme Court workgroup, with an effective date of January 1, 2019. (See R-18-0005) Workgroup 3 considered this rule on multiple occasions, but it was split on the need for further revisions. Although the rule was not presented to the Task Force, the Editorial Group reviewed the rule and made minor, non-substantive edits.

Section Four. Here are hyperlinks to three cases that are highly pertinent to the rules on the December 18 agenda:

- Regarding Rules 23 and 28: *Mario W. v Kaipio*
- <https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2012/CV-11-0344-153407.pdf>
- Regarding Rules 52 and 58: *DCS v Stocking-Tate*
- <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2019/1%20CA-SA%2019-0001%20DCS%20v%20Stocking%20Tate%20.pdf>
- Regarding Rules 74 and 85: *Denia L. v DCS*
- <https://www.appeals2.az.gov/Decisions/JV20190055%20Opinion.pdf>

Section Five. A.O. No. 2019-74, which established the Task Force, provides,

The Task Force shall review the Arizona Rules of Procedure for the Juvenile Court and identify possible changes that would conform these rules to modern usage, simplify the language, clarify and improve current procedures, reorganize the rules to enhance their usability, and account for recent Arizona and federal legislation, including the Family First Prevention Services Act.

Because a number of rules have now been added, consolidated, relocated, abrogated, or otherwise reorganized, and especially because the Task Force has now completed its initial review of all the rules, staff has prepared a proposed Table of Contents (TOC.)

Staff's proposed TOC [version 12.10.2020] is included in the meeting materials. The proposed TOC

- revised certain Part and Subpart titles to more closely align the titles with the content of the subsequent rules;
- more closely grouped rules that have related content;
- put the rules in a more logical sequence;
- eliminated more than a dozen rules that are shown as "repealed," "reserved," or "renumbered" in the current TOC; and
- eliminated rule numbering to the right of the decimal (e.g., 19.1, 40.2, 47.3).

Please don't focus on the numbers associated with each rule in the proposed TOC. The numbers only serve as placeholders for the sequence, which can change later. (The gap in rule numbers between parts and subparts is only temporary and it will facilitate later renumbering.) The keys are whether the subject matters of the rules are grouped appropriately and whether these rules appear in the most rational order.

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JRTF: Rules in the right column are in the same sequence shown in the spiral-bound packet
Proposed Table of Contents: 12.10.2020

Order of Rules as Proposed 12.10.2020	Order of Current Rules, with a few variations such as newly added and relocated rules
Part I: GENERAL PROVISIONS	Part I: GENERAL PROVISIONS
1. Scope and Construction	1. Scope and Construction
2. Definitions	2. Definitions
3. Priority of Proceedings; Conducting Proceedings; Applicability of Other Rules	3. Priority of Proceedings; Conducting Proceedings; Applicability of Other Rules
4. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence and Reports	3.1. Applicability of the Arizona Rules of Evidence
5. Form of Filed Documents	4. ICWA
6. Service of Documents by Parties	5. Appointment of a Special Advocate
7. Computation of Time	6. Change of Judge
8. Change of Judge	7. Form of Filed Documents
9. Consolidation of Hearings	8. Service of Documents by Parties
10. Virtual Proceedings; Declared Emergencies	9. Intervention [new]
11. ICWA	10. Simultaneous Dependency and Family Law Proceedings [FLR 5.1]
12. Appointment of a Special Advocate	11. Computation of Time
13. Intervention [new]	12. Virtual Proceedings; Declared Emergencies
14. Simultaneous Dependency and Family Law Proceedings [FLR 5.1]	
PART II: DELINQUENCY	PART II: DELINQUENCY AND INCORRIGIBILITY
Subpart 1. Delinquency Scope and Procedures	Subpart 1. General Delinquency Provisions
20. Scope [new]	X. Scope [new]
21. Referral; Diversion	XX. Definitions (Reserved) [sole defin. is now in R. 21]
22. Content of a Petition	22. Referral; Diversion
23. Filing a Petition	24. Content of a Petition
24. Serving a Petition and Notice to Appear	25. Filing a Petition
25. Appointment of an Attorney for a Juvenile	26. Serving a Petition and Notice to Appear
26. Attorney's Appearance	10. Appointment of an Attorney for a Juvenile
27. The Juvenile's Attendance at Court Proceedings; Restraints	11. Attorney's Appearance
28. Attendance of Witnesses and Counsel by Telephone or Video Conference	12. The Juvenile's Attendance at Court Proceedings; Restraints
29. Discovery	13. Attendance of Witnesses and Counsel by Telephone or Video Conference
30. Subpoenas	14. Consolidation of Hearings
31. Speedy Justice	15. Motions
32. Victims' Rights	16. Discovery
33. Records and Proceedings	17. Computation of Time
34. Motions	18. Speedy Justice
35. Mandatory Judicial Determinations	19. Records and Proceedings

--	19.1. Mandatory Judicial Determinations
--	20. Intercounty Transfers
--	21. Victims' Rights
--	27. Subpoenas
Subpart 2. Delinquency Proceedings	Subpart 2. Delinquency and Incurrigibility Proceedings
40. Detention and Probable Cause Hearing	23. Detention and Probable Cause Hearing
41. Advisory Hearing	28. Advisory Hearing
42. Admission or Change of Plea [new]	28.1 Admission or Change of Plea [new]
43. Adjudication Hearing	29. Adjudication Hearing
44. Disposition	30. Disposition
45. Probation	31. Probation
46. Revocation of Probation	32. Revocation of Probation
47. Intercounty Transfers	33. Disposition of Non-Felony Offenses
48. Transfer for Criminal Prosecution	34. Transfer for Criminal Prosecution
49. Post Transfer	35. Post Transfer
PART III. CHILD DEPENDENCY AND GUARDIANSHIP; TERMINATION OF PARENTAL RIGHTS	PART III. DEPENDENCY, GUARDIANSHIP, AND TERMINATION OF PARENTAL RIGHTS
---	Subpart 1. Scope of Rules
---	36. Application and Interpretation
Subpart 1. General Provisions; Parties and Participants	Subpart 2. General Provisions
60. Application and Interpretation	
61. Meaning of Terms	37. Meaning of Terms
62. Assignment, Appointment of an Attorney	38. Assignment, Appointment of an Attorney
63. Appearance of Counsel	39. Appearance of Counsel
64. Appointment of a Guardian Ad Litem	40. Appointment of a Guardian Ad Litem
65. Duties of an Appointed Attorney and Guardian ad Litem	40.1. Duties of an Appointed Attorney and Guardian ad Litem
66. Duties of Attorneys Who Represent Parents	40.2. Duties of Attorneys Who Represent Parents
67. [new] Duties and Responsibilities of a Guardian ad Litem for a Parent	40.3 [new] Duties and Responsibilities of a Guardian ad Litem for a Parent
68. [new] Education Requirements for a Court-Appointed Attorney or Guardian ad Litem	40.4 [new] Education Requirements for a Court-Appointed Attorney or Guardian ad Litem
69. Child's Rights [new]	41. Public Attendance at Hearings; Limitations and Prohibitions
70. Participants' Rights [new]	41.1 Child's Rights [new]
--	41.2 Participants' Rights [new]
--	42. Telephonic Testimony, Video Conferencing
Subpart 2. General Provisions on Proceedings and Procedures	43. Computation of Time
71. Public Attendance at Hearings; Limitations and Prohibitions	43.1. Change of Venue [new]

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72. Release of Information	44. Disclosure and Discovery
73. Change of Venue [new]	45. Admissibility of Evidence
74. Disclosure and Discovery	46. Motions
75. Motions	46.1. Altering or Amending a Final Order
76. Altering or Amending a Final Order	46.2. Motions to Continue, for Summary Judgment, and to Set Aside a Final Order
77. Motions to Continue, for Summary Judgment, and to Set Aside a Final Order	46.3. Motions for Judgment as a Matter of Law [new]
78. Motions for Judgment as a Matter of Law [new]	47. Release of Information
79. Placement Preferences [new]	47.1. Mandatory Judicial Determinations
80. Deviation from ICWA Placement Preferences	47.2. Minute Entries
81. Minute Entries	47.3. Court Authorized Removal
82. Mandatory Judicial Determinations	
--	
Subpart 3. Dependency Proceedings	Subpart 3. Dependency
90. Court Authorized Removal	48. Petition, Temporary Orders and Findings, Notice of Preliminary Protective Hearing, Amended Petition
91. Petition, Temporary Orders and Findings, Notice of Preliminary Protective Hearing, Amended Petition	48.X. Service of the Petition, Temporary Orders and Notice of Hearing
92. Service of the Petition, Temporary Orders and Notice of Hearing	48.1. In-Home Intervention
93. In-Home Intervention	49. Pre-Preliminary Protective Hearing Conference nka Preliminary Protective Conference
94. Preliminary Protective Conference	50. Preliminary Protective Hearing
95. Preliminary Protective Hearing	50.1. Placement Preferences [new]
96. Review of Temporary Custody	50.2. Deviation from ICWA Placement Preferences
97. Initial Dependency Hearing	51. Review of Temporary Custody
98. Settlement Conference	52. Initial Dependency Hearing
99. Pretrial Conference	53. Settlement Conference
100. Dependency Adjudication Hearing	54. Pretrial Conference
101. Disposition Hearing	55. Dependency Adjudication Hearing
102. Provision of Reunification Services Hearing	56. Disposition Hearing
103. Review Hearing	57. Provision of Reunification Services Hearing
104. Return of the Child	58. Review Hearing
105. Permanency Hearing	59. Return of the Child
--	60. Permanency Hearing
--	60.1. Consolidation of Hearings
Subpart 4: Guardianship Proceedings	Subpart 4: Permanent Guardianship

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110. Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship	61. Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship
111. Initial Guardianship Hearing	62. Initial Guardianship Hearing
112. Guardianship Adjudication Hearing	63. Guardianship Adjudication Hearing
113. Successor Permanent Guardianships	63.1. Successor Permanent Guardianships
114. Initial Successor Permanent Guardianship Hearing	63.2. Initial Successor Permanent Guardianship Hearing
Subpart 5: Proceedings for Termination of Parental Rights	Subpart 5: Termination of Parental Rights
120. Motion, Petition, Notice of Hearing and Service of Process and Orders	64. Motion, Petition, Notice of Hearing and Service of Process and Orders
121. Initial Termination Hearing	65. Initial Termination Hearing
122. Termination Adjudication Hearing	66. Termination Adjudication Hearing
Part IV. ADOPTIONS	Part IV. ADOPTION
--	Subpart 1: Scope of Rules
--	67. Scope of Rules
Subpart 1: General Adoption Provisions	Subpart 2: General Adoption Provisions
130. Scope of Rules	68. Meaning of Terms
131. Meaning of Terms	69. Appointment, Appearance, and Withdrawal of Counsel
132. Release of Information	70. Appointment of Guardian Ad Litem
133. Appointment, Appearance, and Withdrawal of Counsel	71. Telephonic Testimony, Video Conferencing
134. Appointment of Guardian Ad Litem	72. Computation of Time
136. Disclosure and Discovery	73. Disclosure and Discovery
135. Motions	74. Motions
--	75. Release of Information
--	76. Service of Process [abrogated; is now 79.1]
--	Subpart 3: Certification
--	77. Certification to Adopt
--	78. Petition for Temporary Custody
Subpart 2: Adoption Proceedings	Subpart 4: Adoption
136. Certification to Adopt	79. Petition to Adopt
137. Petition for Temporary Custody	79.1. Service of the Petition to Adopt and Notice of Hearing [new]
138. Petition to Adopt	80. Birth Parent Living Expenses
139. Service of the Petition to Adopt and Notice of Hearing [new]	81. Consent to Adopt
140. Birth Parent Living Expenses	82. Petition to Revoke Consent
141. Consent to Adopt	83. Documentation Required to Adopt
142. Petition to Revoke Consent	84. Hearing to Finalize Adoption
143. Documentation Required to Adopt	85. Setting Aside an Adoption
144. Hearing to Finalize Adoption	86. Adoption Records [consolidated with Rule 75]

145. Setting Aside an Adoption	87. Modification of Post-Placement Agreements
146. Modification of Post-Placement Agreements	
PART V. EMANCIPATION	
150. Emancipation Generally	Subpart 1: Scope of Rules
151. Petition and Documentation Requirements	88. Emancipation Generally
152. Time for Hearing and Notice of Hearing	
153. Proceedings After Service of the Petition	
154. Determination and Order of Emancipation	
--	Subpart 2: General Provisions
--	89. Definitions
--	90. Venue
--	91. Attorneys and Guardians Ad Litem
--	92. Public Access
--	93. Fee Reduction or Waiver
	Part 3: Emancipation Proceedings
--	94. Petition, Filing, Content, and Documentation Requirements
--	95. Hearing, Service of Petition, and Notice
--	96. Allegations of Abuse or Neglect
--	97. Responses and Objections
--	98. Proceedings
--	99. Disclosure
--	100. Time Limits and Exclusions
	Subpart 4: Emancipation Order
--	101. Burden of Proof
--	102. Determination and Order of Emancipation
PART VI. APPEALS	PART VI. APPEALS
160. Right to Appeal	103. General Provisions Concerning Appeals Right to Appeal
161. General Provisions [new]	103.1 [new] General Provisions
162. Notice of Appeal	104. Notice of Appeal; Notice of Non-Participation, the Record on Appeal as of 9/25, "time for filing a notice of appeal and notice of cross-appeal." See further 104X
163. The Record on Appeal [new]	104X. Content and distribution of the Notice of Appeal
164. Notice of Non-Participation [new]	104.1 [new] Record on Appeal
165. Assigning an Appellate Case Number; Filing, Serving, and Transmitting the Record on Appeal	104.2 [new] Notice of Non-Participation

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166. Briefing in the Court of Appeals; Transfer to the Supreme Court	105. Assigning an Appellate Case Number, Filing, Serving, and Transmitting the Record on Appeal
167. Dismissal and Other Action by the Court of Appeals; No Motion for Reconsideration [new]	106. now, Briefing in the Court of Appeals; Transfer to the Supreme Court
168. Petition for Review	106.1 [new] Dismissal and Other Action by the Court of Appeals; No Motion for Reconsideration
169. Appellate Court Mandate [new]	107. Petition for Review
	107.1. [new] Appellate Court Mandate
	108. Service, How Made, Filing, Extensions of Time [abrogated]
[Civil Rule 81.1]	** Civil Rule 81.1
	FORMS
	Form 1. Notice to Parent in Dependency Action
	Form 1A. Notice to Parent in In-home Dependency Action
	Form 2. Notice to Parent in Guardianship Action
	Form 3. Notice to Parent in Termination Action
	Form 4. Counsel’s Certification of Diligent Search [abrogated]
	Form 5. Sample Notice of Appeal [abrogated]
	Form 5a. Notice of Appeal: delinquencies
	Form 5b. Notice of Appeal: general
	Form 6: Supplemental Designation of the Record
	ICWA reference table

Rule 8. Service of Documents by Parties

(a) Application of This Rule. After service of the initial petition, charging document, or other case-initiating document that is assigned a new case number, a party who files a document with the court must provide a copy of that document to the other parties in the manner stated in this rule, unless another juvenile rule or a court order provides otherwise.

(b) Methods of Service. Except for documents that are confidential, including documents deemed confidential under Rule 19 or Supreme Court Rule 123, or documents that are filed under seal, a complete and exact copy of every document that a party files with the court must be provided to every other party or the party's attorney, before or promptly after the document is filed, by one of the following methods.

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders otherwise or a specific rule requires service on the party.

(2) *Methods of Service.* A document is served on a person under this rule by:

(A) handing it to the person;

(B) mailing it by U.S. mail or other national courier service to the person's last-known address, in which event service is complete upon mailing;

(C) delivering it by any other means, including electronic means other than that described in Rule 8(b)(2)(D), if the recipient consents in writing to that method of service or if the court orders service in that manner, in which event service is complete upon transmission;

(D) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, or by email, if the recipient is an attorney of record in the action, in which event service is complete upon transmission;
or

(E) leaving it for the person:

(i) if the person is represented by an attorney, at the attorney's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the attorney's office; or

(ii) if the person is not represented by an attorney, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

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

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

“on [insert date] to:

“Name of opposing party or attorney

“Physical or E-mail Address of opposing party or attorney”

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

(1) subpoenas; and

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

Rule XYZ8. Service of Documents by Parties

(a) Application of This Rule. After service of the initial petition, charging document, ~~for other case-initiating document~~ that is assigned a new case number, a party who files a document with the court must provide a copy of that document to the other parties in the manner stated in this rule, unless another juvenile rule or a court order provides otherwise.

~~(a)~~

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

~~(c) Methods of Service.~~ ~~A~~ ~~Except for documents that are confidential, including documents deemed confidential under Rule 19 or Supreme Court Rule 123, or documents that are filed under seal,~~ a complete and exact copy of every document that a party files with the court must be provided to every ~~other~~ ~~other~~ party or the party's attorney in the action, before or promptly after the document is filed, by one of the following methods.:

(b)

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders otherwise or a specific rule requires service on the party.

(2) Methods of Service. A document is served on a person under this rule by:

(A) handing it to the person;

(B) mailing it by U.S. mail or other national courier service to the person's last-known address, in which event service is complete upon mailing;

(C) delivering it by any other means, including electronic means other than that described in Rule 8(b)(2)(D), if the recipient consents in writing to that method of service or if the court orders service in that manner, in which event service is complete upon transmission;

(D) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, or by email, if the recipient is an attorney of record in the action, in which event service is complete upon transmission;
or

(E) leaving it for the person;

(i) if the person is represented by an attorney, at the attorney's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the attorney's office; or

(ii) if the person is not represented by an attorney, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

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

~~—hand delivery to the other party;~~

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

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

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

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

(1) Hand delivery to the other party;

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

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

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

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

~~(1) **Serving an Attorney.** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders otherwise or a specific rule requires service on the party.~~

~~(2) **Methods of Service.** A document is served on a person under this rule by:~~

~~(A) handing it to the person;~~

~~(B) mailing it by U.S. mail or other national courier service to the person's last known address, in which event service is complete upon mailing;~~

~~(C) delivering it by any other means, including electronic means other than that described in Rule 8(b)(2)(D), if the recipient consents in writing to that method of service or if the court orders service in that manner, in which event service is complete upon transmission;~~

~~(D) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, or by email, if the recipient is an attorney of record in the action, in which event service is complete upon transmission; or~~

~~(E) leaving it for the person:~~

~~(i) if the person is represented by an attorney, at the attorney's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the attorney's office; or~~

~~(ii) if the person is not represented by an attorney, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there.~~

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

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

~~“on [insert date] to:~~

“Name of opposing party or attorney

“Physical or E-mail Address of opposing party or attorney”

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

(1) subpoenas; and

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

∴

disclosure statements; and

disposition reports in delinquency ca

~~(f) —~~

~~(1) Subpoenas;~~

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

~~(3) Disclosure statements; and~~

~~(4) Disposition reports in delinquency cases.~~

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

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

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

Rule 10.0. Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings

- (a) Transfer to Juvenile Division.** If pending family law and dependency proceedings concern the same parties, the juvenile division has jurisdiction over the children.
- (1) *Notice.*** The parties must notify the family division of a pending dependency proceeding.
 - (2) *Effect of Transfer.*** If the proceedings are transferred, the juvenile division will hear custodial issues until the dependency is dismissed or the juvenile division defers jurisdiction to the family division.
- (b) Referral to Family Division.** If the juvenile determines that a change of legal decision-making or parenting time is appropriate, it may decide those issues or refer the matter to the family division for further proceedings.
- (c) Support Orders.** During any dependency or guardianship proceeding in the juvenile division, the juvenile division may establish, suspend, modify, or terminate a child support order. Except in Title IV-D cases, the juvenile division also may make appropriate orders regarding any past due support or child support arrears and may direct that an income withholding order be quashed or modified. Any order regarding child support must be filed in both the family division and the juvenile division.

Rule 11. Computing and Extending Time

(a) Delinquency Matters. In delinquency matters, time is computed and may be extended as provided in Rule 17.

(b) All Other Matters. In all other matters, and unless these rules provide otherwise, time is computed and may be extended as provided in Civil Rule 6.

Note: If this rule is adopted, the Task Force may abrogate Rules 43 and 72

This rule will be relocated in Part I.

Rule 12. Virtual Proceedings; Declared Emergencies.

(a) Generally.

- (1) ***Delinquency Matters.*** This rule and Rules 12 and 13 govern virtual appearances in delinquency proceedings.
- (2) ***In Non-delinquency Matters.*** Upon the court's own motion or motion by a party, the court may permit virtual testimony, argument, or appearances in any non-delinquency proceeding under these rules. A party's motion must be in writing, unless otherwise authorized by the court.
- (3) ***In All Matters.*** Before granting a motion to appear or testify at, or attend, a proceeding virtually, the court must consider the due process rights of any objecting party and enter a case-specific due process determination in a minute entry or signed order.

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

(c) Non-Evidentiary Hearing. The court may allow or direct a party to appear virtually at a non-evidentiary hearing if each person will be audible to every other person participating in the proceeding, including the judicial officer, and to the electronic recording system or court reporter.

(d) Request to Testify Virtually; Evidentiary Hearing.

- (1) ***Presumption.*** Unless section (f) of this rule applies, it is presumed that evidentiary hearings will be conducted in person.
- (2) ***Time.*** A party must file a motion to have a party or witness give virtual testimony at an evidentiary hearing and e-mail or deliver the motion to the staff of the assigned judicial officer.
 - (A) ***Delinquency Matters.*** A party must file a motion to have a party or a witness give virtual testimony at an evidentiary hearing in a delinquency matter no later than 10 days before the hearing, and an opposing party may file a response no later than 5 days after the motion is filed, but the court may modify these time limits.
 - (B) ***Non-delinquency Matters.*** If the evidentiary hearing in a non-delinquency proceeding is scheduled to occur on 21 days' notice or more, the moving party must file a motion at least 14 days before the evidentiary hearing is scheduled to occur. If the hearing is scheduled to occur on 20 days' notice

or less, the moving party must file a motion sufficiently in advance of the hearing to allow the judicial officer to consider it in a timely manner. Responses must be filed as provided by Rule 46 or Rule 74 or as the court otherwise directs.

(C) *In All Matters.* The court may rule on the motion with or without a hearing.

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

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

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

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

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

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

(f) **Evidentiary Hearings During Declared Emergencies; Presumption.** When the risks associated with a public health or other emergency declared by the Governor cause restriction of physical access to court facilities, evidentiary hearings will presumptively be conducted virtually.

(1) **Objections: How Made, When Made.**

(A) **How to Object to a Virtual Evidentiary Hearing.** A party objecting to a virtual evidentiary hearing must file the objection and email or deliver it to the staff of the assigned judicial officer.

(B) When to Object to a Virtual Evidentiary Hearing. If the virtual evidentiary hearing is scheduled to occur on 21 days' notice or more, the objecting party must file their objection at least 14 days before the evidentiary hearing is scheduled to occur. If the hearing is scheduled to occur on 20 days' notice or less, the objecting party must file their objection sufficiently in advance of the hearing to allow the judicial officer to consider it in a timely manner. In delinquency matters, an opposing party may file a response no later than 5 days after the objection is filed, but the court may modify this time limit. In non-delinquency matters, responses must be filed as provided by Rule 46 or Rule 74 or as the court otherwise directs. The court may rule on the objection with or without a hearing.

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

- (A)** an in person evidentiary hearing cannot reasonably be held, given the ongoing, declared public health or other emergency;
- (B)** one or more witnesses are unable to appear in person at an evidentiary hearing, given the ongoing, declared public health or other emergency;
- (C)** the court can accommodate the objecting party by providing them with full access to the evidentiary hearing by video conferencing, or other audio and video technology; and
- (D)** the objecting party is able to effectively and timely communicate confidentially with their counsel during the hearing as needed.

**Rule 42123. ~~Telephonic Virtual Testimony Proceedings; Video Conferencing,~~
Declared Emergencies.**

(a) Generally.

(1) Delinquency Matters. This rule and Rules 12 and 13 govern virtual appearances in delinquency proceedings.

(2) In Non-delinquency Matters. Upon the court's own motion or motion by a party, the court may permit ~~telephonic virtual~~ testimony ~~or~~ argument, ~~or~~ appearances ~~or video conferencing~~ in any dependency, Title 8 guardianship or termination of parental rights hearings proceeding non-delinquency proceeding under these rules. ~~The A party's~~ motion must be in writing ~~pursuant to Rule 46,~~ unless otherwise authorized by the court.

(a)(3) In All Matters. Before granting ~~the motion~~ a motion to appear or testify at, or attend, a proceeding virtually, the court must consider the due process rights of any objecting party. ~~The and enter a~~ case-specific due process determinations must be in a minute entry or the form of a signed order or contained in a minute entry order.

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

(c) Non-Evidentiary Proceeding Hearing. The court may allow or direct a party to appear virtually telephonically at a non-evidentiary hearing ~~in any dependency, Title 8 guardianship, or termination of parental rights proceeding,~~ if each person will be audible to every other person participating in the proceeding, including the judicial officer, and to the electronic recording system or court reporter, ~~if any.~~

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

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

(2) Time. ~~A party must file a motion to have a party or witness give virtual testimony at an evidentiary hearing and e-mail or deliver the motion to the staff of the assigned judicial officer.~~

(A) Delinquency Matters. A party must file a motion to have a party or a witness given virtual testimony at an evidentiary hearing in a delinquency matter no later than 10 days before the hearing, and an opposing party may

file a response no later than 5 days after the motion is filed, but the court may modify these time limits.

(B) Non-delinquency Matters. ~~A party must file a motion to have a party or witness give telephonic virtual testimony at an in-person evidentiary proceeding hearing in writing with the clerk and e-mail or deliver it the motion to the division staff of the judicial officer to which the case has been assigned.~~ If the ~~telephonic virtual~~ evidentiary ~~proceeding hearing in a non-delinquency proceeding~~ is scheduled to occur on 21 days' notice or more, the ~~objecting-moving~~ party must file ~~their a motion objection~~ at least 14 days before the evidentiary ~~proceeding hearing~~ is scheduled to occur. If the ~~proceeding hearing~~ is scheduled to occur on 20 days' notice or less, the ~~objecting-moving~~ party must file ~~their objection a motion~~ sufficiently in advance of the ~~proceeding hearing~~ to allow the judicial officer to consider it in a timely manner. Responses must be filed as provided by Rule 46 or Rule 74 or as the court otherwise directs.

~~(2)(C)~~ In All Matters. The court may rule on the ~~objection motion~~ with or without a hearing.

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

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

- (1) the party calling the witness must make a good faith effort to contact the opposing parties to identify and provide previously disclosed exhibits that will be used during the witness's testimony;
- (2) ~~the~~ exhibits must be provided in advance to the witness or party ~~or witness~~ through counsel, as applicable, by noon on the court day before the evidentiary ~~proceeding hearing~~ is scheduled to occur;
- (3) the party who introduces the exhibits must affirm that they are accurate copies of the exhibits provided to the party or witness who is appearing telephonicallyvirtually; must follow the clerk's procedures for submitting exhibits; and must email them to the ~~division~~ staff of the assigned judicial officer ~~to which the case has been assigned~~ by noon on the court day before the evidentiary ~~proceeding hearing~~ is scheduled to occur; and
- (4) if a party seeks to examine or cross-examine a witness regarding a previously ~~introduced identified~~ exhibit that has not yet been provided to the testifying witness, the court must allow the party a reasonable opportunity to provide an

accurate copy of the exhibit to the witness who is appearing ~~telephonically~~virtually, including granting a recess or continuance if necessary.

(f) Evidentiary ~~Proceedings~~Hearings During Declared Emergencies; Presumption.

When the risks associated with a public health or other emergency declared by the Governor cause restriction of physical access to court facilities, evidentiary ~~proceedings~~hearings will presumptively be conducted ~~by telephone, by video conferencing, or by other available audio and video technology~~virtually.

(1) Objections: How Made, When Made.

(A) How to Object to a ~~Telephonic~~Virtual Evidentiary ~~Proceeding~~Hearing.

A party objecting to ~~a the telephonic virtual~~ conduct of an evidentiary ~~proceeding hearing~~ must file the objection ~~in writing with the clerk~~ and email or deliver it to the ~~division~~ staff of the assigned judicial officer ~~to which the case has been assigned~~.

(B) When to Object to a ~~Telephonic~~Virtual Evidentiary ~~Proceeding~~Hearing.

If the ~~telephonic virtual~~ evidentiary ~~proceeding hearing~~ is scheduled to occur on 21 days' notice or more, the objecting party must file their objection at least 14 days before the evidentiary ~~proceeding hearing~~ is scheduled to occur. If the ~~proceeding hearing~~ is scheduled to occur on 20 days' notice or less, the objecting party must file their objection sufficiently in advance of the ~~proceeding hearing~~ to allow the judicial officer to consider it in a timely manner. In delinquency matters, an opposing party may file a response no later than 5 days after the objection ~~motion~~ is filed, but the court may modify this time limit. In non-delinquency matters, responses must be filed as provided by Rule 46 or Rule 74 or as the court otherwise directs. The court may rule on the objection with or without a hearing.

(2) Case-Specific ~~Due Process~~ Determinations in Evidentiary Hearings.

The court may overrule an objection to a ~~telephonic virtual~~ evidentiary ~~proceeding hearing~~ and deny a request for an in-person ~~proceeding hearing~~ only after making a case-specific determination that the objecting party's constitutional rights ~~to, including the right to~~ due process, will be satisfied by the ~~telephonic virtual~~ evidentiary ~~proceeding hearing~~. To overrule the objection and to demonstrate that due process will be satisfied, the court must specifically find that the ~~telephonic virtual~~ evidentiary ~~proceeding hearing~~ will not substantially prejudice any party, and that each person will be audible and, if practicable, visible to every other person participating in the ~~proceeding hearing~~, including the judicial officer, and to the electronic recording system or court reporter, ~~if any~~. This case-specific due process determination may involve providing for certain

witnesses to testify ~~telephonically~~virtually, even though the ~~proceeding hearing~~ will primarily be in-person. The case-specific due process determination must be ~~in in a minute entry or signed order~~the form of a signed order or contained in a minute entry and must address the following factors showing that, as applicable:

- (A) an in-person evidentiary ~~proceeding hearing~~ cannot reasonably be held, given the ongoing, declared public health or other emergency;
- (B) one or more witnesses are unable to appear in-person at an evidentiary ~~proceeding hearing~~, given the ongoing, declared public health or other emergency;
- (C) the court can accommodate the objecting party by providing them with full access to the evidentiary ~~proceeding hearing~~ by video conferencing, or other audio and video technology; and
- ~~(D)~~ the objecting party is able to effectively and timely communicate confidentially with their counsel during the ~~proceeding hearing~~ as needed; ~~and.~~
- ~~(E)~~(D) ~~the court must admonish witnesses and attendees in open court that the telephonic virtual evidentiary proceeding hearing will proceed in a manner similar to the trial of a civil action before the court sitting without a jury.~~

Rule 12. The Juvenile's Attendance at Court Proceedings; Restraints

(a) Personal Appearance. A juvenile must personally appear in court for the following proceedings:

- (1) A detention hearing;
- (2) an advisory hearing;
- (3) a transfer hearing;
- (4) a change of plea hearing;
- (5) an adjudication hearing; and
- (6) a disposition hearing.

(b) Telephonic or Video Appearance. If the parties agree and if authorized by the court, the juvenile may personally appear by telephone or by video conferencing.

(c) Voluntary Absence. The court may infer that a juvenile's absence is voluntary if the juvenile:

- (1) was notified of the date, time, and place of the hearing;
- (2) was ordered to be present at the hearing;
- (3) was advised that the hearing would proceed in the juvenile's absence if the juvenile failed to appear; and
- (4) has not **shown good cause** for the non-appearance.

(d) Failure to Appear. The court may proceed with a hearing, other than a disposition hearing, if the juvenile voluntarily fails to appear. Following the juvenile's non-appearance at any hearing, the court also may issue a warrant to secure the juvenile's attendance for a future hearing.

(e) Mechanical Restraints. Mechanical restraints include handcuffs, leg irons, belly chains, zip ties, spit hoods and masks, and any other device used to restrain movement of the arms, legs, or torso.

- (1) When a juvenile appears before a judicial officer at a hearing in the juvenile's delinquency case, the juvenile must be free of mechanical restraints, unless there are no less restrictive alternatives that will prevent flight or physical harm. A juvenile appearing before a judicial officer may object to the use of restraints. After the judicial officer has heard from the juvenile, the State, and any detention

personnel, and considered the factors in subpart (2), the judicial officer must approve or disapprove of the use of restraints.

- (2)** Relevant factors in determining whether the use of mechanical restraints is warranted include:
 - (A)** the juvenile has displayed threatening or physically aggressive behavior;
 - (B)** the juvenile has expressed an intention to flee or has previously attempted to flee from detention; and
 - (C)** a present security situation in the courtroom or courthouse, including a risk of gang violence or gang-related conduct or a specific concern due to a witness's presence, which warrants the use of mechanical restraints.
- (3)** A prior judicial determination that the juvenile should appear free of mechanical restraints remains in effect until the court orders otherwise.
- (4)** The use of mechanical restraints outside the courtroom is governed by the Arizona Juvenile Detention Standards.
- (5)** Any restraints should allow the juvenile to read, handle documents, and write.

Rule 13. Attendance of Witnesses and Appearance of Attorneys by Telephone or Video Conference

(a) At Adjudication Hearings. All witnesses must personally appear for adjudication hearings, unless the court orders otherwise after considering the juvenile's constitutional right of confrontation.

(b) At Other Proceedings. For proceedings other than adjudications, a party may request the court to permit witness testimony or an attorney's appearance by telephone or video conferencing. Unless the court orders otherwise, the request must be in writing.

Rule 14. Combining Hearings

- (a) **Delinquency Proceedings.** The court may conduct at one time any combination of the advisory, adjudication, disposition, or other delinquency hearings.
- (b) **Crossover Youth.** If there are pending delinquency and dependency cases involving the same child, the court also may set a delinquency hearing and a dependency hearing involving that child on the same date and time.
- (c) **Non-Delinquency Proceedings.** The court may combine and conduct at one time any hearings or conferences under Part III, provided the combined hearing abides by the time limits set by law and the required notice to the parties for each proceeding, and that preserves the parties' rights to due process.

Rule 19. Records and Proceedings

(a) Juvenile Court Delinquency Files.

(1) *Legal File.*

- (A) *Public Access.* The legal file must be open to public inspection, except for portions of the file that are confidential or designated as confidential by the judge after making findings of a need to protect the welfare of the juvenile or the victim, or a clear public interest in confidentiality.
- (B) *Contents.* The juvenile court's legal file consists of all pleadings, motions, minute entries, orders, or other documents as provided by rule or court order.
- (C) *Confidential Documents.* Within the legal file, the clerk must file and segregate confidential documents, including any documents and information originating in the social file. [WG 2 recommends flagging A.R.S. section 8-208 for possible amendment and consistency with this rule.]
- (D) *Disposition File.* The disposition file includes the Rule 30 disposition report, any attachments to the disposition report, and any documents from the legal or social file that were included with the disposition report. Documents in the disposition file are confidential documents.
- (E) *Closed Documents.* The court may close all or part of the legal file after making findings of a need to protect the welfare of the juvenile or the victim, or a clear public interest in confidentiality.

(2) *Social File.*

- (A) *No Public Access.* A juvenile's social file is confidential and is not open to public inspection without a court order.
 - (B) *Contents.* The social file is maintained by the probation department and consists of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, DCS records, police reports, detention records, and records and reports or work product of the probation department.
- (3) ~~*Disposition File.* The disposition file includes the Rule 30 disposition report, any attachments to the disposition report, and any documents from the legal or social file that were included with the disposition report.~~

(b) Proceedings. Delinquency proceedings are open to the public, except upon the court's written finding of a need to protect the interests of a victim, the juvenile, a witness, the State, or a clear public interest in confidentiality.

(1) Request to Close Proceeding.

(A) Notice of Request. Any person who requests that all or a portion of a proceeding be closed to the public must give the parties reasonable notice of the request. The person also must give notice to any other person designated by the court, which may include media representatives.

(B) Hearing. The court must hold a hearing before the proceeding to determine whether the proceeding should be closed and must consider the positions of the parties.

(C) Factors. In determining whether to close all or part of proceeding, the judge may consider any relevant factor, including the likelihood that an open proceeding may:

(i) be emotionally harmful to a participant or victim; or

(ii) inhibit testimony or the disclosure or discussion of information material to the truth finding or rehabilitation process.

(c) Release of Juvenile Court Files.

(1) Release to Juvenile Probation Departments. The juvenile court may release a legal and social file to a juvenile probation department in another jurisdiction when release is necessary for the juvenile's supervision.

(2) Release to Federal Authorities. Upon request of the United States Attorney's Office, the juvenile court must promptly release to that office for presentment to a federal magistrate judge any records concerning a juvenile who is arrested for a criminal offense, pursuant to 18 U.S.C. § 5032.

Rule 22. Referral; Diversion

(a) Definition of “Parent.” “Parent” as used in the delinquency rules includes a parent, guardian, or custodian.

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

- (1) the name, age, gender, and address of the juvenile named in the referral;
- (2) the names and addresses, if known, of the juvenile’s parent or the juvenile’s spouse, if any;
- (3) if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody;
- (4) a concise statement of facts – including with reasonable particularity the time, date, place, and manner of the alleged acts of the juvenile – that bring the juvenile within the court’s jurisdiction, and the law or standard of conduct that the acts allegedly violated; and
- (5) the signature of the person responsible for filing the referral.

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

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

(e) Diversion.

- (1) **Meaning.** “Diversion” is a way of resolving a referral under A.R.S. § 8-321 without filing a petition.
- (2) **Prosecutorial Discretion.** The prosecutor has sole discretion to divert the prosecution of a juvenile to a community-based program or to a program administered by the juvenile court.
- (3) **Notice to the Victim.** If the juvenile is accepted into such a program, the victim must be notified as provided by A.R.S. § 8-388.

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

Rule 22. Referral; Diversion

(a) Definition of “Parent.” ~~“Parent” as used in the delinquency rules includes a parent, guardian, or custodian.~~

(b) Referral. A referral ~~from an individual or agency~~ for incorrigible or delinquent conduct must include:

- ~~(1) a concise statement of facts—including with reasonable particularity the time, date, place, and manner of the alleged acts of the juvenile—that bring the juvenile within the court’s jurisdiction, and the law or standard of conduct that the acts allegedly violated;~~
- ~~(2)~~ **(1)** the name, age, gender, and address of the juvenile named in the referral;
- ~~(3)~~ **(2)** the names and addresses, if known, of **the juvenile’s parent, guardian, or custodian of the juvenile** or the juvenile’s spouse, if any; ~~and~~
- (3)** if the juvenile is in custody, the place of detention and the date and time the juvenile was taken into custody;
- ~~(4) a concise statement of facts—including with reasonable particularity the time, date, place, and manner of the alleged acts of the juvenile—that bring the juvenile within the court’s jurisdiction, and the law or standard of conduct that the acts allegedly violated; and~~
- (5)** ~~t~~he signature of the person responsible for filing the referral.

(c) Record of Referral. ~~An authorized juvenile court officer~~ Any authorized juvenile court personnel ~~[Staff Note: Staff suggests including in Rule 2 a definition of “authorized juvenile court officer” to distinguish this person from a judicial officer.]~~ who receives a referral must make a record of the referral in the manner prescribed by the juvenile court in each county. ~~[Staff Note: How does the court typically make a record of a referral? Are referrals assigned a case number? Who has access to the record?]~~

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

~~(e)(e) **Diversion or Deferral.** [Staff Note: Are these two terms interchangeable? If they mean different things, should the rule include an explanation of the difference? Staff also suggests a standalone rule on diversion; compare Criminal Rule 38.]~~

~~(1) **Meaning.** “Diversion” or “deferral” are ways of processing a juvenile delinquency is a way of resolving a referral under A.R.S. § 8-321 or incorrigibility matter that obviate without filing a petition the need for a court adjudication. [Staff Note: The preceding sentence, as modified, was taken from current Rule 9(A). It is of some value, but it does not distinguish the meaning of these two terms.]~~

~~(2) **Prosecutorial Discretion.** The prosecutor has sole discretion to divert or defer the prosecution of a juvenile who is accused of an incorrigible or delinquent act to a community-based alternative program or to a program administered by the juvenile court.~~

~~(3) **Notice to the Victim.** If the juvenile is accepted into such a program, the court administering the program must notify the victim, victim must be notified as provided by A.R.S. § 8-388. by law. [Staff Note: If the diversion process avoids a court proceeding, shouldn't the prosecutor rather than the court have the duty to notify the victim?]~~

~~(d)(f) **Submission.** If the juvenile is not eligible for diversion, After reviewing a referral, the authorized juvenile court officer personnel must submit the referral to the prosecutor, if the offense has not been designated for diversion. [Staff Note: Does the substance of sections C and D require clarification? Section D requires the juvenile court officer to submit a referral to the prosecutor if the offense is not designated for diversion; but if—as section C requires—the prosecutor alone has discretion to defer, the only way the prosecutor could have made that decision is if the juvenile court officer had already referred the matter to the prosecutor.]~~

Rule 23. Detention and Probable Cause Hearing

(a) Admission to Detention. Any peace officer who brings a juvenile to a juvenile court detention facility, other than a juvenile who was arrested pursuant to an arrest warrant, must provide a report or documentation that supports the juvenile's admission to detention to an authorized juvenile court officer in the manner prescribed by the juvenile court in each county. **12/3/20 WG-2 note: Joe Kelroy asked if we need to clarify the meaning of admission; what if the juvenile is brought in, screened, and released; has the juvenile been admitted?**

(b) Requirements Upon Admission. Upon admission to the detention facility, the authorized juvenile court officer must do the following:

- (1) notify the juvenile of the reason for the admission and the location, date, and time of the detention hearing;
- (2) notify the juvenile's parent of the reason for the admission and the location, date, time of the detention hearing, and that the hearing may proceed in the absence of the juvenile's parents if they fail to appear for the hearing;
- (3) make a written record of the time and manner of notifications;
- (4) advise the juvenile of the right to telephone a parent and an attorney immediately after admission to the facility; and
- (5) advise the juvenile of the right to visitation, in private, with the parent and an attorney. After the initial visit, the juvenile may have visitation during normal visiting hours, or by special appointment if necessary to prepare for a hearing.

(c) Length of Detention.

- (1) ***No Petition or Criminal Complaint is Filed.*** A juvenile must not be held in detention for longer than 24 hours after admission to detention unless a petition or criminal complaint has been filed.
- (2) ***After a Petition or Criminal Complaint is Filed.*** Within 24 hours of the filing of a petition or criminal complaint, a juvenile must be brought before the court for a detention hearing under section (d). If a detention hearing is not held within 24 hours after the filing of the petition or criminal complaint, the juvenile must be released from the detention facility to a parent or other responsible person. If no parent or other responsible person can be located to assume physical custody, the court must release the juvenile to DCS.

(d) Detention Hearing.

(1) ***Finding of Probable Cause.*** A juvenile may be detained only if there is probable cause to believe that the juvenile committed the acts alleged in the petition or complaint. Probable cause may be based upon the allegations in a police report or a citation narrative prepared by a law enforcement officer, or a properly executed affidavit or sworn testimony.

(2) ***Basis for Detention.*** In addition to a finding of probable cause under (d)(1), a juvenile may be detained only if there is probable cause to believe and the court finds on the record one or more of the following:

(A) the juvenile otherwise will not be present at any hearing;

(B) the juvenile is likely to commit an offense injurious to self or others;

(C) the juvenile must be held for another jurisdiction;

(D) the interests of the juvenile or the public require continued detention until a less restrictive placement for the juvenile can be found; or

(E) the juvenile must be held pending the filing of a complaint under A.R.S. 13-501.

(3) ***Absence of the Juvenile's Parents.*** The detention hearing may be held in the absence of the juvenile's parents if they cannot be located or they fail to appear for the hearing.

(4) ***Victim's Right to be Heard.*** The victim of the offense has the right to be heard at the detention hearing, as provided by law.

(e) **Release from Detention.** The court may release the juvenile and set terms and conditions of release. Upon release from any detention facility, the court must advise the juvenile that any violation of release conditions or the failure to appear at future proceedings could result in the issuance of a warrant for the juvenile's arrest and detention, and that the court may proceed with future hearings in the juvenile's absence. A victim may request, and the court must provide to the victim, a copy of the juvenile's terms and conditions of release, as provided by law.

(f) ~~**Order for DNA Testing.** An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of~~

~~buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample.~~

(g) Violation of Conditions of Release. If there is probable cause to believe the juvenile has violated a condition of release, the juvenile probation officer responsible for the juvenile's supervision or the prosecutor may file a request to revoke the juvenile's release. The request must state the substance of the conduct alleged to have violated the conditions of release. If the probation officer or prosecutor does not file a request to revoke release, the victim may file a request directly with the court, as provided by law.

(h) Taking of DNA.

(1) In custody. An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample.

(2) Revocation of Release. The supervising juvenile probation officer or the prosecutor may file a motion to revoke the juvenile's release if there is probable cause to believe that a juvenile who the court ordered as a condition of release to provide a DNA sample pursuant to A.R.S. § 8-238, and to provide proof of compliance, has not complied with that order. The court having jurisdiction over the juvenile may issue a warrant or summons to secure the juvenile's presence in court and must proceed in accordance with the requirements of this rule and A.R.S. § 8-238.**DNA Testing** – DNA may not be submitted to DPS for testing unless the juvenile has been adjudicated delinquent for an offense in §13-610(O)(3).

(i) Release to County Jail. A juvenile may be released from a juvenile detention facility to a county jail upon the filing of a criminal complaint charging a juvenile with an offense listed in A.R.S. § 13-501. The filing of a criminal complaint is the date of arrest for purposes of Criminal Rules 4 and 8.2.

(j) Review of Detention. The court may review the detention status of a juvenile upon written motion of the juvenile, the prosecutor, or on its own. A party's motion must allege material facts not previously presented to the court. The court must hold a hearing on a motion to review detention status within 5 days after the

motion is filed. The victim has the right to be heard concerning the release of the juvenile and the conditions of release, as provided by law. The court may accelerate a hearing on the motion upon written request demonstrating extraordinary circumstances and that acceleration is necessary in the interests of justice. [**Staff Note:** Should the title of this section be “review of detention” or “review of release?”]

Notes/ References

AJDS Section III A4. Juveniles may be separated from other juveniles only as a last resort when less restrictive measures are inadequate to keep them and other juveniles safe, and then only until an alternative means of keeping all juveniles safe can be arranged. During any period of separation, detention personnel shall not deny the juvenile daily large-muscle exercise, leisure activity, legally required educational programming, or special education services. If the separation of the juvenile from other juveniles involves segregation, the juvenile shall receive daily visits from a medical or mental health practitioner. Juveniles shall also have access to other programs and work opportunities to the extent possible. The detention administrator shall review housing and programming assignments of the juveniles to assess any threats to safety experienced by the juvenile.

ARS 8-305 F. Any detained juvenile or child who, by the juvenile's or child's conduct, endangers or evidences that the juvenile or child may endanger the safety of other detained children shall not be allowed to intermingle with any other juvenile or child in the detention center.

Advisement of right to contact parent and attorney

AJDS Section II D3. The director of juvenile court services shall implement policies and procedures to ensure access to telephone services including:

a) Advising the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission;

Detention personnel shall advise the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission to a detention facility.

Arrangements shall be made to allow confidential telephone calls with attorneys.

AJDS Section II D2

The director of juvenile court services shall implement a visitation program and policy that includes notifying parents/legal guardians of the visitation schedule upon the juvenile's admission, and a posted schedule in English and other languages necessary to meet Limited English Proficiency standards. The policy shall include the types of

visitations, days and times and level of confidentiality and reasonable accommodations for unique circumstances. Visitation shall be granted balancing privacy interests with safety and security needs. Visitation rights shall include parents/ legal guardians, attorneys and spiritual leaders. Visits may include siblings, juvenile's children (with adult supervision), custodians, counselors, teachers, grandparents, and other supportive adults as determined by the probation officer and/or detention administration unless excluded by the court or other legal directive. Local policy shall establish the age of siblings eligible for visitation.

ARS 8-238. Advisory hearing; DNA

A. If a juvenile is charged with a violation of any of the following offenses and is summoned to appear at an advisory hearing, the judicial officer shall order the juvenile to report within five days to the law enforcement agency that investigated the juvenile or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction:

1. An offense listed in title 13, chapter 11.
2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411 or 13-1417.
3. A violation of section 13-1507 or 13-1508.
4. A violation of any serious offense as defined in section 13-706 that is a dangerous offense as defined in section 13-105.

B. If a juvenile does not comply with an order issued pursuant to subsection A of this section, the court shall revoke the juvenile's release.

C. The investigating law enforcement agency or its designee shall transmit the sample to the department of public safety.

D. Section 13-610, subsections H, I, J, K, M and N, are applicable to samples collected pursuant to this section.

13-610. DNA testing

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration in a county jail detention facility or is detained in a county juvenile detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county probation department shall transmit the sample to the department of public safety.

Rule 23. Detention and Probable Cause Hearing

- (a) ~~Report to the Court~~**Admission to Detention.** Any ~~person~~peace officer who brings a juvenile to a juvenile court detention facility, other than a juvenile who was arrested pursuant to an arrest warrant, must ~~make a report~~provide a report or documentation that supports the juvenile's admission to detention to ~~the an~~ authorized juvenile court officer in the manner prescribed by the juvenile court in each county, ~~and state the reasons why the juvenile should be detained.~~ 12/3/20 WG-2 note: Joe Kelroy asked if we need to clarify the meaning of admission; what if the juvenile is brought in, screened, and released; has the juvenile been admitted?
- (b) ~~Admission to~~**Requirements Upon Detention Admission.** Upon admission to the detention facility, the authorized juvenile court officer must do the following: ~~[Staff Note: Does section B apply to arrests pursuant to a warrant as well as warrantless arrests?]~~
- (1) notify the juvenile of the reason for the admission and the location, date, and time of the detention hearing;
 - (2) notify the juvenile's parent ~~, guardian, or custodian~~ of the reason for the admission and ~~inform them of~~ the location, date, ~~and~~ time of the detention hearing. ~~The detention, and that the~~ hearing may ~~be held without the presence~~ proceed in the absence of the juvenile's parents ~~, guardian, or custodian~~, if ~~they cannot be located or~~ they fail to appear for the hearing;
 - (3) make a written record of the time and manner of ~~notification~~ notifications; ~~[Staff Note: Does this requirement apply to (1) and (2) or just (2)?];~~
 - ~~(4) determine whether the juvenile's conduct endangers or could endanger the safety of other detained juveniles and if so, restrict the juvenile's contact with other detained juveniles;~~
 - ~~(5)~~(4) advise the juvenile of the right to telephone a parent ~~, guardian, or custodian~~ and an attorney immediately after admission to the facility; ~~and~~ ~~[Staff Note: Does the court appoint an attorney for the juvenile at this hearing?]~~
 - ~~(6)~~(5) advise the juvenile of the right to visitation, in private, with the parent ~~, guardian, or custodian~~ and an attorney. After the initial visit, the juvenile may have visitation during normal visiting hours, or by special appointment if ~~required~~ necessary to prepare for a hearing; ~~and.~~

~~(7) obtain from the arresting agency proof of compliance with A.R.S. Section 13-610(K) if the juvenile was arrested for an offense listed in A.R.S. Section 13-610(O)(3).~~

(c) Length of Detention.

~~(1) **No Petition or Criminal Complaint is Filed.** If a petition alleging incorrigible or delinquent conduct or a criminal complaint has not been filed, a juvenile must not be held in detention for ~~more~~ longer than 24 hours after admission to detention unless a petition or criminal complaint has been filed.~~

~~(2) **After a Petition or Criminal Complaint is Filed.** Within 24 hours of the filing of a petition or criminal complaint, a juvenile must not be held longer than 24 hours after the filing of a petition unless ordered by must be brought before the court after for a detention hearing under section (Dd). If a detention hearing is not held within 24 hours after the filing of the petition or criminal complaint [**Staff Note: Does this mean that a juvenile can be held for 48 hours if a petition has been filed?**], the juvenile must be released from the detention facility to a parent, guardian, custodian, or other responsible person. If no parent, guardian, custodian, or other responsible person can be located to assume physical custody, the court must release the juvenile to the DCS.~~

~~(2)~~

(d) Detention Hearing.

~~(1) **Finding of Probable Cause.** A juvenile may be detained only if there is probable cause to believe that the juvenile committed the acts alleged in the petition or complaint. Probable cause may be based upon the allegations in a police report or a citation narrative prepared by a law enforcement officer, or a properly executed affidavit or sworn testimony. The affidavit may serve as the oath before a magistrate for purposes of Criminal Rule 2.4.~~

~~(2) **Basis for Detention.** In addition to a finding of probable cause under (d)(1), a juvenile may be detained only if there is probable cause to believe and the court finds on the record one or more of the following:~~

~~(A) the juvenile otherwise will not be present at any hearing;~~

~~(B) the juvenile is likely to commit an offense injurious to self or others;~~

~~(C) the juvenile must be held for another jurisdiction;~~

(D) the interests of the juvenile or the public require continued detention until a less restrictive placement for the juvenile can be found; or

(E) the juvenile must be held pending the filing of a complaint under A.R.S. 13-501.

(3) *Absence of the Juvenile's Parents.* The detention hearing may be held in the absence of the juvenile's parents if they cannot be located or they fail to appear for the hearing.

(4) *Victim's Right to be Heard.* The victim of the offense has the right to be heard at the detention hearing, as provided by law.

(e) Release from Detention. The court may release the juvenile and set terms and conditions of release. Upon release from any detention facility, the court must advise the juvenile that any violation of release conditions or the failure to appear at future proceedings could result in the issuance of a warrant for the juvenile's arrest and detention, and that the court may proceed with future hearings in the juvenile's absence. A victim may request, and the court must provide to the victim, a copy of the juvenile's terms and conditions of release, as provided by law. ~~[Staff Note: Shouldn't the juvenile (or the parent) also be given a copy of the T and C?]~~

~~**(d)(f) Order for DNA Testing.** An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample.~~

(e)(g) Violation of Conditions of Release. If there is probable cause to believe the juvenile has violated a condition of release, the juvenile probation officer responsible for the juvenile's supervision or the prosecutor may file a **motion request** to revoke the juvenile's release. The **motion request** must state the substance of the conduct alleged to have violated the conditions of release. If the probation officer or prosecutor does not file a **motion request** to revoke release, the victim may file a request directly with the court, as provided by law.

(h) Taking of DNA.

(1) **In custody.** —An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an

offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample.

~~(1)~~ **Revocation of Release. ; DNA Testing.** The supervising juvenile probation officer or the prosecutor may file a motion to revoke the juvenile's release if there is probable cause to believe that a juvenile who the court ordered as a condition of release to provide a DNA sample pursuant to A.R.S. § 8-238, and to provide proof of compliance, has not complied with that order. The court having jurisdiction over the juvenile ~~must~~ ~~[may?]~~ may issue a warrant or summons to secure the juvenile's presence in court and must proceed in accordance with the requirements of this rule and A.R.S. § 8-238.

(2) DNA Testing – DNA may not be submitted to DPS for testing unless the juvenile has been adjudicated delinquent for an offense in §13-610(O)(3).

~~(f) Order for DNA Testing.~~ ~~An arresting authority or custodial agency may submit a petition under penalty of perjury stating that the juvenile is detained for an offense listed in A.R.S. § 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances. The court must order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency must provide to the juvenile a copy of the court order before or at the time of taking the sample. [Staff Note: Should this section be relocated after section (E)?]~~

~~(g)~~ **(i) Release to County Jail.** A juvenile may be released from a juvenile detention facility to a county jail upon the filing of a criminal complaint charging a juvenile with an offense listed in A.R.S. § 13-501. The filing of a criminal complaint is the date of arrest for purposes of Criminal Rules 4 and 8.2.

~~(h)~~ **(i) Review of Detention.** The court may review the detention status of a juvenile upon written motion of the juvenile, the prosecutor, or on its own. A party's motion must allege material facts not previously presented to the court. The court must hold a hearing on a motion to review detention status within 5 days after the motion is filed. The victim has the right to be heard concerning the release of the juvenile and the conditions of release, as provided by law. The court may accelerate a hearing on the motion upon written request demonstrating extraordinary circumstances and that acceleration is necessary in the interests of

justice. [Staff Note: Should the title of this section be “review of detention” or “review of release?”]

Notes/ References

AJDS Section III A4. Juveniles may be separated from other juveniles only as a last resort when less restrictive measures are inadequate to keep them and other juveniles safe, and then only until an alternative means of keeping all juveniles safe can be arranged. During any period of separation, detention personnel shall not deny the juvenile daily large-muscle exercise, leisure activity, legally required educational programming, or special education services. If the separation of the juvenile from other juveniles involves segregation, the juvenile shall receive daily visits from a medical or mental health practitioner. Juveniles shall also have access to other programs and work opportunities to the extent possible. The detention administrator shall review housing and programming assignments of the juveniles to assess any threats to safety experienced by the juvenile.

ARS 8-305 F. Any detained juvenile or child who, by the juvenile's or child's conduct, endangers or evidences that the juvenile or child may endanger the safety of other detained children shall not be allowed to intermingle with any other juvenile or child in the detention center.

Advisement of right to contact parent and attorney

AJDS Section II D3. The director of juvenile court services shall implement policies and procedures to ensure access to telephone services including:

a) Advising the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission;

Detention personnel shall advise the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission to a detention facility.

Arrangements shall be made to allow confidential telephone calls with attorneys.

AJDS Section II D2

The director of juvenile court services shall implement a visitation program and policy that includes notifying parents/legal guardians of the visitation schedule upon the juvenile’s admission, and a posted schedule in English and other languages necessary to meet Limited English Proficiency standards. The policy shall include the types of visitations, days and times and level of confidentiality and reasonable accommodations for unique circumstances. Visitation shall be granted balancing privacy interests with safety and security needs. Visitation rights shall include parents/ legal guardians, attorneys and spiritual leaders. Visits may include siblings, juvenile’s children (with adult

supervision), custodians, counselors, teachers, grandparents, and other supportive adults as determined by the probation officer and/or detention administration unless excluded by the court or other legal directive. Local policy shall establish the age of siblings eligible for visitation.

ARS 8-238. Advisory hearing; DNA

A. If a juvenile is charged with a violation of any of the following offenses and is summoned to appear at an advisory hearing, the judicial officer shall order the juvenile to report within five days to the law enforcement agency that investigated the juvenile or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction:

1. An offense listed in title 13, chapter 11.

2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411 or 13-1417.

3. A violation of section 13-1507 or 13-1508.

4. A violation of any serious offense as defined in section 13-706 that is a dangerous offense as defined in section 13-105.

B. If a juvenile does not comply with an order issued pursuant to subsection A of this section, the court shall revoke the juvenile's release.

C. The investigating law enforcement agency or its designee shall transmit the sample to the department of public safety.

D. Section 13-610, subsections H, I, J, K, M and N, are applicable to samples collected pursuant to this section.

13-610. DNA testing

B. Within thirty days after a person is placed on probation and sentenced to a term of incarceration in a county jail detention facility or is detained in a county juvenile detention facility, the county detention facility shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted of or adjudicated delinquent for an offense listed in this section. The county detention facility shall transmit the sample to the department of public safety.

C. Within thirty days after a person is convicted and placed on probation without a term of incarceration or adjudicated delinquent and placed on probation, the county probation department shall secure a sufficient sample of blood or other bodily substances for deoxyribonucleic acid testing and extraction from the person if the person was convicted

of or adjudicated delinquent for an offense listed in this section. The county probation department shall transmit the sample to the department of public safety.

Rule 28. Advisory Hearing

(a) **Generally.** After a petition alleging delinquent acts has been filed, including a petition filed under Criminal Rule 40, the court must set an advisory hearing to advise the juvenile and the juvenile's parent of the allegations against the juvenile. Copies of the petition must be given to the juvenile and the parent, and to the juvenile's counsel, either in person or pursuant to Rule 26.

(b) Time Limits.

(1) ***For a Detained Juvenile.*** If the juvenile is detained, the advisory hearing must be held within 24 hours after the filing of the petition. If the juvenile is already detained on a prior matter and a new petition is filed, the advisory hearing on the new petition must be held within 72 hours after the new petition is filed.

(2) ***For a Juvenile Who is Not Detained.*** If the juvenile is not detained, the hearing must be held within 30 days after the filing of the petition.

(c) 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) ***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.

(3) ***Enter the Juvenile's Admission or Denial.*** The court must determine whether the juvenile wishes to admit or deny the allegations. If the juvenile wishes to admit to allegations, the court may accept the admission or plea as provided in Rule 28.1.

(4) ***Set an Adjudication Hearing.*** If the juvenile denies the allegations of the petition, the court must set an adjudication hearing under Rule 29.

(5) ***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.

- (6) ***Special Release Condition.*** If the juvenile has been arrested for an offense listed in A.R.S. section 13-610(O)(3), and the court has found probable cause, the judicial officer must order as a condition of release that the juvenile submit a DNA sample as provided by law.
- (7) **DNA Testing** – DNA may not be submitted to DPS for testing unless the juvenile has been adjudicated delinquent for an offense in §13-610(O)(3). (added by CP 11/24/2020)
- (8) **Making a Record.** The court must determine how a verbatim record of the adjudication hearing will be made.

Rule 28. Advisory Hearing

(a) **Generally.** After a petition alleging delinquent ~~or incorrigible~~ acts has been filed, including a petition filed under Criminal Rule 40, the court must set an advisory hearing to advise the juvenile and the juvenile's parent, ~~guardian, or custodian~~ of the allegations against the juvenile, ~~and to determine whether the juvenile admits or denies the allegations in the petition.~~ Copies of the petition must be given to the juvenile, ~~and the~~ parent, ~~guardian, or custodian,~~ and to the juvenile's counsel, ~~representing any party either in person or unless the parties were served notice pursuant to Rule 26.~~ [~~Staff Note: Why "counsel representing any party?" Other than the State, isn't the juvenile the only party who is represented by counsel?]~~

(b) Time Limits.

- (1) *For a Detained Juvenile.* If the juvenile is detained, the advisory hearing must be held within 24 hours ~~of~~ after the filing of the petition. If the juvenile is already detained on a prior matter and a new petition is filed, the advisory hearing on the new petition must be held within 72 hours after the new petition is filed.
- (2) *For a Juvenile Who is Not Detained.* If the juvenile is not detained, the hearing must ~~occur~~ be held within 30 days ~~of~~ after the filing of the petition.

(c) Procedure. At the advisory hearing ~~the court must:~~

- (1) *Advise of Rights.* ~~Advise~~ The court must advise the juvenile and the juvenile's parent, ~~guardian, or custodian~~ 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;
 - ~~(B)~~(C) to an adjudication hearing on the allegations in the petition;
 - ~~(C)~~(D) to confront witnesses presented by the State; to call witnesses on the juvenile's behalf; and
 - ~~(D)~~(E) to call witnesses on the juvenile's behalf ~~to confront witnesses presented by the State.~~
- ~~(2) Determine Understanding of Rights.~~ ~~Determine whether the juvenile understands these constitutional rights, and whether the juvenile knowingly,~~

intelligently and voluntarily wishes to waive those rights. ~~[Staff Note: The waiver of rights is covered in subpart 4(a); a juvenile who denies the allegations does not waive these rights. Also, even a juvenile who admits the allegations does not waive the right to appointed counsel under subpart (1)(a). So this provision requires modifications.]~~

- ~~(3) **Allow a Victim to be Heard.** The court must determine whether the victim of the offense has requested to be ~~present~~ present and to be heard, ~~and be heard if a plea agreement will be presented to the court.~~ The court must not accept a plea agreement unless:
 - ~~(A) the prosecutor advises the court that reasonable efforts were made to confer with the victim concerning the proposed plea;~~
 - ~~(B) reasonable efforts were made to advise the victim of the plea proceeding [Staff Note: Who has the duty to make those efforts? If it is the prosecutor, does this duplicate the preceding provision? Alternatively, (a) and (b) could be combined] and of the victim's right to be present and to be heard; and~~
 - ~~(C) (2) 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) **Enter the Juvenile's Admission or Denial.** Determine ~~The court must determine~~ whether the juvenile wishes to admit or deny the allegations. If the juvenile wishes to admit to allegations, the court may accept the admission or plea as provided in Rule 28.1.~~
- ~~(4) **Set an Adjudication Hearing.** If the juvenile denies the allegations of the petition, the court must set an adjudication hearing under Rule 29.~~
- ~~(5) **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.~~
- ~~(6) **Special Release Condition.** If the juvenile has been arrested for an offense listed in A.R.S. section 13-610(O)(3), and the juvenile has been summoned to appear at an advisory hearing, and the court has found probable cause, the judicial officer must order as a condition of release that the juvenile report within 5 days to the law enforcement agency that arrested the juvenile, or to the agency's designee, and submit to DNA testing, and that the juvenile provide proof of~~

compliance at the next scheduled court proceeding. The judicial officer must advise the juvenile that a willful failure to comply with this order will result in revocation of the juvenile's release, including arrest and detention for violation of a condition of release, as provided in Rule 23-G. submit a DNA sample as provided by law.

(7) DNA Testing – DNA may not be submitted to DPS for testing unless the juvenile has been adjudicated delinquent for an offense in §13-610(O)(3). (added by CP 11/24/2020)

—**Making a Record.** The court must determine how a verbatim record of the adjudication hearing will be made.

~~—**Making a Record.** The court must determine how a verbatim record of the adjudication hearing will be made.~~

~~(4)~~

~~(d) **Admission.** If the juvenile wishes to admit to allegations, the court may 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. [Staff Note: See further the staff note **Generally.** After a petition alleging delinquent or incorrigible acts has been filed, including a petition filed under Criminal Rule 40, the court must set an advisory hearing to advise the juvenile and the juvenile's parent, guardian, or custodian of the allegations against the juvenile, and to determine whether the juvenile admits or denies the allegations in the petition. Copies of the petition must be given to the juvenile, parent, guardian, or custodian, and counsel representing any party unless the parties were served notice pursuant to Rule 26. [Staff Note: Why "counsel representing any party?" Other than the State, isn't the juvenile the only party who is represented by counsel?]~~

~~(A) —under (c)(2).] The factual basis may include evidence other than the juvenile's statements.~~

~~(B) **Denial.** If the juvenile denies the allegations in the petition, the court must set an adjudication hearing.~~

~~(2) **Set Conditions of Release.** Set conditions of release, if any, and advise the juvenile that any violation of the terms and conditions of release may result in the issuance of a warrant for the juvenile's arrest and detention. If the juvenile has been arrested for an offense listed in A.R.S. section 13-610(O)(3) and the juvenile has been summoned to appear at an advisory hearing, the judicial officer must order as a condition of release that the juvenile report within 5 days to the law enforcement agency that arrested the juvenile, or to the agency's designee, and submit to DNA testing, and that the juvenile~~

~~provide proof of compliance at the next scheduled court proceeding. The judicial officer must advise the juvenile that a willful failure to comply with this order will result in revocation of the juvenile's release, including arrest and detention for violation of a condition of release, as provided in Rule 23 G.~~

~~(3) Determine how a verbatim record of the adjudication hearing will be made. [Staff Note: Isn't the superior court always a court of record? If so, is this provision necessary?]~~

~~(e) Findings and Orders. At the conclusion of the hearing [Staff Note: Is the preceding phrase necessary?], the court must make findings in a minute entry or written order. If the juvenile admits the allegations in the petition, the court must find there was a valid waiver of constitutional rights and the existence of a factual basis in support of the admission.~~

~~(f)(8) **Disposition.** Following an admission, the court must adjudicate the juvenile delinquent or incorrigible and proceed with a disposition or set a disposition hearing. The court may defer acceptance of the plea until the time of disposition. [Staff Note: If the court defers the plea (admission?), does it still adjudicate the juvenile delinquent, as provided in the first sentence of this section?] The juvenile is subject to court orders under the supervision of a probation officer pending the adjudication [Staff Note: As shown above, the current provision begins with the words, "following an admission, the court must adjudicate the juvenile delinquent..." For clarity, shouldn't this say, "following an admission, the court must find the juvenile delinquent...?"] or disposition hearing.~~

Rule 30. Disposition

(a) Disposition Report. Before the disposition hearing, the court may order the probation officer to prepare and submit a written report to the court with recommendations regarding the juvenile's disposition. The disposition report and any attachments to that report are confidential and must be withheld from public inspection except upon court order. The report must be submitted to the court and be made available to counsel for the parties, or to the juvenile if unrepresented by counsel, at least 3 court days before the disposition hearing.

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

- (A)** the juvenile's delinquency referral and detention history;
- (B)** an evaluation of the juvenile's risk of reoffending and identified needs including the strengths of the juvenile and family;
- (C)** a victim impact statement;
- (D)** any information furnished by the victim regarding restitution; and
- (E)** a disposition recommendation.

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

- (A)** the juvenile's delinquency referral and detention history; and
- (B)** the probation officer's case assessment and recommendations for treatment and disposition.

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

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

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

(6) Disposition Reports and Records. Disposition reports and any Rule 19(a)(2) social file records included with the report must be retained in a confidential and

segregated disposition file. In the event of an appeal, the file must be transmitted by the clerk as part of the record on appeal.

(b) Disposition Hearing.

(1) Time Limits.

(A) Juvenile Who is Detained. If the juvenile is detained, the court must hold a disposition hearing no later than 30 days after the adjudication, unless the juvenile waives time or time is excluded by the court under Rule 17.

(B) Juvenile Who is Not Detained. If the juvenile is not detained, the court must hold a disposition hearing no later than 45 days after the adjudication, unless the juvenile waives time or time is excluded by the court under Rule 17.

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

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

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

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

(A) the right to appeal and the method of appeal;

(B) the right to set aside the adjudication;

(C) the right to destruction of records;

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

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

[Staff Note: See further 2019 statutory amendments contained in HB 2055/Chapter 125 A.R.S. § 8-348) and HB 2080/Chapter 149 (particularly A.R.S. § 13-907, et seq.). In light of these statutory amendments, should the Juvenile Rules contain an analogous

process for setting aside a juvenile adjudication? See Criminal Rule 29 for an analogous process for setting aside a conviction.]

Rule 35. Post Transfer

(a) Court Actions. Once the juvenile court finds that the juvenile should be transferred to the criminal division of the superior court, the juvenile court must:

- (1) *Hold to Answer.*** Designate the counts of the criminal complaint upon which the juvenile will be held to answer in the criminal division and order that no further preliminary hearing or grand jury occur.
- (2) *Amendments.*** Order that the complaint must not be amended to add additional or different charges unless the juvenile consents. The complaint may be amended to correct mistakes of fact in the complaint or to remedy technical defects.
- (3) *Initial Appearance.*** Conduct an initial appearance as required by Criminal Rule 4.2. At the initial appearance the court must:
 - (A)** order the juvenile to appear before the criminal division for an arraignment at a specific location, date, and time;
 - (B)** appoint counsel if the juvenile is indigent to represent the juvenile in all further criminal proceedings;
 - (C)** determine the conditions of release under Rule 7.2, unless the court determines that release on bail is prohibited;
 - (D)** provide the juvenile with a copy of the conditions of release, including the next court date and location, and have the juvenile acknowledge an understanding by signing a copy of the conditions of release in the court's presence;
 - (E)** inform the juvenile that a violation of the conditions of release or the failure to appear for an arraignment could result in the issuance of a warrant for the juvenile's arrest; and
 - (F)** determine, if the juvenile is not released, the facility that will have custody of the juvenile pursuant to A.R.S. § 8-305(C) and (D) and remand the juvenile to the custody of an appropriate officer.

(b) Time Limits. Criminal Rule 8.2 applies for determining time limits for trying a juvenile in the criminal division after transfer.

Rule 35. Post Transfer

(a) **Court Actions.** ~~After a finding~~Once the juvenile court finds that the juvenile should be transferred to ~~adult~~the criminal division of the superior court, the juvenile court ~~[Staff Note: the rule should clarify whether this is a reference to the adult court or the juvenile court]~~ must:

- (1) **Hold to Answer.** ~~-~~Designate the counts of the criminal complaint upon which the juvenile will be ~~tried~~held to answer in ~~adult court~~the criminal division and order that no further preliminary hearing or grand jury occur. ~~[Staff Note: See the current rule. A preliminary hearing is the functional equivalent of a grand jury, not a grand jury indictment].~~
- (2) **Amendments.** ~~-~~ Order that the complaint must not be amended to add additional or different charges unless the juvenile consents. The complaint may, ~~however,~~ be amended to correct mistakes of fact in the complaint or to remedy ~~formal or~~ technical defects.
- (3) **Initial Appearance.** Conduct an initial appearance as required by Criminal Rule 4.2, ~~unless the court had previously done so at the advisory or transfer hearing.~~ The ~~At the initial appearance the~~ court must: ~~enter the following orders at the initial appearance:~~
 - ~~(A) o~~(A) ~~Order holding the juvenile to answer to the charge or charges upon which probable cause was found, as if the juvenile were an adult;~~
 - (A) the juvenile to appear before the criminal division for an arraignment at a specific location, date, and time;
 - ~~(B) a~~(B) ~~Appointing t~~ counsel if the juvenile is indigent to represent the juvenile in all further criminal proceedings if the juvenile is indigent.;
 - ~~(C) D~~(C) ~~determine the conditions of release under Rule 7.2, unless the court determines that release on bail is prohibited; regarding the juvenile's release on bail, if the offense is bailable, or on the juvenile's own recognizance, and the conditions of release, if any, pursuant to Criminal Rule 7;~~
 - (D) P provide the juvenile with a copy of the conditions of release, including the next court date and location, and have the juvenile acknowledge an understanding by signing a copy of the conditions of release in the court's presence.;

~~(E) Inform the juvenile that a violation of the conditions of release or the failure to appear for an arraignment could result in the issuance of a warrant for the juvenile's arrest; and~~

~~(B) _____~~

~~(C)(F) Determine, if the juvenile is not released, the facility that will have transferring custody of the juvenile pursuant to A.R.S. § 8-305(C) and (D) and remand the juvenile to the custody of an appropriate officer. to an appropriate law enforcement officer if the juvenile is not released;~~

~~(D) that the juvenile appear before the appropriate criminal court or division for an arraignment at a specific, location, date, and time; [Staff Note: Does this duplicate subpart (a)?] and~~

~~(E) appointing counsel to represent the juvenile in all further proceedings if the juvenile is indigent.~~

~~(4) Inform the juvenile that a violation of the conditions of release or the failure to appear for an arraignment could result in the issuance of a warrant for the juvenile's arrest; and~~

~~(5) Provide the juvenile with a copy of the conditions of release and the date, location, and time of the next court appearance, and have the juvenile acknowledge an understanding by signing a copy of the conditions of release and the next hearing date in the court's presence.~~

~~(b) Date of Commencement of Criminal Proceedings. An action in the criminal court commences on the date of the juvenile court's decision to transfer the juvenile. The date of the transfer decision is deemed the date of arrest, service of summons, and initial appearance under Criminal Rule 8.2. Time Limits. Criminal Rule 8.2 applies for determining time limits for trying a juvenile in the criminal division after transfer.~~

Rule 41.2. Participants' Rights

- (a) **Right to Notice.** If DCS is a party, it must provide notice of the date, time, and location of all ~~proceedings~~ hearings that will be held concerning the child to:
- (1) the child's current out-of-home placement;
 - (2) pre-adoptive placement or any relative identified as a possible placement for a child who is in out-of-home care and under the responsibility of DCS;
 - (3) for any periodic review hearings under A.R.S. § 8-847, any placements where the child has resided for more than 10 days during the past 6 months; and
 - (4) a participant Indian tribe that has not intervened or is not endorsed on the court's minute entries. *See 25 C.F.R. § 23.111.*
- (b) **Right to be Heard.** Participants have a right to be heard ~~in~~ at any ~~court proceeding~~ hearing regarding a child.
- (c) **Status.** Although participants have the right to notice and the right to be heard, they do not have the status of parties.
- (d) **Duties.** Participants with whom a child is placed by DCS have a continuing duty to provide DCS with a current and correct mailing address, including any address protected by court order.
- (e) **Review Hearings.** This rule **does not limit** the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings. [7/24/20 WG-3 note: legislation should address the issues of notice in this statute.]
- (f) **Limiting a Participant.** The court may limit the presence of a participant ~~with whom a child is not placed~~ to the time the participant is heard or testifies, if:
- (1) it is in the best interest of the child; or
 - (2) it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

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

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

- (1) ~~participants~~ the child's current out-of-home placement; ~~or~~
- (2) ~~or pre-adoptive placement~~ or any relative identified as a possible placement for a child who is in out-of-home care and under the responsibility of the DCS; ~~and~~
- (3) for any periodic review hearings under A.R.S. § 8-847, any placements where the child has resided for more than 10 days during the past 6 months; ~~ands.~~
— the a participant Indian Tribe that has not intervened or is not endorsed on the court's minute entries when ICWA applies or there is a reason to believe the child is an Indian child pursuant to. See 25 C.F.R. § 23.111. (not required by Act or regs but suggested by Guidelines)
— ~~for any periodic review hearings, any placements where the child has resided for more than 10 days during the past 6 months.~~
- (4) ~~for any periodic review hearings, any placements where the child has resided for more than 10 days during the past 6 months.~~

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

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

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

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

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

- (1) it is in the best interest of the child; or
- (2) it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

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

- (a) **Service or Acceptance of Service.** Service is complete when the dependency petition, temporary orders, and a notice of the dependency hearing:
- (1) is provided to a parent at the preliminary protective conference or at the preliminary protective hearing; or
 - (2) if the parent signs an acceptance of service anytime after the dependency petition is filed.
- (b) **Other Methods of Service.** If a parent is not served pursuant to section (a), the petitioner must serve copies of the dependency petition, temporary orders, and a notice of the dependency hearing on the parent as soon as possible after the petition is filed but no fewer than 5 days before the initial dependency hearing or the continued initial dependency hearing, or 10 days before the hearing when a parent is served by publication. Service must be in the manner provided by Civil Rules 4(f), 4.1, or 4.2 or as otherwise provided by this rule. However, for dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows:
- (1) ***No summons.*** References to service of summons are inapplicable because no summons is issued.
 - (2) ***Petitioner and respondent.*** References to “plaintiff” mean the petitioner. References to “defendant” or “respondent” mean the parent.
 - (3) ***No written response.*** No responsive pleading to the petition is required. However, a party served must appear at the time and place indicated on the notice of the dependency hearing and temporary orders served with the petition.
- (c) **Service within Arizona.** Service of process on a parent, guardian, or custodian within Arizona must be completed pursuant to Civil Rule 4.1(d). However, when warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g), (k), or (l).
- (d) **Service within Arizona but Outside the County.** When the petitioner knows the address of a parent, guardian, or Indian custodian who resides outside the county where the petition is pending, the petitioner may serve the parent, guardian, or Indian custodian by mailing a copy of the petition, notice of hearing, and temporary order through the postal office or a national courier service, with a return receipt. When the post office or national courier service has returned the signed receipt, the petitioner must file with the clerk an affidavit stating:

- (1) the circumstances warranting the utilization of service by mail;
- (2) that copies of the petition, notice of hearing and temporary orders were mailed to the person being served;
- (3) that the copies were in fact received by the person to be served as evidenced by the receipt, a copy of which must be attached to the affidavit; and
- (4) the date of receipt by the party being served and the date the receipt was received by the sender.

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

- (e) **Service Outside Arizona.** Service outside the state must be completed pursuant to Civil Rule 4.2(a), (c), (f), (i), or (j).
- (f) **Service on an Incarcerated Person.** A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service, with the return or confirmation of service completed by an official of the jail, prison, or correctional facility. The signature of an official of the jail, prison, or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. In addition, the petitioner must send copies of the documents being served to the inmate, and to the inmate's assigned dependency attorney, by first class mail.
- (g) **Serving a Conservator for a Minor.** If a conservator has been appointed for the child, the conservator must be served pursuant to Civil Rule 4.1.
- (h) **Service under ICWA.**

- (1) If the petition alleges or the court has reason to know the child at issue is an Indian child, then in addition to service of process as required by these rules, the petitioner must notify the parent, Indian custodian, and child's tribe or tribes as ICWA requires. The petitioner must provide notice by registered or certified mail with a return receipt requested.
- (2) If the identity or location of the parent or Indian custodian cannot be determined, the petitioner must give notice to the Secretary of the Interior by certified mail with a return receipt requested. The Secretary of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the

tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

(3) The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

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

COMMENT TO 2022 AMENDMENT

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

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

(a) Service or Acceptance of Service. ~~at or Before the Preliminary Protective~~

Hearing. Service ~~is complete of when~~ the dependency petition, temporary orders, and a notice of the ~~initial~~ dependency hearing ~~is complete~~:

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

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

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

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

(b) Other Methods of Service. ~~Service After or in the Absence of a Preliminary Protective Hearing.~~

~~If thea parent, guardian, or Indian custodian hasis not been served pursuant to section (a),- did not attend the preliminary protective hearing, or if the court did not set a preliminary protective hearing,~~ the petitioner must serve copies of the dependency petition, temporary orders, and a notice of the ~~initial~~ dependency hearing on ~~athe~~ parent, ~~guardian, or Indian custodian~~ as soon as possible after the petition ~~was~~ filed but no fewer than 5 days before the initial dependency hearing or the continued initial dependency hearing, or 10 days before the hearing when a parent is served by publicationy hearing-. Service must ~~and~~be in the manner provided by Civil Rules 4(f), 4.1, or 4.2 or as otherwise provided by this rule. However, for dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows:

~~(2)(1) *No summons.*~~ References to service of summons are inapplicable because no summons is issued.

(2) *Petitioner and respondent.* References to “plaintiff” mean the petitioner. References to “defendant” or “respondent” mean the parent, ~~guardian, or Indian custodian.~~

(3) No written response.- No responsive pleading to the petition is required.
However, a party served must appear at the time and place indicated on the notice of the initial dependency hearing and temporary orders served with the petition.

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

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

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

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

~~(e)(d) **Service within Arizona but Outside the County.** When the petitioner knows the address of a parent, guardian, or Indian custodian who resides outside the county where the petition is pending, the petitioner may serve the parent, guardian, or Indian custodian by depositing mailing a copy of the petition, notice of hearing, and temporary order through the postal office or a national courier service, with a return receipt, restricted delivery requested, in the post office [Staff Note: Why in the post office, why not any mailbox?] postage prepaid, by any form of mail requiring a signed and returned receipt. Service by mail pursuant to this section and the return may be made by the party procuring service or by that party’s attorney. [Staff Note: What does the preceding sentence add? Isn’t the petitioner the “party procuring service?”] When the post office or national courier service has returned the signed receipt, the petitioner must file with the clerk’s office an affidavit stating:~~

- (1) ~~that the parent, guardian, or Indian custodian resides out of the county;~~ the circumstances warranting the utilization of service by mail;
 - (2) that copies of the petition, notice of hearing and temporary orders were mailed to the person being served;
 - ~~(3) that the copies were in fact received by the person to be served as evidenced by the receipt~~ ~~[Staff Note: Unless the mailing required restricted delivery, i.e., to the addressee only, the receipt does not establish receipt by the respondent.]~~, a copy of which must be attached to the affidavit; and
- (3)
- the date of receipt by the party being served and the date the receipt was received
- (4) by the sender.

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

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

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

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

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

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

~~(i)~~**(h) Service under ICWA.**

- (1) If the petition alleges or the court has reason to know the child at issue is an Indian child ~~as defined by ICWA~~, then in addition to service of process as required by these rules, the petitioner must notify the parent, Indian custodian, and child's tribe or tribes as ICWA requires. The petitioner must provide notice by registered or certified mail with a return receipt requested.
- (2) If the identity or location of the parent or Indian custodian cannot be determined, the petitioner must give notice to the Secretary of the Interior by certified mail with a return receipt requested. ~~[Staff Note: This provision omits the requirement of a return receipt].~~ The Secretary of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.
- (3) The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. ~~[Staff Note: How can a notice of hearing include a hearing date when the date of receipt by these individuals is unknown?]~~ The court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

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

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

COMMENT TO 2022 AMENDMENT

~~The committee concluded that a~~The provision permitting the parent, Indian custodian, or the child's tribe to waive the ~~ten (10)-~~day notice requirement does not conflict with ICWA and reflects current practice in some counties. Inclusion of the waiver provision

allows timely disposition of cases without interfering with the rights afforded the parent, Indian custodian, or the tribe under ICWA. When the preliminary protective hearing is held as an emergency hearing under 25 U.S.C. §§ 1922 and 25 C.F.R. 23.113 the 10-day notice requirement does not apply.

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

Rule 50. Preliminary Protective Hearing

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

(b) ICWA.

- (1)** The court must inquire at the start of the hearing if any party has reason to know under 25 C.F.R. § 23.107 that the child is an Indian child.
- (2)** If there is reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian the preliminary protective hearing must be held as an emergency hearing as provided in ICWA Section 1922 and 25 C.F.R. § 23.113 The court must find:
 - (A)** whether the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child unless those findings were made prior to the removal pursuant to Rule 47.3(D)(1) and C.F.R. § 23.113(d); and
 - (B)** that the emergency removal or placement terminated upon the filing of the dependency petition. If there is a request to transfer the proceeding to the jurisdiction of the Indian tribe see Rule YY.

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

- (1)** appoint counsel pursuant to Rule 38;
- (2)** determine:
 - (A)** whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 48X;
 - (B)** whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 41;
 - (C)** whether paternity has been established as to any father, and the court **may/must** take testimony from the mother concerning the identity and location of any potential father;
 - (D)** whether reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would have eliminated the need for continued removal pursuant to A.R.S. § 8-825(D);

- (E) whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition as required by A.R.S. § 8-824(F);
 - (F) whether a proposed case plan for services has been submitted and whether it is reasonable and necessary to carry out the case plan; and
 - (G) whether the parent admits, does not contest, or denies the allegations in the dependency petition.
- (3) if DCS is the petitioner, determine:
- (A) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child’s extended family, including a person who has a significant relationship with the child;
 - (B) whether DCS made arrangements, as provided by A.R.S. §§ 8-512, 8-512.01, and 8-514.05, for: [**10/19 WG-3 Note:** The workgroup reviewed these statutes but it is not certain whether the referenced statutes address all the items noted below.]
 - (i) the assembly of the child’s medical records;
 - (ii) a medical assessment of the child;
 - (iii) the implementation of referrals; and
 - (iv) the communication of recommendations and results.
- (4) identify on the record all the documents the court has received and will consider, including DCS’s report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825;
- (5) review any agreements reached at the preliminary protective conference;
- (6) conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 51, if requested by a parent;
- (7) consider as a mitigating factor the availability of reasonable services to the parent to prevent or eliminate the need for removal of the child and efforts of the parent to obtain and participate in these services;
- (8) inform a foster parent, pre-adoptive parent, a member of the child’s extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and

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

(d) Findings. At the conclusion of the hearing, the court must make findings that include the following:

- (1) that the court has jurisdiction over the subject matter and persons before the court;
- (2) that the initial dependency hearing was held pursuant to Rule 52 for those parties who were present;
- (3) if a parent requested a review of temporary custody, that the hearing has been held;
- (4) whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication;
- (5) confirm, under 25 C.F.R. § 23.107 and based on a report, declaration, or testimony included in the record or by court order, that the petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;
- (6) make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations;
- (7) if there is reason to believe that the child is an Indian child, whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by Rule 52(E).
- (8) that the parent was advised of, and understands the consequences of:
 - (A) failing to participate in reunification services, and
 - (B) failing to attend future proceedings;
- (9) if applicable, the reasons why siblings have not been placed together;
- (10) other findings as appropriate and required by law.

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

- (1) returning the child to the parent, or if the child is not returned to the parent, declaring the child a ward of the court and entering orders regarding the placement of the child pending the determination of the dependency petition, and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);
- (2) approving or modifying any of the agreements the parties reached at the preliminary protective conference;
- (3) if paternity has not been established, that it be established through testing or execution of affidavits of paternity;
- (4) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;
- (5) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:
 - (A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
 - (B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanent plan for the child.
- (6) if the petitioner has not verified whether the child is an Indian child, that the petitioner must continue to use due diligence to make that determination;
- (7) where the court knows or has reason to know that an Indian child is involved, that the petitioner notify the parent, Indian custodian, the Indian child's tribe or the Secretary of the Interior, as required by ICWA § 1912(a);
- (8) that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
- (9) that the parent promptly inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;

- (10) setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, in accordance with A.R.S. § 8-842 and Rule 52 ## [to comply with ICWA];
 - (11) setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered; and
 - (12) entering other orders as appropriate and required by law.
- (f) **Copies for the Parties.** At the conclusion of the hearing, the court must provide a copy of the court's written findings and orders to each party who has appeared at the hearing.

Rule 50. Preliminary Protective Hearing

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

—ICWA.

(b)

(1) ~~The~~ The court must inquire at the start of the hearing if any party has reason to know under 25 C.F.R. § 23.107 that the child is an Indian child.

(2) If there is reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian ~~and~~, the preliminary protective hearing must be held as an emergency hearing as provided in ICWA Section 1922 and 25 C.F.R. § 23.113 The court must find: ~~—, and~~

(A) whether the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child unless those findings were made prior to the removal pursuant to Rule 47.3(D)(1) and C.F.R. § 23.113(d); and

—that the emergency removal or placement terminated upon the filing of the dependency petition. If there is a request to transfer the proceeding to the jurisdiction of the Indian tribe see Rule YY.

—that the emergency removal or placement terminated upon the filing of the dependency petition. the court must determine whether removal and continued custody of the Indian child is necessary to prevent imminent physical damage or harm to the child;

(B) If there is a request to transfer the proceeding to the jurisdiction of the Indian tribe see Rule YY.

(b)

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

(1) appoint counsel pursuant to Rule 38;

(2) determine ~~whether~~:

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

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

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

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

~~(C)~~(E) whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition as required by A.R.S. § 8-824(F);

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

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

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

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

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

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

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

(ii) a medical assessment of the child;

(iii) the implementation of referrals; and

(iv) the communication of recommendations and results.

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

~~(5)~~(4) identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825; ~~[825; 10/19 WG-3 Note: this provision will need to be consistent with Rule 3.1(d).]~~

~~(6)~~(5) review any agreements reached at the preliminary protective conference; and ~~approve or modify any of the parties' agreements;~~

~~(7)~~(6) affirm the child's current placement, ~~approve another placement [10/15 WG Note: for TF discussion], or,~~ conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 51, if requested by a parent;

~~(8)~~(7) consider as a mitigating factor the availability of reasonable services to the parent, ~~guardian, or Indian custodian~~ to prevent or eliminate the need for removal of the child and efforts of the parent, ~~guardian, or Indian custodian~~ to obtain and participate in these services;

~~(9)~~(8) inform a foster parent, pre-adoptive parent, a member of the child's extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and

~~(10)~~(9) provide a copy of Form 1, and request that the parent, ~~guardian, or Indian custodian~~ sign and return the form to the court and ensure that the parent, ~~guardian, or Indian custodian~~ understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6), ~~& (E)(8)~~, and (I).

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

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

(2) that the initial dependency hearing was held pursuant to Rule 52 for those parties who were present;

(3) if a parent requested a review of temporary custody, that the hearing has been held; ~~and the court has determined~~

~~(3)~~ whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the

dependency adjudication; ~~that the court has done so and that temporary custody and placement of the child as is required by A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d) [add: to prevent further abuse and neglect?].~~

(4)

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

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

~~(A) failing to participate in reunification services, and~~

~~(B) failing to attend future proceedings;~~

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

(5)

—make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations;

(6)

~~—if ICWA applies, or there is reason to know a child is an Indian child, that the hearing is an emergency proceeding governed by ICWA § 1922 and 25 C.F.R. § 23.1131, and that removal and continued custody of the Indian child is necessary to prevent imminent physical damage or harm to the child.~~

(6) —If the standard for emergency removal is not met, the court must return to the child to the parent or Indian custodian, transfer the child to the jurisdiction of the child’s tribe, or retain custody of the child and make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by Rule 52(E).

make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in

accordance with ICWA Section 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences, unless the proceeding is an emergency proceeding governed by ICWA Section 1922;

(7) if there is reason to believe that the child is an Indian child, whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by Rule 52(E).

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

(A) failing to participate in reunification services, and

(7)(B) failing to attend future proceedings;

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

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

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

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

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

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

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

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

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

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

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

~~(6)(7)~~ if ICWA applies where the court knows or has reason to know that an Indian child is involved, or the court has reason to know that an Indian child is involved, that the petitioner ~~notify-serve~~ the parent, ~~Indian custodian,~~ ~~or the~~ Indian child's tribe or the Secretary of the Interior, as required by ICWA § 1912(a)~~2~~;

~~(7)(8)~~ that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;

~~(8)(9)~~ ~~order~~ that the parent promptly inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;

~~(9)(10)~~ setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, ~~or~~ in accordance with A.R.S. § 8-842 and ~~Rule 52 ## [to comply with ICWA]; Rule 52(FE);~~

~~(10)(11)~~ setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered;^{2,7} and

~~(11)(12)~~ entering other ~~findings and~~ orders as appropriate and required by law.

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

(f)

Rule 50.1. Placement Preferences

- (a) **Generally.** A child should be placed in the least restrictive placement available, consistent with the best interests of the child. *See* A.R.S. § 8-514.
- (b) **Placement Preferences.** Subject to section (a), placement preferences, in descending order, are as follows:
- (1) with a parent;
 - (2) with a grandparent;
 - (3) in kinship care with another member of the child's extended family, including a person who has a significant relationship with the child. A foster parent or kinship caregiver with whom a child under three years of age has resided for at least nine months is presumed to be a person who has a significant relationship with the child;
 - (4) in licensed family foster care;
 - (5) in therapeutic foster care;
 - (6) in a group home; or
 - (7) in a residential treatment facility.
- (c) **Child with Developmental Disabilities.** In determining the child's placement, consideration should be given to the child's developmental disabilities. *See* A.R.S. § 8-514.01.
- (d) **Indian Child.** Rule 50.2 governs placement preferences for an Indian child.

Rule 50.2. ICWA Placement Preferences

(a) Placement Preferences. In determining placement, including in any foster care, guardianship, pre-adoption or adoption proceeding, if a tribe has established preferences, those preferences apply to the placement of an Indian child. See ICWA § 1915 and 25 C.F.R. §§ 23.131 and 23.132. Otherwise, placement preferences for an Indian child, in descending order, are as follows:

- (1) with a member of the child's extended family;
- (2) in a licensed family foster home approved or specified by the child's tribe;
- (3) in an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) in an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 U.S.C. Ch. 21.

(b) Deviation from ICWA Placement Preferences. Under 25 C.F.R. §§ 23.131 and 23.132, the determination to depart from the placement preferences in ICWA § 1915 must be made in the following manner:

- (1) ***Statement of Good Cause.*** In any foster care, guardianship, pre-adoptive, or adoptive placement, if any party asserts that there is good cause not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding and the court.
- (2) ***Burden of Proof.*** The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
- (3) ***Courts Determination.*** A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following:
 - (A) the request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
 - (B) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

- (C) the presence of a sibling attachment that can be maintained only through a particular placement;
 - (D) the extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or
 - (E) the unavailability of a suitable placement, if the court determines that a diligent search was conducted to find suitable placements meeting the preference criteria, but none was located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child’s parent or extended family resides, or with which the Indian child’s parent or extended family members maintain social and cultural ties.
- (4) ***Socioeconomic Status.*** A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- (5) ***Time in a Non-Preferred Placement.*** A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement if that placement was made in violation of ICWA.

COMMENT

The Regulations provide that good cause to deviate from placement preferences ‘should’ be based on one of the five factors but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be “narrow and limited in scope.” 81 Fed. Reg. 38778, 38839 (June 14, 2016).

Rule 50.1.

Rule 50.11. -Placement Preferences

—(a) Generally.

~~(a) A. The Court shall place a~~ A child should be placed in the least restrictive placement available, consistent with the best interests of the child. See A.R.S. § 8-514.

~~(b) (b) Placement Preferences. The order for p~~ Subject to section (a), placement preference-s, in descending order, are as followsis as follows:

(1) Wwith a parent;-

(2) with a grandparent;

(3) in kinship care with another member of the child's extended family, including a person who has a significant relationship with the child. A foster parent or kinship caregiver with whom a child under three years of age has resided for at least nine months is presumed to be a person who has a significant relationship with the child;

(4) in licensed family foster care;

(5) in therapeutic foster care;

(6) in a group home; or

(7) in a residential treatment facility.

—1. With a parent.

—2. With a grandparent.

—3. In kinship care with another member of the child's extended family, including a person who has a significant relationship with the child. A foster parent or kinship caregiver with whom a child under three years of age has resided for at least nine months or more is presumed to be a person who has a significant relationship with the child.

—4. In licensed family foster care.

—5. In therapeutic foster care.

—6. In a group home.

~~—7. In a residential treatment facility.~~

~~(c) **(e) Child with Developmental Disabilities.** In determining the child’s placement, consideration should be given to the child’s developmental disabilities. See A.R.S. § 8-514.01.~~

~~—(d) **Indian Child.** Rule 50.2 governs placement preferences for an Indian child. **B.** Notwithstanding subsection A of this section, the order for placement preference of a Native American child is as follows:~~

~~—1. With a member of the child's extended family.~~

~~2. In a licensed family foster home approved or specified by the child's tribe.~~

~~—3. In an Indian foster home licensed or approved by an authorized non-Indian licensing authority.~~

~~—4. In an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 United States Code chapter 21.~~

~~—C.~~

~~—**Rule 50.2. Deviation from ICWA Placement Preferences**~~

~~—[**Staff Note:** Because this rule is general in nature, i.e., it could apply to multiple proceedings, staff suggests relocating it either in the general dependency rules or in: **PART I BECAUSE IT ALSO APPLIES TO PARTS IV AND V (ADOPTIONS)**]~~

~~—(a) **Placement Preferences.** In determining placement, including in any foster care, guardianship, pre adoption or adoption proceeding, if a tribe has established preferences, those preferences apply to the placement of an Indian child. See ICWA § 1915 and 25 C.F.R. §§ 23.131 and 23.132. Otherwise, placement preferences for an Indian child, in descending order, are as follows:~~

~~—1. With a member of the child's extended family.~~

~~—2. In a licensed family foster home approved or specified by the child's tribe.~~

~~—3. In an Indian foster home licensed or approved by an authorized non-Indian licensing authority.~~

- 4. In an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 United States Code chapter 21.

- **Generally Deviation from Placement Preferences.** Under 25 C.F.R. §§ 23.131 and C.F.R. § 23.132, the determination to depart from the placement preferences in ICWA § 1915 Section 1915 of ICWA must be made in the following manner:
- **Statement of Good Cause.** In any foster care, guardianship, pre-adoptive, or adoptive placement, if any party asserts that there is good cause not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child custody proceeding [to the child custody proceeding **Staff note:** Delete this phrase?] and the court.
- **Burden of Proof.** The party seeking departure from the placement preferences should [Staff Note: Why “should?” Are there circumstances where another party has the burden?] bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences. [Staff Note: The current rule has good cause in quotes. Staff omitted the quote marks.]
- **Court’s Determination.** A court’s determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:
- The request of one or both of the Indian child’s parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
- The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.
- The presence of a sibling attachment that can be maintained only through a particular placement.
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
- The unavailability of a suitable placement, if the court determines that a diligent search was conducted to find suitable placements meeting the preference criteria, but none was located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child’s parent or extended

family resides, or with which the Indian child's parent or extended family members maintain social and cultural ties.

~~Socioeconomic Status.~~ A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

~~Time in a Non-Preferred Placement.~~ A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement if that placement was made in violation of ICWA.

~~COMMENT~~

~~The Regulations provide that good cause to deviate from placement preferences 'should' be based on one of the five factors but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be "narrow and limited in scope." 81 Fed. Reg. 38778, 38839 (June 14, 2016).~~

~~Deviation from Deviation From ICWA Placement Preferences~~

~~[Staff Note: Because this rule is general in nature, i.e., it could apply to multiple proceedings, staff suggests relocating it in the general dependency rules. PART I BECAUSE IT ALSO~~

~~APPLIES TO PARTS IV AND V (ADOPTIONS)]~~

~~When determining the most appropriate placement for a minor, the Court shall consider the following placement preferences.~~

~~(a)~~

~~Generally.~~ Under 25 C.F.R. § 23.132, the determination to depart from the placement preferences in Section 1915 of ICWA must be made in the following manner:

~~(a) Statement of Good Cause.~~ In any foster care, preadoptive, or adoptive placement, if If any party asserts that there is good cause not to follow the placement preferences,

the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties [to the child custody proceeding **Staff note:** Delete this phrase?] and the court.

(b) Burden of Proof. The party seeking departure from the placement preferences should [**Staff Note:** Why “should?” Are there circumstances where another party has the burden?] bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences. [**Staff Note:** The current rule has good cause in quotes. Staff omitted the quote marks.]

(c) Court’s Determination. A court’s determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

- (1) The request of one or both of the Indian child’s parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference.
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made.
- (3) The presence of a sibling attachment that can be maintained only through a particular placement.
- (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.
- (5) The unavailability of a suitable placement, if the court determines that a diligent search was conducted to find suitable placements meeting the preference criteria, but none was located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child’s parent or extended family resides, or with which the Indian child’s parent or extended family members maintain social and cultural ties.

(d) Socioeconomic Status. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) Time in a Non-Preferred Placement. A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement if that placement was made in violation of ICWA.

—COMMENT

(d) ~~The Regulations provide that good cause to deviate from placement preferences ‘should’ be based on one of the five factors but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be “narrow and limited in scope.” 81 Fed. Reg. 38778, 38839 (June 14, 2016).~~

Rule 52. Initial Dependency Hearing

(a) Generally. At the initial dependency hearing, the court must determine whether service has been completed and whether the parent admits, denies, or does not contest the allegations in the dependency petition. The court must give paramount consideration to the health and safety of the child.

(b) Time for the Hearing.

(1) *No Appearance at the Preliminary Protective Hearing.* If a parent does not appear at the preliminary protective hearing, the court must set an initial dependency hearing no later than 21 days after the filing date of the petition.

(2) *Service by Publication.* If service by publication is required, the court may set an initial dependency hearing within a time period to allow for publication and no sooner than 10 days after publication is complete.

(c) Procedure. At the initial dependency hearing, the court must:

(1) provide the admonition as required by A.R.S. § 8-525 and Rule 41;

(2) appoint counsel under Rule 38;

(3) determine:

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

(B) whether to close the proceeding;

(C) whether paternity has been established as to any father, and if not, the court **may/must** take testimony from the mother concerning the identity and location of any potential father;

(D) whether reasonable efforts were made to prevent or eliminate the need for removal of the child and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D); (before it said 8-824(F) - confirm correct statute)

(E) **conduct a temporary custody hearing if requested by a parent pursuant to A.R.S. § 8-825 and Rule 51;**

(F) **consider as a mitigating factor the availability of reasonable services to the parent, guardian, or Indian custodian to prevent or eliminate the need for removal of the child and efforts of the parent, guardian, or Indian custodian to obtain and participate in these services; [See A.R.S. § 8-824(D)(5)]**

- (G) inquire if any party has reason to believe that the child is an Indian child (see 25 C.F.R. § 23.107);
- (H) provide the parent a copy of Form 1 and request the parent sign and return the form to the court, and ensure that the parent understands their rights and responsibilities (see A.R.S. § 8-824(D), (E), (6), (8), and (I)); and
- (I) inquire if the parent wishes to admit, not contest, or deny the allegations in the dependency petition.
 - (i.) Admission/No contest. If the parent admits or does not contest the allegations in the petition, the court must proceed pursuant to Rule 55 (D)(1) and set or conduct a disposition hearing under Rule 56.
 - (ii.) Denial. If the parent denies the allegations contained in the petition, the court must set a settlement conference, pretrial conference, or a mediation, and may set a dependency adjudication.

(d) 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:

- (1) had notice of the hearing;
- (2) was properly served pursuant to Rule 48X;
- (3) had been admonished 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 allegations contained in the dependency petition; and
- (4) failed to demonstrate good cause for the failure to appear.
- (5) If DCS is the petitioner, determine:
 - (A) whether DCS is attempting to identify and assess placement of the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;
 - (B) whether DCS is attempting to identify and assess placing the child with the child's siblings, if such placement is possible and is in the child's best interest and if that is not possible, to maintain frequent visitation or other ongoing contact between all siblings; and

- (C) identify on the record all the documents the court has received and will consider including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825.

(e) **Findings.** All findings must be in a signed order or contained in a minute entry. At the conclusion of the hearing the court must make findings that include:

- (1) the court has jurisdiction over the subject matter and persons before the court;
- (2) if a parent requested a review of temporary custody, that the hearing has been held and whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication;
- (3) confirm, under 25 C.R.S. § 23.107 and based on a report, declaration, or testimony included in the record or by court order, that petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership;
- (4) if ICWA applies, make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in accordance with ICWA Section 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;
- (5) that the parent was advised of, and understands the consequences of:
 - (A) failing to participate in reunification services, and
 - (B) failing to attend future proceedings.
- (6) if applicable, the reasons why siblings have not been placed together; and
- (7) other findings as appropriate and required by law.

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

- (1) returning the child to the parent, or if the child is not returned to the parent, regarding the placement of the child pending the determination of the dependency petition and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 51(d);
- (2) if paternity has not been established, that it be established through paternity testing or execution of affidavits of paternity;

- (3) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings;
- (4) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:
 - (A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
 - (B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another planned permanent plan for the child.
- (5) if the petitioner has not verified whether the child is an Indian child, that the petitioner must continue to use due diligence to make that determination;
- (6) where the court knows or has reason to know that an Indian child is involved, that the petitioner notify the parent, Indian custodian, the Indian child's tribe or the Secretary of the Interior, as required by ICWA § 1912(a);
- (7) that the parent, guardian, or Indian custodian provide the court with the names, relationship, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent, guardian, or Indian custodian informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
- (8) that the parent, guardian, or Indian custodian promptly inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;
- (9) that the petitioner effectuate service on any party who has not been served and did not appear and set a continued initial dependency, or a publication hearing in accordance with A.R.S. § 8-842 and Civil Rules 4.1(l) or 4.2(f);
- (10) setting dates for future proceedings, which may include a settlement conference, mediation, a pretrial conference, or an adjudication if a denial is entered;
- (11) may stay the proceedings and order an in-home intervention if appropriate, as provided by A.R.S. §§ 8-842(C), 8-843(F) and Rule 48.1; (consider whether to add to Rule 50)
- (12) if the party admits or does not contest the allegations in the petition or fails to appear, make orders as appropriate and required by law and Rules 55 and 56; and

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

(g) Continuance. The court for good cause, including the following reasons, may continue the initial dependency hearing:

- (1) service of process on the parties and notification under ICWA has not been completed;
- (2) additional time is required to comply with the requirements of ICWA or additional time is requested by the child's tribe; or
- (3) additional time is required to obtain and consult with an attorney and the child's best interest would not be adversely affected.

Rule 52. Initial Dependency Hearing

~~(a) (a) Generally.~~ At the initial dependency hearing, the court must determine whether service has been completed and whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations in the dependency petition. The court must give paramount consideration to the health and safety of the child. ~~determines whether service has been completed all the respondents have been served~~ [Staff Note: Suggest replacing the words in strikethrough with “all the respondents have been served”]. ~~and whether the parent, guardian, or Indian custodian admits, denies, or does not contest the allegations in the dependency petition.~~

~~(b) Time for the Hearing.~~

~~(a) Time for the Hearing.~~

~~(b) Time for the Hearing.~~

~~(b)~~

~~(1) Appearance at the Preliminary Protective Hearing. If the parent, guardian, or Indian custodian appears at the preliminary protective hearing, then the court must conduct the initial dependency hearing at that time. (covered below)~~

~~(1) (1) No Appearance at the Preliminary Protective Hearing.~~ If a parent, guardian, or Indian custodian does not appear at the preliminary protective hearing, the court must ~~hold set~~ an initial dependency hearing no later than within 21 days after the filing date of the petition. ~~[Staff Note: Must the court hold an IDH even when service has not been completed? The rule might clarify this.]~~ [NOTE: See Rule 50]

~~(2)~~

~~(2) Service by Publication.~~ If service by publication is required, the court may set an initial dependency hearing within a time period to allow for publication and initial hearing must be held no sooner than 10 days after publication service is complete.

~~(3)~~

~~(e) (e) Procedure.~~ At the initial dependency hearing, the court must: ~~[Staff Note: The following subparts do not include other actions the court must take under A.R.S. section 8-824(E), among them, that the court “shall provide an opportunity for the child’s parent or guardian, if present, and any other person who has relevant~~

knowledge, to provide relevant testimony.” Staff also suggests re-ordering the items below so they are congruent with the sequence in Rule 50(B).]

(c)

—

(1) provide the admonition as required by A.R.S. § 8-525 and Rule 41;

—

(2) appoint counsel under Rule 38.;

—

(3) determine:

—

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

—

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

—

(C) ~~determine whether paternity has been established as to any father, and if not, the court may/must take the testimony from the mother concerning the identity and location of any potential father;~~

—

(D) ~~determine whether reasonable efforts were made to prevent or eliminate the need for removal of the child and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D); (before it said 8-824(F) - confirm correct statute)~~

—

(E) ~~conduct a temporary custody hearing if requested by a parent, guardian, or Indian custodian pursuant to A.R.S. § 8-825 and Rule 51;~~

—

~~(F)~~ ~~(G)~~ consider as a mitigating factor the availability of reasonable services to the parent, guardian, or Indian custodian to prevent or eliminate the need for removal of the child and efforts of the parent, guardian, or Indian custodian to obtain and participate in these services; [See A.R.S. § 8-824(D)(5)]

~~(G)~~ Conduct a temporary custody hearing if requested by a parent, guardian, or Indian custodian pursuant to A.R.S. § 8-825 and Rule 51. ~~determine~~ inquire if any party has reason to believe ~~under 25 C.F.R. § 23.107~~ that the child is an Indian child (~~see 25 C.F.R. § 23.107~~);

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

~~— the right to counsel, including court appointed counsel if the parent, guardian, or Indian custodian is indigent;~~

~~— [t]he right to a trial to the court on the allegations in the dependency petition;~~

~~— the right to cross-examine all witnesses who are called to testify against the a parent, guardian, or Indian custodian; and~~

~~— the right to use the process of the court to issue subpoenas to compel the attendance of witnesses.~~

~~(1)~~ ~~inquire if any party has reason to know that the child is an Indian child as defined by ICWA.~~

~~(2)~~ ~~Appoint assigned counsel under Rule 38(B).~~

~~(3)~~ Conduct a temporary custody hearing if requested by a parent, guardian, or Indian custodian pursuant to A.R.S. § 8-825 and Rule 51. Determine whether service of process has been completed under Rule 48 or waived as to each party. Conduct a temporary custody hearing if requested pursuant to

(I) Inquire ~~of if~~ the parent, ~~guardian, or Indian custodian~~ whether ~~ishes~~ ~~they wish~~ to admit, ~~deny, or~~ not contest, ~~or deny~~ the allegations in the dependency petition.

-

(i.) Admission/No contest. If the parent, ~~guardian, or Indian custodian~~ admits or does not contest the allegations in the petition, the court must proceed pursuant to Rule 55 (D)(1) and set or conduct a disposition hearing under Rule 56.

-

(ii.) Denial. If the parent, ~~guardian, or Indian custodian~~ denies the allegations contained in the petition, the court must set a settlement conference, pretrial conference, or a mediation, and may set a dependency adjudication.

(d) 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~~:

(1) had notice of the hearing;

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

(3) had been admonished 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 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. grounds [Staff Note: The current rule says “has established grounds,” but if this is an evidentiary finding, should it instead say, “has established facts?”] upon which to adjudicate the child dependent.~~

—
~~(5) (10) (J)~~ If DCS is the petitioner, determine:

—
~~(A) (A) (i)~~ whether DCS is attempting to identify and assess placement of the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;:

—
~~(B) (B) (ii)~~ whether DCS is attempting to identify and assess placing the child with the child's siblings, if such placement is possible and is in the child's best interest and if that is not possible, to maintain frequent visitation or other ongoing contact between all siblings; and:

—
~~(C) (11) (K)~~ identify on the record all the documents the court has received and will consider including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825; and

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

—
~~(4) Provide a copy of Form 1, and request that the parent, guardian, or Indian custodian sign and return the form to the court and ensure that the parent, guardian, or Indian custodian understands their rights and responsibilities pursuant to A.R.S. § 8-824(D), (E), (6), (8), and (I). Advise the parent, guardian, or Indian custodian of these rights: (Ensure 50 and 52 are congruent with Form 1 Admonition.)~~

~~(A) the right to counsel, including court-appointed counsel if the parent, guardian, or Indian custodian is indigent; [Staff Note: Why is the court advising of the right to counsel if the court has already appointed counsel under subpart (C)(2)? Form 1 advises parent of right to be represented.]~~

~~(B) the right to cross-examine all witnesses who are called to testify against the a parent, guardian, or Indian custodian; [Staff Note: A.R.S. section 8-824(D)(5)~~

~~uses the phrase “testify against the parent or guardian,” but are witnesses testifying “against” someone else? Doesn’t the right simply permit cross-examination of a witness called by another party, regardless of whether the witness is “against” someone? If the witness’ testimony is favorable to, and not “against” a parent, does the parent lose the right to cross-examine?]~~

- ~~(C) — the right to a trial to the court on the allegations in the dependency petition;~~
- ~~(D) — the right to use subpoenas to compel the attendance of witnesses; an (d) d~~
- i. ~~(4) the right to request before a hearing that the hearing be closed to the public.~~
- ~~(5) Determine whether paternity has been established and take the mother’s testimony concerning the identity and location of any potential father.~~
- ~~(6) Inquire of the parent, guardian, or Indian custodian whether they wish to admit, deny, or not contest the allegations in the dependency petition.~~
- (A) — Admission/No contest. If the parent, guardian, or Indian custodian admits or does not contest the allegations in the petition, the court must proceed pursuant to with a dependency adjudication hearing under Rule 55 (D)(1) and set or conduct a disposition hearing under Rule 56.
- (B) Denial. If the parent, guardian, or Indian custodian denies the allegations contained in the petition, the court must set a settlement conference or mediation and a pretrial conference and continue the child as a temporary ward of the court pending adjudication.
- (C) — Failure to appear. If a parent, guardian, or Indian custodian fails without good cause to appear at the initial dependency hearing, then based upon the record, the court may adjudicate the child dependent after the court finds:
 - (i.) ~~the parent, guardian, or Indian custodian had notice of the hearing;~~
 - (ii.) — ~~the parent, guardian, or Indian custodian was properly served pursuant to Rule 48,~~
 - (iii.) — ~~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~~
 - (iv.) — ~~the petitioner has established facts grounds [Staff Note: The current rule says “has established grounds,” but if this is an evidentiary finding, should it instead say, “has established facts?”] upon which to adjudicate the child dependent.~~

(e) Findings, and Orders. -All findings ~~and orders~~ must be in a signed order or contained in a minute entry. At the conclusion of the ~~initial~~ hearing the court must make findings that include: [~~Staff Note: The following list appears to omit some items specified in A.R.S. section 8-825, such as a finding that the petitioner did not meet the burden of proof and that the petitioner return the child to the parent.~~]

~~(d)~~ :

(1) ~~That~~ the court has jurisdiction over the subject ~~and~~ matter and persons before the court; ~~Enter findings as to notice and service upon the parties, and the court's jurisdiction over the subject matter and persons before the court.~~

(2) ~~If~~ a parent requested a review of temporary custody, that the ~~hearings~~ has been held and whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication;

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

(4) ~~If~~ ICWA applies, make findings pursuant to the standards and burdens of proof as required by ICWA and the regulations, including whether placement of the Indian child is in accordance with ICWA Section 1915 and 25 C.F.R. § 23.131 or ~~whetherwhether~~ there is good ~~caues~~ cause to deviate from the preferences;

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

(A) ~~F~~ailing to participate in reunification services, and

(B) ~~F~~ailing to attend future proceedings.;

(6) ~~(6)~~ if applicable, the reasons why siblings have not been placed together; and

(7) ~~(7)~~ other findings as appropriate and required by law.

(A) ~~(A)~~ :

(f) ~~(ed)~~ Orders. At the conclusion of the hearing, the court must enter orders:

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

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

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

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

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

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

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

(6) where the court knows or has reason to know that an Indian child is involved, that the petitioner notify the parent, Indian custodian, the Indian child's tribe or the Secretary of the Interior, as required by ICWA § 1912(a);

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

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

(9) ~~(8)~~ that the petitioner effectuate service on any party who has not been served and did not appear and set a continued initial dependency, or a publication hearing in accordance with A.R.S. § 8-842 and Civil Rules 4.1(1) or 4.2(f);

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

(11) (10)-may stay the proceedings and order an in-home intervention if appropriate, as provided by A.R.S. §§ 8-842(C), 8-843(F) and Rule 48.1; (consider whether to add to Rule 50)

(12) (11)-if the party admits or does not contest the allegations in the petition or fails to appear, make orders as appropriate and required by law and Rules 55 and 56; and

(13) (12)-entering other orders as appropriate and required by law.

(g) Continuance. The court for good cause, including the following reasons, may continue the initial dependency hearing:

(1) service of process on the parties and notification under ICWA has not been completed;

(2) additional time is required to comply with the requirements of ICWA or additional time is requested by the child's tribe; or

additional time is required to obtain and consult with an attorney and the child's best interest would not be adversely affected.

(2) Order the petitioner to effectuate service by publication if the requirements of Civil Rules 4.1(n) [Staff Note: This is now Civil Rule 4.1(l)] or 4.2(f) are established, and it appears that the party cannot reasonably be located. [Discuss Civil Rules and requirements for publication and practice in juvenile.]

(3) Under ICWA and based on a report, declaration, or testimony included in the record or by court order, confirm that the DCS or other petitioner has used or will use due diligence to identify and work with all tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership).

- ~~(4) Order that paternity be established as to any alleged father, either through paternity testing or by authorizing the execution of affidavits of paternity.~~
- ~~(5) Set a continued initial hearing as to any party who was not served and did not appear.~~
- ~~(6) Affirm prior orders making the child a temporary ward of the court.~~
- ~~(7) Set a settlement conference, a pretrial conference, or order the parties to attend mediation.~~
- ~~(8) Address the parent, guardian, or Indian custodian in open court and advise them that failure to attend the pretrial conference, the settlement 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 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 upon the record and evidence presented. The court must also advise 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.~~
- ~~(9) If ICWA applies, the court shall make findings pursuant to the standards and burdens of proof as required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with Section 1915 of ICWA and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.~~
- ~~(10) Order the parent or guardian to provide the court with the names, the type of relationship, and all available information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent or guardian informs the court that no sufficient information is available. The court must order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of new information related to the existence or location of a relative or person with a significant relationship with the child.~~
- ~~Make findings and enter any other orders as may be appropriate or required by law, including the preparation of a disposition report as required under Rule 56.~~

~~(11) —~~

~~(e) Continuance. The court for good cause, including the following reasons, may continue the initial dependency hearing:~~

- ~~(1) service of process on the parties and notification under ICWA has not been completed;~~
- ~~(2) additional time is required to comply with the requirements of ICWA or additional time is requested by the child's tribe; or~~
- ~~(3) additional time is required to obtain and consult with an attorney and the child's best interest would not be adversely affected.~~

~~— COMMITTEE COMMENT~~

~~(3) See comment to Rule 50.~~

Rule 58. Review Hearing

(a) Generally. The court must conduct periodic review hearings at least once every six months after the disposition hearing pursuant to A.R.S. § 8-847 to review the progress of the parties in achieving the case plan goals and determine whether the child continues to be dependent.

(b) Notice.

(1) *Court's Duty to Notify of the Right to Participate.* At a proceeding to review the disposition orders of the court, the court must notify the following persons of the review hearing, and their right to participate in the review proceeding and any future proceedings:

(A) The authorized agency charged with the child's care and custody,

(B) the child's tribe as required under ICWA and the Regulations;

(C) Any foster parents in whose home the child resides or has resided within the last six months , except for those foster parents who maintain a receiving foster home where the child has resided for 10 days or less. The petitioner must provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

(D) A shelter care facility or receiving foster home where the child resides or has resided within the last 6 months for more than 30 days. The petitioner must provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

(E) The child's parent, unless:

(i) the rights of a parent to the child have been terminated by court action; or

(ii) the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107;

(F) The child, if 12 years of age or older;

(G) The child's relative, as defined in A.R.S. § 8-501, if that relative files with the court a written notice to participate. [**Staff Note:** Is there, or should there be, a form for this? Yes.]

(H) A person permitted by the court to intervene in the dependency proceeding.

(I) A physical custodian in whose home the child resides or has resided within the last 6 months.

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

(K) Any other person the court deems appropriate.

(2) **Sibling information exchange program.** If the court finds that a child is no longer dependent, before it dismisses the proceeding the court must provide notice of the sibling information exchange program as required by A.R.S. § 8-543 to the following:

(A) the child in the proceeding for whom the periodic review hearing is held; and

(B) a parent or guardian with legal custody of the child for whom the periodic review hearing is held.

(c) **Reports.** The petitioner must provide a report to the court and the parties at least 15 days before the review hearing that addresses:

(1) the placement of the child;

(2) the services being provided to the child and family, including the educational stability of the child;

(3) the progress the parties have made in achieving the case plan goals; and

(4) whether the child continues to be dependent.

(d) **Contested Issues.** Any party seeking an evidentiary hearing on any issue must file a motion requesting that the matter be set for a contested hearing. The motion must identify the issues to be litigated, the names and addresses of all witnesses, and the estimated time the parties will need to present evidence. Upon receiving the motion, the court may reset the matter to provide sufficient time for an evidentiary hearing, or it may proceed with the review hearing as scheduled.

(e) **Procedure.**

(1) Absent any party's objection, the court may consider the oral or written reports of the parties, documents entered into evidence at prior proceedings, documents agreed upon by the parties, and any other reports pursuant to Rule 45.

(2) Any documents that the parties wish the court to consider as evidence must be marked and admitted before the hearing concludes.

(3) The court must address the recommendations of the Foster Care Review Board on the record, as provided by A.R.S. § 8-515.03(1).

(4) At the first periodic review hearing, the court must consider whether a parent of a child under three years of age at the time of removal has substantially neglected or willfully refused to participate in reunification services offered by the department.

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

(1) At the conclusion of the hearing the court must:

(A) dismiss the petition and return the child to the parent if the court finds the child is not dependent; or

(B) make a finding that the child continues to be dependent.

(2) If the court finds that the child continues to be dependent, the court must:

(A) enter orders concerning

(i) the placement, custody, and educational stability of the child, and

(ii) services to be provided to the family and child.

(B) if the child is not placed with a parent, determine whether DCS has identified and assessed whether placement of the child with a relative or person who has a significant relationship with the child is possible;

(C) determine whether the parent has complied with orders the court has issued pursuant to A.R.S. § 8-824(E)(7);

(D) Set the next review hearing within the time provided by A.R.S. § 8-847;

(E) Set a permanency hearing not more than 12 months after the date the child was removed from the home;

(F) Address and advise the parent in open court that their failure to attend further proceedings without good cause or their failure to participate in reunification services, if appropriate, 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 that the hearings may go forward in their absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent with a copy of Form X, request that they sign and return a copy of the form and note on the record that the form was provided.

- (G)** 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 ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.
- (H)** Make other findings and enter other orders as necessary.

Rule 58. Review Hearing

(a) **Generally.** The court must conduct periodic review hearings at least once every six months after the disposition hearing pursuant to A.R.S. § 8-847 ~~review hearings, as provided by law~~ [**Staff Note: A.R.S. 8-847 says, “after the disposition hearing, the court shall hold periodic review hearings at least once every six months as required by federal law”**], to review the progress of the parties in achieving the case plan goals and determine whether the child continues to be dependent.

(b) Notice.

(1) *Court’s Duty to Notify of the Right to Pparticipate.* At a proceeding to review the disposition orders of the court, the court must notify the following persons of the review hearing, and their right to participate in the review proceeding and any future proceedings:

~~(A)~~ The authorized agency charged with the child’s care and custody, **and**

~~(A)(B)~~ the child’s tribe as required under ICWA and the Regulations; ~~:(periods or semi colons?)~~

~~(B)(C)~~ Any foster parents in whose home the child resides or has resided within the last six months ~~or resides at present~~, except for those foster parents who maintain a receiving foster home where the child has resided for 10 days or less. The petitioner must provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

~~(C)(D)~~ _____ A shelter care facility or receiving foster home where the child resides or has resided within the last 6 months for more than 30 days. The petitioner must provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

~~(E)~~ The child’s parent, ~~or guardian~~ (unless:

-

~~(i)~~ ~~(1)~~ the parental rights of that a parent or guardian to the child have been terminated by court action; or

-

~~(i)~~ (2) the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107); ~~and the child's Indian custodian as defined by ICWA and the Regulations.~~

(ii)

~~(D)~~ (F) The child, if 12 years of age or older; ~~(look to other rules to ensure a referncereference to A.R.S. § 8-529(A)(16) — child of any age has a right to attend their court hearing and speak to the judge.)~~

~~(E)~~ (G) _____ The child's relative, as defined in A.R.S. § 8-501, if that relative files ~~with the court~~ with the court a written notice ~~to participate of right of participation.~~ to participate of right of participation. [Staff Note: Is there, or should there be, a form for this? Yes.]

~~(F)~~ (H) A person permitted by the court to intervene ~~as a party~~ in the dependency proceeding.

~~(G)~~ (I) A physical custodian in whose home the child resides or has resided of the child within the ~~preceding last~~ preceding last 6 months.

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

~~(H)~~ (K) Any other person the court deems appropriate.

~~(I)~~ Any other person the court deems appropriate. as the court may direct.

(2) **Sibling information exchange program.** If the court finds that a child is no longer dependent, before it dismisses the proceeding the court must provide notice of the sibling information exchange program as required by A.R.S. § 8-543 to ~~[both of?]~~ the following:

(A) ~~a~~ An adult who is the former dependent the child in the proceeding for whom the periodic review hearing is held; ~~and~~ and

(B) a A parent or guardian with legal custody of the ~~former dependent~~ child for whom the periodic review hearing is held.

(c) **Reports.** The petitioner must provide a report to the court and the parties at least 15 days before the review hearing that addresses:

(1) the placement of the child;

(2) the services being provided to the child and family, including the educational stability of the child;

(3) the progress the parties have made in achieving the case plan goals; and

(4) whether the child continues to be dependent.

(d) Contested Issues. Any party seeking an evidentiary hearing on any issue must file a motion requesting that the matter be set for a contested hearing. The motion must identify the issues to be litigated, the names and addresses of all witnesses, and the estimated time the parties will need to present evidence. Upon receiving the motion, the court may reset the matter to provide sufficient time for an evidentiary hearing, or it may proceed with the review hearing as scheduled. ~~{Staff Note: If the court proceeds with a review hearing as scheduled, is the hearing evidentiary?}~~

(e) Procedure.

(1) Absent any party's objection, the court may consider the oral or written reports of the parties, documents entered into evidence at prior proceedings, documents agreed upon by the parties, and any other reports; ~~{Staff Note: Does the presence of the comma give this final clause a different meaning?}~~ pursuant to Rule 45.

(2) Any documents that the parties wish the court to consider as evidence must be marked and admitted before the hearing concludes.

(3) The court must address the recommendations of the Foster Care Review Board on the record, as provided by A.R.S. § 8-515.03(1)law.

(4) At the first periodic review hearing, the court must consider whether a parent of a child under three years of age at the time of removal has substantially neglected or willfully refused to participate in reunification services offered by the department.

(f) Findings and Orders. All findings and orders must be in a signed minute entry or order~~or contained in a minute entry.~~

(1) At the conclusion of the hearing the court must:

(A) dismiss the petition and return the child to the parent,~~guardian, or Indian custodian~~ if the court finds the child is not dependent; or

(B) make specific findings of fact~~a finding~~ that the child continues to be dependent.

~~— if the child is not placed with a parent, guardian or Indian custodian determine whether DCS has identified and assess placement of the child with a relative or person who has a significant relationship with the child;~~

~~**(B)** whether the parent, guardian, or Indian has complied with the order issued pursuant to A.R.S. § 8-842(E)(7);~~

(2) If the court finds that the child continues to be dependent, the court must:

~~(A)~~ enter ~~appropriate~~ orders concerning

~~(i)~~ ~~the placement, and custody, and educational stability~~ of the child, and

~~(ii)~~ ~~services to be provided to the family and child including the educational stability of the child.~~ [~~Staff Note: Does this mean “orders concerning the educational stability of the child,” or “services concerning the educational stability of the child?”~~]

~~(B)~~ if the child is not placed with a parent, determine whether DCS has identified and assessed ~~whether~~ placement of the child with a relative or person who has a significant relationship with the child ~~is possible~~;

~~—determine whether the parent has complied with the orders the court has issued pursuant to A.R.S. § 8-82442(E)(7);~~

~~(A)(C)~~

~~(B)(D)~~ Set ~~the next~~ review hearing within the time provided by A.R.S. § 8-847 ~~law~~;

~~(C)(E)~~ Set a permanency hearing not more than 12 months ~~from~~ after the date the child was removed from the home;

~~(D)(F)~~ Address and advise the parent, ~~guardian, or Indian custodian~~ in open court that their failure to attend further proceedings without good cause or their failure to participate in reunification services, if appropriate, 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 ~~1X~~, request that they sign and return a copy of the form and note on the record that the form was provided.

~~(E)(G)~~ 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 ICWA § 1915 of ICWA~~ and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

(F)(H) Make other findings and enter ~~any~~ other orders as ~~may be appropriate or~~
~~required by law~~necessary.

Rule 60. Permanency Hearing

- (a) Generally.** At the permanency hearing, the court will determine the child's permanency plan and enter orders that are necessary to accomplish the plan within a specific time.
- (b) Time Limits.** Pursuant to A.R.S. § 8-862, the permanency hearing must be held:
- (1) within 30 days after the disposition hearing, if the court under A.R.S. § 8-846 relieved DCS of the duty to provide reunification services;
 - (2) within 6 months of the removal of a child who was under three years at the time of removal from the child's home; or
 - (3) within 12 months of the child's removal from the home in all other cases, unless otherwise permitted by law.
- (c) Procedure.** At the permanency hearing, the court:
- (1) must consider testimony or documents admitted into evidence, which may include hearsay;
 - (2) must consider the final plan prepared by DCS pursuant to a prior court order; and
 - (3) may allow the child to speak with the court during the hearing to assist the court in determining a permanency plan for the child.
- (d) Findings and Orders.** All findings and orders must be in a signed minute entry or order. The court must make findings and:
- (1) Determine the appropriate permanency plan for the child, make the determination required by Rule 47.1, and order the petitioner to accomplish the plan within a specific time.
 - (2) Set a review hearing within the time required by A.R.S. § 8-847(A), but every review hearing after the permanency hearing for that child is deemed a permanency hearing.
 - (3) If the court determines that termination of parental rights or the establishment of a permanent guardianship is clearly in the best interests of the child, order DCS, the child's attorney, or the child's guardian ad litem, to file a motion or petition pursuant to A.R.S. § 8-862 to terminate parental rights—or to establish a permanent guardianship—within 10 days after the permanency hearing, and appoint counsel for the parent as provided in Rule 38B.

- (4) Address and advise the parent in open court that failure to attend further proceedings without good cause and failure to participate in reunification services, if appropriate, 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 that the hearings may go forward in their absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent with a copy of Form 2 (if the permanent plan is guardianship) or Form 3 (if the permanent plan is termination of parental rights), request that the parent sign and return a copy of the form, and note on the record that the form was provided. [Perhaps this FTA language can be standardized throughout workgroups/editing committee?]
- (5) 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 ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences. [Editing committee]
- (6) If the child is in an **out-of-state** placement the court must make a finding as to whether the placement continues to be appropriate and in the child's best interest.
- (7) Make other findings and enter other orders as appropriate.

Rule 60.1 Consolidation of Hearings

- a) ~~**Generally.** AFTER THE ADJUDICATION OF A DEPENDENCY [ICCF#1](#), IF THE COURT ORDERS OR PERMITS THE FILING OF A MOTION FOR TERMINATION OF PARENTAL RIGHTS OR PERMANENT GUARDIANSHIP PRIOR TO THE PERMANENCY HEARING, THE COURT MAY CONSOLIDATE THE INITIAL TERMINATION OF PARENTAL RIGHTS HEARING OR PERMANENT GUARDIANSHIP HEARING WITH THE PERMANENCY HEARING. [ICCF#1](#)~~
- b) ~~**Procedure.** On a motion of any party or the court's own motion, the court may order [Staff Note: The rule should identify the person who is the subject of the order] that a motion or petition [Staff Note: Which does the court order, a motion or a petition? It seems that by the time of the permanency hearing, the court has determined that the child is dependent; that being the case, under Rule 64 the court would order the filing of a motion] to terminate parental rights or to establish a~~

~~permanent guardianship be filed before the permanency hearing. The court may consolidate the permanency hearing and the initial termination or guardianship hearing, provided the court HOLDS the permanency hearing within 12 months of the child's removal and all the following are true:~~

~~(1) THE PROVISIONS OF ARS 8-864 HAVE BEEN MET; the child was removed from the custody of the parent, guardian, or Indian custodian; (SEE SUBPART 2)~~

~~(2) the parent, guardian, or Indian custodian has been offered reunification services;~~

~~[NOTE: Not sure how this comports with statute 8-864? What about cases with aggravated circumstances, would they not be allowed to consolidate? SEE 8-846 (d)(e)(f)]~~

~~(3) The child was removed from the custody of the parent, guardian, or Indian custodian and is not currently in the custody of a parent, guardian, or Indian custodian; AND~~

~~(4) a party is requesting the termination of parental rights or the establishment of a permanent guardianship. [Staff Note: Is this redundant to what is in the first sentences of Section (B)?]~~

Rule 60. Permanency Hearing

(a) **Generally.** At the permanency hearing, the court will determine the child's future permanent legal status child's permanency plan and enters orders that are necessary to accomplish the plan within a specific time.

~~(b) **Consolidation of Hearings.** On a motion of any party or the court's own motion, the court may order [Staff Note: The rule should identify the person who is the subject of the order] that a motion or petition [Staff Note: Which does the court order, a motion or a petition? It seems that by the time of the permanency hearing, the court has determined that the child is dependent; that being the case, under Rule 64 the court would order the filing of a motion] to terminate parental rights or to establish a permanent guardianship be filed before the permanency hearing. The court may consolidate the permanency hearing and the initial termination or guardianship hearing, provided the court must hold the permanency hearing within 12 months of the child's removal and all the following are true:~~

- ~~(1) the child was removed from the custody of the parent, guardian, or Indian custodian;~~
- ~~(2) the parent, guardian, or Indian custodian has been offered reunification services;~~
- ~~(3) the child has not been returned to the parent, guardian, or Indian custodian; and~~
- ~~(4) a party is requesting the termination of parental rights or the establishment of a permanent guardianship. [Staff Note: Is this redundant to what is in the first sentences of Section (B)?]~~

~~(e)~~**(b) Time Limits.** ~~The~~ Pursuant to A.R.S. § 8-862, the permanency hearing must be held:

- (1) within 30 days after the disposition hearing, ~~days of the disposition hearing, if the court did if the court under A.R.S. § 8-846 relieved DCS of the duty to provide not order~~ reunification services;
- (2) within 6 months of the removal of a child who was under three years at the time of removal from the child's home; or
- (3) within 12 months of the child's removal from the home in all other cases, unless otherwise permitted by law.

(c) Procedure. At the permanency hearing, the ~~court~~ court must

- (1) Must consider evidence testimony or documents admitted into evidence, ~~from the parties~~ [Staff Note: evidence, which is introduced by parties, is testimony or

documents, and the stricken words are unnecessary [from the parties and in the form of testimony or documents admitted into evidence] and] that which may include hearsay; ~~in whole or in part, and~~

~~(2) m~~Must consider the final plan prepared by DCS pursuant to a prior court order; and-

~~(3) m~~May allow the child to speak with the court during the hearing an age-appropriate consultation with the child, in order to assist the court in determining e-whata permanency plan for the child. permanent legal status is appropriate for the child. The court also mus

~~(d) t~~ consider the final plan prepared by the DCS pursuant to a prior court order.

~~(e)~~(d) Findings and Orders. All findings and orders must be in a signed minute entry or order ~~or contained in a minute entry.~~ The court must make findings ~~based upon the evidence presented~~ and ~~must~~:

(1) Determine the appropriate ~~permanent~~permanency plan for the child, make the determination required by Rule 47.1, and order the petitioner to accomplish the plan within a specific time ~~frame.~~

(2) Set a review hearing within the time required by ~~law~~ A.R.S. § 8-847(A), but every review hearing after the permanency hearing for that child is deemed a permanency hearing.-

(3) If the court determines that termination of parental rights or the establishment of a permanent guardianship is clearly in the best interests of the child, order ~~the DCS, petitioner~~ DEPARTMENT [ARS 8-862 (D)(1)] ~~or the child's attorney,~~ or the child's guardian ad litem, to file a motion or petition pursuant to A.R.S. § 8-862 to terminate parental rights—or to establish a permanent guardianship—within 10 days after the permanency hearing, and appoint counsel for the parent as provided in Rule 38B.

(4) Address and advise the parent, ~~guardian, or Indian custodian~~ in open court that failure to attend further proceedings without good cause and failure to participate in reunification services, if appropriate, 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 2 (if the permanent plan is guardianship)

or Form 3 (if the permanent plan is termination of parental rights), 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. [\[Perhaps this FTA language can be standardized throughout workgroups/editing committee?\]](#)

- (5) 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 ICWA § 1915 of ICWA~~ and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences. [\[Editing committee\]](#)
- (6) If the child is in an **out-of-state** placement the court must make a finding as to whether the placement continues to be appropriate and in the child's best interest.
- (7) Make other findings and enter ~~any~~ other orders as ~~may be~~ appropriate ~~or required by law~~.

Rule 60.1 Consolidation of Hearings

~~a) *Generally.* AFTER THE ADJUDICATION OF A DEPENDENCY^[CCF1], IF THE COURT ORDERS OR PERMITS THE FILING OF A MOTION FOR TERMINATION OF PARENTAL RIGHTS OR PERMANENT GUARDIANSHIP PRIOR TO THE PERMANENCY HEARING, THE COURT MAY CONSOLIDATE THE INITIAL TERMINATION OF PARENTAL RIGHTS HEARING OR PERMANENT GUARDIANSHIP HEARING WITH THE PERMANENCY HEARING. ^[CCF1]~~

~~b) *Procedure.* On a motion of any party or the court's own motion, the court may order **[Staff Note: The rule should identify the person who is the subject of the order]** that a motion or petition **[Staff Note: Which does the court order, a motion or a petition? It seems that by the time of the permanency hearing, the court has determined that the child is dependent; that being the case, under Rule 64 the court would order the filing of a motion]** to terminate parental rights or to establish a permanent guardianship be filed before the permanency hearing. ~~The court may consolidate the permanency hearing and the initial termination or guardianship hearing, provided the court must hold **HOLDS** the permanency hearing within 12 months of the child's removal and all the following are true:~~~~

~~**(1) THE PROVISIONS OF ARS 8-864 HAVE BEEN MET; the child was removed from the custody of the parent, guardian, or Indian custodian; (SEE SUBPART 2)**~~

~~(2) the parent, guardian, or Indian custodian has been offered reunification services;~~
~~[NOTE: Not sure how this comports with statute 8-864? What about cases with~~
~~aggravated circumstances, would they not be allowed to consolidate? SEE 8-846~~
~~(d)(e)(f)]~~

~~(3) The child was removed from the custody of the parent, guardian, or Indian custodian~~
~~and is not currently in the custody of a parent, guardian, or Indian custodian;. AND~~

~~(4) a party is requesting the termination of parental rights or the establishment of a~~
~~permanent guardianship. [Staff Note: Is this redundant to what is in the first sentences of~~
~~Section (B)?]~~

Rule 74. Motions

- (a) **Form.** Motions must be in writing, unless otherwise authorized by the court, and state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.
- (b) **Filing.** A motion must be filed with the clerk. A copy of the motion must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding juvenile judge or that judge's designee. **The filing party must serve all other parties with a copy of the motion by mail, hand delivery, fax, or electronic means.**
- (c) **Response.** If the moving party serves the motion by hand delivery, fax, or electronic means, a response to a motion must be filed no later than 5 days after service. If the motion is served by mail, a response is due no later than 10 days after service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.
- (d) **Court Ruling.** Except as these rules or statutes provide otherwise, after the time for a response has expired or if no party objects, the court may rule on the motion with or without a hearing.
- (e) **Motion to Continue.** A motion to continue must be made in good faith and must state the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court may grant a motion to continue for good cause.
- (f) **Motion to Set Aside Judgment.** A motion to set aside a judgment rendered by the court must conform to the requirements of Civil Rule 60(b)-(d), except that the motion must be filed no later than one year after the final judgment, order, or proceeding unless the moving party alleges grounds pursuant to Civil Rule 60(b) (1), (2) or (3), in which case the motion must be filed within 6 months. The court may not extend these time limits. **A motion to set aside a judgment under Rule 60(b)(4) may be filed at any time.** If the child is an Indian child, the provisions of ICWA §§ 1913 and 1914 apply.

Rule 74. Motions

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

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

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

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

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

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

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

~~Motion to Continue. Any motion to continue shall be made in good faith and shall state with specificity the reasons for the continuance. The party requesting the~~

~~continuance shall advise the court of impending expiration of time limits. Motions to continue shall only be granted only upon a showing of good cause.~~

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

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

(c) Response. If the moving party serves the motion by hand delivery, fax, or electronic means, a response to a motion must be filed ~~within~~ no later than 5 days ~~of~~ after service. If the motion is served by mail, a response is due ~~within~~ no later than 10 days ~~of~~ after service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.

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

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

(e)(f) Motion to Set Aside Judgment. A motion to set aside a judgment rendered by the court ~~shall~~ must conform to the requirements of Civil Rule 60(b)-(d), except that the motion must be filed ~~within~~ no later than one year ~~of~~ after the final judgment, order, or proceeding unless the moving party alleges grounds pursuant to Civil Rule 60(b) (1), (2) or (3), in which case the motion must be filed within 6 months. The court may not extend these time limits. **A motion to set aside a judgment under Rule 60(b)(4) may be filed at any time.** ~~[7/22/20 WG-4 note: See ARS 8-123; is the draft consistent with the statute?]~~ If the child is an Indian child, the provisions ~~a motion to set aside a judgment must comply with~~ ICWA 25 U.S.C. §§ 1913 and 1914 apply.

Rule 80. Birth Parent Living Expenses

- (a) Motion for Approval.** Any person or agency wishing to pay living expenses for a birth parent in excess of one-thousand dollars, as provided by A.R.S. § 8-114, must file a motion supported by an affidavit signed by the birth parent justifying the expenses. The affidavit must specify the amounts allocated to the individual monthly expenses for which approval is sought and explain why the expenses are needed for the time period requested.
- (b) Procedure.** Unless waived by the court on a showing of good cause, the court must hold a hearing within 10 days and notify the parties of the location, date, and time of the hearing. If the court holds a hearing, it may require the attendance of the birth parent or the person or agency wishing to pay living expenses. The court must verify the identity of the birth parent before entering any orders.
- (c) Findings and Order.** The court must promptly determine whether the expenses are permissible under [A.R.S. § 8-114](#). All findings and orders must be in a signed minute entry or order.

Rule 80. Birth Parent Living Expenses

- (a) **Motion for Approval.** Any person or agency wishing to pay living expenses for a birth parent in excess of one-thousand dollars, as provided by A.R.S. § 8-114, must file a motion supported by an affidavit signed by the birth parent justifying the expenses. The affidavit must specify the amounts allocated to the individual monthly expenses for which approval is sought and explain why the expenses are needed for the time period requested. Unless the court finds good cause otherwise, the court must hold a hearing within 10 days after the motion is filed and notify the parties of the location, date, and time of the hearing. The court may waive the appearance of the person or agency wishing to pay living expenses.
- (b) **Procedure.** The birth parent must appear at the hearing. The court shall verify the identity of the birth parent before entering any orders. Unless waived by the court on a showing of good cause, the court must hold a hearing within 10 days and notify the parties of the location, date, and time of the hearing. If the court holds a hearing, it may require the attendance of the birth parent or the person or agency wishing to pay living expenses. The court shall must verify the identity of the birth parent before entering any orders.
- (e) **Findings and Order.** The court must promptly determine whether the expenses are permissible under A.R.S. § 8-114. All findings and orders must be in an order or a signed minute entry signed by the court or order.

—COMMITTEE COMMENT

- (c) A.R.S. 8-114 does not require the filing of a motion where the amount of living expenses to be paid does not exceed one thousand (1000) dollars.

Rule 81. Consent to Adopt

~~[Staff Note: Notwithstanding Section A of this rule, A.R.S. §§ 8-106 and 107 do not appear to require that the consent be given at a court hearing, even when the consent is given out of state.]~~

(a) Generally. Individuals must give consent as required by A.R.S. § 8-106. Consent must meet the requirements of A.R.S. § 8-107.

(b) Consent in Open Court for an Out-of-State Adoption. This section governs procedures relating to the signing of consents by a birth parent as part of an out-of-state adoption where the consents are required to be given in open court.

- (1)** Any person required to sign a consent to adopt before the court must move the court to set a hearing for the purpose of taking the consent. The court must promptly set a hearing and notify the person seeking to give consent of the location, date, and time of the hearing.
- (2)** The person required to give consent or the prospective adoptive parent must make arrangements for the presence of a certified court reporter at the hearing if one is required to effectuate an out-of-state adoption. The person required to give consent also must provide the court with copies of the consents for signature, if required, and must include an additional copy for the court. All copies of the signature establishing consent must be accompanied by self-addressed, stamped envelopes if the person consenting will request that the court mail the consents to the state where the adoption will occur.
- (3)** At the hearing, the person seeking to give consent must provide the court with proof of identification. The identification must include a photograph of the person so that the court can verify the identity of the person before taking a consent to adopt.

(c) Consent to Adopt an Indian Child. If there is reason to know that the child is an Indian child, in addition to requirements as provided by law, the consent to adopt must contain the following information:

- (1)** the name and birth date of the Indian child;
- (2)** the name of the Indian child's tribe;
- (3)** the identifying number or other indication of the Indian child's membership in the tribe;
- (4)** the name and address of the consenting parent or Indian custodian; and

(5) the name and address of the person, division or agency through whom any preadoptive or adoptive placement has been or is to be made.

(d) Findings and Orders. At the conclusion of the hearing the court must state, by order or minute entry, that consents were signed by the person appearing before the court. If there is reason to know that the child is an Indian child, the consents must be accompanied by the presiding judge's certificate that the terms and consequences were fully explained in detail, in English or interpreted in a language the parent or Indian custodian could understand, and were understood by the parent or Indian custodian. *See* ICWA § 1913 and 25 C.F.R. §§ 23.124 through 23.126. The signed consents must be returned to the person consenting to the adoption.

(e) Invalid Consent. A consent given less than 72 hours after the birth of the child is invalid. In the case of an Indian child, any consent given prior to, or within 10 days after, the birth of an Indian child is invalid.

Rule 81. Consent to Adopt

[**Staff Note:** Notwithstanding Section A of this rule, A.R.S. §§ 8-106 and 107 do not appear to require that the consent be given at a court hearing, even when the consent is given out of state.]

(a) Generally. Individuals must give consent as required by A.R.S. § 8-106. Consents~~ne~~
~~markup~~ must meet the requirements of A.R.S. § 8-107.

(b) Motion to Set Hearing Consent in Open Court for an Out-of-State Adoption.

This section governs procedures relating to the signing of consents by a birth parent as part of an out-of-state adoption where the consents are required to be given in open court.

(a)(1) Any person required to sign a consent to adopt before the court ~~shall~~
~~motion~~must move the court, ~~orally or in writing as provided in Rule 74,~~ to set a hearing for the purpose of taking the consent. The court ~~shall~~must promptly
~~promptly~~ set a hearing and ~~shall~~ notify the person seeking to give consent of the location, date, and time of the hearing.

(b) Procedure. ~~[11/9/2020: End here.]~~ At the hearing, the person seeking to give consent is responsible for the following:

(1) Identification. ~~At the hearing, the person seeking to give consent is responsible for the following: providing~~ ~~must provide~~ the court with proof of identification ~~on~~ which shall . ~~The identification must include a photograph of the person so that the court can verify the identity of the person before taking a consent to adopt;~~

(2) Out-of-state Adoptions. ~~The prospective adoptive parent~~ person required to give consent or the prospective adoptive parent ~~must make~~ making arrangements for the presence of a certified court reporter at the hearing if one is required to effectuate an out-of-state adoption; ~~and.~~ The prospective adoptive parent person required to give consent also ~~must provide~~ providing the court with copies of the consents for signature, ~~if required,~~ which shall and must include an additional copy for the court. All copies ~~for~~ of the signature establishing consent ~~shall~~ must be accompanied by self-addressed, stamped envelopes if the person consenting will request that the court mail the consents to the state where the adoption will occur.

(3) At the hearing, the person seeking to give consent must provide the court with proof of identification. The identification must include a photograph of the person so that the court can verify the identity of the person before taking a consent to adopt.

~~(2) —~~

~~(3) providing the court with copies of the consents for signature if required, which shall include an additional copy for the court. All copies for signature shall be accompanied by self-addressed, stamped envelopes if the person consenting will request that the court mail the consents to the state where the adoption will occur.~~

(c) Consent to Adopt an Indian Child. If there is reason to know that the child is an Indian child, in addition to requirements as provided by law, the consent to adopt ~~shall~~ must contain the following information:

- (1) the name and birth date of the Indian child;
- (2) the name of the Indian child's tribe;
- (3) the identifying number or other indication of the Indian child's membership in the tribe;
- (4) the name and address of the consenting parent or Indian custodian; and
- (5) the name and address of the person, division or agency through whom any preadoptive or adoptive placement has been or is to be made.

(d) Findings and Orders. At the conclusion of the hearing the court ~~must state shall~~, by order or minute entry, ~~state~~ that consents were signed by the person appearing before the court. ~~In the case of~~ If there is reason to know that the child is an Indian child, the consents ~~shall~~ must be accompanied by the presiding judge's certificate that the terms and ~~conditions consequences~~ were fully explained in detail, in English or interpreted in a language the parent or Indian custodian could understand, and ~~was were~~ understood by the parent or Indian custodian. See ICWA § 1913 and 25 C.F.R. §§ 23.124 through 23.126. The signed consents ~~shall~~ must be returned to the person consenting to the adoption.

~~[Staff Note: In the 2019 rules, section E is mistakenly shown as a part of section D rather than as a separate section.]~~

(e) Invalid Consent. A consent given less than ~~seventy two (72)~~ 72 hours after the birth of the child is invalid. In the case of an Indian child, any consent given prior to, or within ~~ten (10)~~ 10 days after, the birth of an Indian child is invalid.

~~—COMMITTEE COMMENT~~

~~(e) This rule governs procedures relating to the signing of consents by a birth parent as part of an out of state adoption where the consents are required to be given in open court or consents involving an Indian child.~~

Rule 82. Petition to Revoke Consent.

- (a) **Petition to Revoke Consent.** A person seeking to revoke their own consent to the adoption of a child must file a petition stating the basis for the relief sought. A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 85.
- (b) **Service.**
- (1) The court must prepare a notice of hearing that specifies the date, time, and location of an initial hearing.
 - (2) The court must provide a copy of the petition and notice of hearing to the adoptive parent or the parent's attorney, DCS, or the agency to whom the consent was originally given. The court must provide the copies in a manner that is reasonably calculated to provide prompt notice.
 - (3) If the original consent was given to DCS or an agency, the entity must provide copies of the petition to revoke consent and notice of hearing to the prospective adoptive parent.
- (c) **Appointment of Counsel.** The court must appoint counsel for an indigent petitioner as provided in Rule 69.
- (d) **Appointment of a Guardian ad Litem.** Upon a party's or the court's own motion, the court may appoint a guardian ad litem for the child. If the court grants the petition to revoke consent, the guardian ad litem, if warranted, may file a dependency petition.
- (e) **Initial Hearing and Evidentiary Hearing.** The court must set an initial hearing no later than 15 days after the filing date of the petition. At the initial hearing, the court must determine whether notice has been provided. If so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. It may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 73 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.
- (f) **Burden of Proof.** The person seeking to revoke consent must prove by clear and convincing evidence that the consent to adopt was the result of fraud, duress, or undue influence.
- (g) **Procedure.** The court must consider evidence in the form of testimony and documents that have been entered into evidence.

(h) Findings and Orders. The court's findings must be in a signed minute entry or order. If a consent is revoked, the court must enter orders concerning the custody of the child. The court must advise the parties of their right to appeal.

(i) Revocation of Consent to Adopt an Indian Child. The parent or Indian custodian of an Indian child who seeks to revoke a consent to adopt may do so at any time before the court enters a final order of termination of parental rights or adoption. The revocation may be accomplished by filing a sworn statement of intent to revoke consent with the clerk of the court where the consent was originally filed, or as otherwise required by 25 C.F.R. § 23.128. The court must then order the return of the Indian child as soon as practicable to the custody of the parent or Indian custodian.

COMMENT TO 2022 AMENDMENT

Proceedings to revoke a consent to adopt be more formal and more expeditious than other types of juvenile proceedings due to the potential impact on all parties, particularly the child. The court should consider the appointment of a guardian ad litem for the child if it appears that valid grounds exist upon which to revoke the consent.

Rule 82. Petition to Revoke Consent.

(a) **Petition to Revoke Consent.** A person seeking to revoke their own consent to the adoption of a child must file a petition stating the basis for the relief sought. A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 85.

(b) Service.

- (1) The ~~petitioner or the~~ court must prepare a notice of hearing that specifies the date, time, and location of an initial hearing., ~~and provide a copy of the petition and the notice of hearing to the adoptive parent or the parent's attorney, DCS, or the agency to whom the consent was originally given.~~
- (2) The court must provide a copy of the petition and notice of hearing ~~must be provided to the~~ adoptive parent or the parent's attorney, DCS, or the agency to whom the consent was originally given. The court must provide the copies in a manner that is reasonably calculated to provide prompt notice.
- (3) ~~Notification to the prospective adoptive parent is not required i~~If the original consent was given to DCS or an agency, the entity must provide copies of the petition to revoke consent and notice of hearing to the prospective adoptive parent.

(c) **Appointment of Counsel.** The court must appoint counsel for an indigent petitioner as provided in Rule 69. ~~[12/2/2020: WG ended during a discussion of this section.]~~

(d) **Appointment of a Guardian ad Litem.** Upon a party's or the court's own motion, the court may appoint a guardian ad litem ~~to represent for~~ the child. ~~The court may order the guardian ad litem or the division [Staff Note: Who/what is the division? Does it mean DCS?] to conduct an investigation and determine whether a dependency petition will need to be filed if a consent to adopt is revoked. If appropriate the court grants the petition to revoke consent, the guardian ad litem, if warranted, must prepare the may file a~~ dependency petition ~~for filing.~~

(e) **Initial Hearing and Evidentiary Hearing.** The court must set an initial hearing ~~within no later than 20-15~~ days after the filing date of the petition. At the initial hearing, the court must determine whether service notice has been ~~completed provided, and.~~ ~~i~~If so, ~~it the court~~ must set a date for an evidentiary hearing ~~within no later than 45-30 days of after~~ the initial hearing. It may set a mediation before that date. ~~–~~The court also must order that the parties exchange information as provided in Rule 73 ~~(B)~~ no later than 30-15 days before the evidentiary hearing, ~~unless the court orders otherwise. The court may extend these time limits for good~~

cause. ~~[Staff Note: This last sentence suggests that the parties have 15 days (45 days minus 30 days) to complete disclosure. Is this right?]~~

- (f) **Burden of Proof.** The person seeking to revoke consent must prove by clear and convincing evidence that the consent to adopt ~~previously given was the result of fraud, duress, or undue influence. is invalid as provided by law.~~ ~~[Staff Note: Should the rule specify what law this refers to?]~~
- (g) **Procedure.** The court ~~shall~~ must consider evidence, in the form of testimony ~~and/or~~ and documents ~~which that~~ have been entered into evidence. ~~[Staff Note: Is this provision necessary or helpful? Note that Section F refers to the hearing as “evidentiary.”]~~
- (h) **Findings and Orders.** The court’s findings must be in a signed minute entry or order. If a consent is revoked, the court must enter orders concerning the custody of the child. The court must advise the parties of their right to appeal, ~~and, if a consent is revoked, it must enter orders concerning the custody of the child.~~
- (i) **Revocation of Consent to Adopt an Indian Child.** ~~[Staff Note: This appears to apply to the parent or custodian of an Indian child, and the rule was rewritten to clarify this.]~~ The parent or Indian custodian of an Indian child who seeks to revoke a consent to adopt may do so at any time before the court enters a final order of termination of parental rights or adoption. The revocation ~~is~~ may be accomplished by filing a sworn statement of intent to revoke consent with the clerk of the court where the consent was originally ~~executed~~ filed, or as otherwise required by 25 C.F.R. § 23.128. The court must then order the return of the Indian child as soon as practicable to the custody of the parent or Indian custodian. ~~[Staff Note: Does this require the court to consider the child’s best interests?]~~

COMMITTEE COMMENT TO 2022 AMENDMENT

~~It was the opinion of the Committee that p~~Proceedings to revoke a consent to adopt be more formal and more expeditious than other types of juvenile proceedings due to the potential impact on all parties, particularly the child. The court ~~is urged to~~ should consider the appointment of a guardian ad litem for the child, if it appears that valid grounds exist upon which to revoke the consent, ~~in order to assist the court in determining whether the child is dependent.~~

Rule 83. Documentation Required to Adopt

(a) Before the Hearing. Not later than 10 days before the finalization of an adoption, the petitioner must provide to the court the following documents, if applicable:

- (1) a copy of the birth certificate of the child to be adopted;
- (2) a notarized affidavit signed by the birth mother identifying all potential fathers of the child as provided by law;
- (3) an affidavit that a search of paternity filings was conducted;
- (4) a certificate from the Department of Health Services signed by the State Registrar of Vital Statistics stating that a diligent search has been made of the putative fathers registry for notices of claims of paternity from potential fathers, and the results of the search;
- (5) the affidavit of service of process upon all potential fathers as provided by A.R.S. § 8- 106
- (6) an affidavit of compliance from an attorney or agency as provided by A.R.S. § 8-130;
- (7) a verified accounting required by A.R.S. § 8-114, unless the prospective adoptive parent is the child's stepparent;
- (8) notarized statements from any birth parent granting or denying permission for the child being adopted to obtain identifying information about the child and from the consenting parent upon the child reaching 18 years of age, and granting or denying permission to be informed of the death of the child, as provided by A.R.S. §§ 8-107, 8-129, 8-130;
- (9) the original agreement between the birth parent and prospective adoptive parent regarding future communications among the parties, as provided by A.R.S. § 8-116.01; and
- (10) the social study required by A.R.S. § 8-112, or as ordered by the court.

(b) Before or at the Hearing. The following documents may be provided to the court before or at the time of the hearing:

- (1) a certified copy of the birth certificate of the child to be adopted;
- (2) the certificate of adoption;
- (3) the order of adoption; and

(4) all original consents as provided by law.

Rule 83. Documentation Required to Adopt

(a) Before the Hearing. ~~Within~~ Not later than 10 days before the finalization of an adoption, the petitioner must provide to the court the following documents, if applicable:

- (1) a ~~certified~~ copy of the birth certificate of the child to be adopted;
- (2) a notarized affidavit signed by the birth mother identifying all potential fathers of the child as provided by law;
- (3) an affidavit that a search of paternity filings was conducted;
- (4) a certificate from the Department of Health Services signed by the State Registrar of Vital Statistics stating that a diligent search has been made of the putative fathers registry for notices of claims of paternity from potential fathers, and the results of the search;
- (5) the affidavit of service of process upon all potential fathers as provided by A.R.S. § 8-106~~law~~;
- (6) an affidavit of compliance from an attorney or agency as provided by A.R.S. § 8-130;
- (7) a verified accounting required by A.R.S. § 8-114, unless the prospective adoptive parent is the child's stepparent;
- (8) notarized statements from any birth parent granting or denying permission for the child being adopted to obtain identifying information about the child and from the consenting parent upon the child reaching 21-18 years of age, and granting or denying permission to be informed of the death of the child, as provided by A.R.S. §§ 8-107, 8-129, 8-130;
- (9) the original agreement between the birth parent and prospective adoptive parent regarding future communications among the parties, as provided by A.R.S. § 8-116.01; and
- (10) the social study required by A.R.S. § 8-~~114~~112, or as ordered by the court.

(b) Before or at the Hearing. The following documents may be provided to the court before or at the time of the hearing:

(1) a certified copy of the birth certificate of the child to be adopted;

~~(b)~~

- ~~(1)~~(2) the certificate of adoption;
- ~~(2)~~(3) the order of adoption; and
- ~~(3)~~(4) all original consents as provided by law.

Rule 84. Hearing to Finalize Adoption

- (a) **Attendance.** The prospective adoptive parent, the spouse of the prospective adoptive parent, unless otherwise ordered by the court, and the child to be adopted must attend the hearing. The court may permit virtual attendance as provided by Rule 42. For good cause, the court may permit testimony by an oral deposition of an adoptive parent who is unable to attend the final adoption hearing, if the deposition was conducted in open court before the hearing.
- (b) **Burden of Proof.** The burden is on the petitioner to prove by a preponderance of the evidence that the petitioner is a fit and proper person to adopt and that it is in the best interests of the child to be adopted.
- (c) **Procedure.** At the hearing the court must:
- (1) receive testimony from the parties verifying the information in the petition to adopt;
 - (2) if the child is 12 years of age or older, determine whether the child consents to the adoption;
 - (3) review any post-placement agreements between the parties under A.R.S. § 8-116.01 and approve such agreements, as appropriate;
 - (4) terminate the parental rights of the birth parent, by a finding of clear and convincing evidence, if not terminated previously;
 - (5) if the child is an Indian child, determine whether:
 - (A) the tribe was notified of the proceedings and the right to intervene, if applicable;
 - (B) the parent or Indian custodian's consent to the adoption was taken in accordance with ICWA § 1913;
 - (C) the placement complies with the placement preferences set forth in ICWA, or whether good cause exists for deviation from the placement preferences as provided in ICWA §1915 and 25 C.F.R. §§ 23.130 through 23.132; and
 - (D) the parental rights of the parent or Indian custodian have been terminated in accordance with ICWA § 1912, 25 C.F.R. §§ 23.121 and 23.122, and Rule 66; and
 - (6) set an additional hearing if the court cannot proceed with the adoption hearing for any reason.

(d) Findings and Orders. The court must make its findings in a signed minute entry or order and grant or deny the petition to adopt at the conclusion of the hearing. The court may take the matter under advisement if information required by law had not been received by the court before or at the hearing, as required by these rules.

(e) ICWA. If the child is an Indian child:

(1) the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA; and

(2) pursuant to ICWA § 1951, the court must direct the clerk to provide the Secretary of the Interior with a copy of the final adoption decree and the following information:

(A) the name and tribal affiliation of the child;

(B) the names and addresses of the biological parents;

(C) the names and addresses of the adoptive parents; and

(D) the identity of any agency having files or information relating to such adoptive placement.

(f) Dismissal of a Dependency Action. If the adopted child is a ward of the court in the county where the adoption is granted, the court must dismiss the dependency action. If the child is a ward of the court in another county or state, the court must direct that the department or agency having had legal custody of the child to file a motion to dismiss in the county where the child is a ward, or to notify the other state of the adoption order.

NOTE: 12/14/20 WG suggests the need for a mechanism, possibly by rule, to notify the clerks office where a child support obligation originated so that the child support paying parent no longer needs to provide support payments following entry of the adoption order.

Rule 84. Hearing to Finalize Adoption

- (a) **Attendance.** The prospective adoptive parent, the spouse of the prospective adoptive parent, unless otherwise ordered by the court, and the child to be adopted must attend the hearing. The court may permit virtual attendance as provided by Rule 42. For good cause, the court may permit testimony by an oral deposition of an adoptive parent who is unable to attend the final adoption hearing, if the deposition was conducted in open court before the hearing ~~in open court~~.
- (b) **Burden of Proof.** The burden is on the petitioner to prove by a preponderance of the evidence that the petitioner is a fit and proper person to adopt and that it is in the best interests of the child to be adopted.
- (c) **Procedure.** At the hearing the court must:
- (1) receive testimony from the parties verifying the information in the petition to adopt;
 - (2) if the child is 12 years of age or older, determine whether the child consents to the adoption;
 - (3) review any post-placement agreements between the parties under A.R.S. § 8-116.01 and approve such agreements, as appropriate;
 - ~~(4) set additional hearings within the time limits provided by law if the court cannot proceed with the adoption hearing for any reason; and~~
 - ~~(5)~~(4) terminate the parental rights of the birth parent, by a finding of clear and convincing evidence, if not terminated previously;
 - ~~(6)~~(5) if the child is an Indian child ~~subject to ICWA is being adopted~~, determine whether:
 - (A) the tribe was notified of the proceedings and the right to intervene, if applicable;
 - (B) the parent or Indian custodian's consent to the adoption was taken in accordance with ICWA § 1913;
 - (C) the placement complies with the placement preferences set forth in ICWA, or whether good cause exists for deviation from the placement preferences as provided in ICWA §1915 and 25 C.F.R. §§ 23.130 through 23.132; and
 - (D) the parental rights of the parent or Indian custodian have been terminated in accordance with ICWA § 1912, 25 C.F.R. §§ 23.121 and 23.122, and Rule 66-; and ~~The court shall enter an order terminating parental rights, based upon~~

~~evidence beyond a reasonable doubt, including testimony of 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 and 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. This finding must be in addition to other findings beyond a reasonable doubt that the petitioner has met the burden of proving grounds upon which to terminate parental rights.~~

~~—sset an additional hearings within the time limits provided by law if the court cannot proceed with the adoption hearing for any reason; and.~~

~~(D)(6)~~

(d) Findings and Orders. The court must make its findings in a signed minute entry or order and grant or deny the petition to adopt at the conclusion of the hearing. ~~The court may take the matter under advisement if information required by law had not been received by the court prior to or at the hearing, as required by these rules. If ICWA applies, the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA. The court may take the matter under advisement if information required by law had not been received by the court prior to before or at the hearing, as required by these rules.~~

(e) ICWA. If the child is an Indian child:-

(1) the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA; and

(2) pursuant to ICWA § 1951, if the child being adopted is subject to the Act, the court must direct the clerk to provide the Secretary of the Interior with a copy of the final adoption decree and the following information:

(A) the name and tribal affiliation of the child;

(B) the names and addresses of the biological parents;

(C) the names and addresses of the adoptive parents; and

(D) the identity of any agency having files or information relating to such adoptive placement.

~~(d)—~~

(e)(f) Dismissal of a Dependency Action. If the adopted child is a ward of the court in the county where the adoption is granted, the court must dismiss the dependency action. If the child is a ward of the court in another county or state, the court must

direct that the department or agency having had legal custody of the child to file a motion to dismiss in the county where the child is a ward, or to notify the other state of the adoption order. ~~[Staff Note: The current rule does not direct the department or agency what to do if the dependency is pending in another state.]~~

COMMITTEE COMMENT

~~This rule permits the court to accept an oral deposition from a prospective adoptive parent in lieu of personally appearing before the court. This procedure has been informally used in circumstances where the adoptive parent has filed a petition to adopt but subsequently moved out of state prior to the scheduled hearing and could not appear before the court.~~

~~Pursuant to 25 U.S.C. 1951, if the child being adopted is subject to the Act, the court must provide the Secretary of the Interior with a copy of the final adoption decree and the following:~~

- ~~1. the name and tribal affiliation of the child;~~
- ~~2. the names and addresses of the biological parents;~~
- ~~3. the names and addresses of the adoptive parents; and~~

~~the identity of any agency having files or information relating to such adoptive placement.~~

4. NOTE: 12/14/20 WG suggests the need for a mechanism, possibly by rule, to notify the clerks office where a child support obligation originated so that the child support paying parent no longer needs to provide support payments following entry of the adoption order.

Rule 85. Setting Aside an Adoption

- (a) **Motion to Set Aside.** A person seeking to set aside a final order of adoption must file a motion to set aside the judgment within the time limits set by Rule 74(f). The motion may only allege grounds permitted under Civil Rule 60(b)-(d). The court must set an initial hearing within 10 days of the filing date and advise the parties of the date, time, and location of the initial hearing. If there is reason to know the child is an Indian child, the court must proceed under ICWA.
- (b) **Appointment of Guardian ad Litem.** Upon a party's or the court's own motion, the court may appoint a guardian ad litem for the child. If the court grants the motion to set aside, the guardian ad litem, if warranted, may file a dependency petition.
- (c) **Initial Hearing.** The court must set an initial hearing no later than 15 days after the filing date of the motion. At the initial hearing, the court must determine whether notice has been provided. If so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. It may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 73 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.
- (d) **Burden of Proof.** The burden is upon the person seeking to set aside the adoption to prove the allegations contained in the motion by clear and convincing evidence.
- (e) **Procedure.** The court shall consider evidence, in the form of testimony and documents that have been entered into evidence.
- (f) **Indian Child.** After the finalization of an adoption, the parent of an Indian child may withdraw consent to the adoption and petition the court to vacate the adoption decree on the grounds that the consent was obtained through fraud or duress under ICWA § 1913. Upon a finding that consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to the parent as soon as practicable. No adoption of an Indian child that has been effective for at least two years may be invalidated unless otherwise permitted under state law. An Indian parent or custodian also may move to set aside an adoption for reasons other than fraud or duress, pursuant to Rule 74(f).
- (g) **Findings and Orders.** The court must make its findings in the form of a signed minute entry or order. The court must advise the parties of their right to appeal and, if court sets the adoption aside, it must enter orders concerning custody of the child. If ICWA applies, the court must make findings and enter orders pursuant to the standards and burdens of proof as required under ICWA.

COMMENT TO 2022 AMENDMENT

Proceedings to set aside an adoption should be more formal than other types of juvenile proceedings due to the potential impact on all parties, particularly the child.

The Indian Child Welfare Act contemplates the return of the child to the parent or Indian custodian if the adoption is set aside. The court should return the child in the absence of clear and convincing evidence, including testimony of a qualified expert, that return of the child to the parent or Indian custodian would likely result in serious emotional or physical damage to the child.

Rule 85. Setting Aside an Adoption

- (a) **Motion to Set Aside.** A person seeking to set aside a final order of adoption must file a motion to set aside the judgment within the time limits set by Rule 74(f). ~~within the time limits set by Rule 74(f).~~ The motion may only allege grounds permitted under Civil Rule 60(b)-(d), ~~or by ICWA.~~ The court must set an initial hearing within 10 days of the filing date and advise the parties of the date, time, and location of the initial hearing. If there is reason to know the child is an Indian child ~~as defined by ICWA,~~ the court must proceed under ICWA.
- (b) **Appointment of Guardian ad Litem.** ~~On a party's or the court's own motion, the court may appoint a guardian ad litem to represent for the child. [Staff Note: Does the GAL "represent" the child? To avoid confusing the role of the GAL with that of an attorney, staff suggests changing "to represent the child" to "for the child."] The court may order the guardian ad litem or the DCS to conduct an investigation for the purpose of determining whether a dependency petition should be filed in the event the adoption is set aside. If appropriate, the guardian ad litem must prepare the dependency petition for filing.~~ Upon a party's or the court's own motion, the court may appoint a guardian ad litem for the child. If the court grants the motion to set aside, the guardian ad litem, if warranted, may file a dependency petition.
- (c) **Initial Hearing.** ~~The court shall set an initial hearing within ten (10) days of the filing of the motion to set aside. [Staff Note: The preceding sentence duplicates a provision in section A.] At the initial hearing, the court must set an evidentiary hearing within 45 days of the initial hearing and order that the parties exchange information as provided in Rule 73(B), no later than thirty (30) days prior to the evidentiary hearing. [Staff Note: If the only purpose of the initial hearing is to order disclosure and to set an evidentiary hearing, it seems unnecessary. Those things can be accomplished by a minute entry. Also, the timing of the evidentiary hearing is 45 days after the initial hearing, yet disclosure is due 30 days before the evidentiary hearing, leaving only 15 days for disclosure. That seems unrealistic.]~~ The court must set an initial hearing no later than 15 days after the filing date of the motion. At the initial hearing, the court must determine whether notice has been provided. If so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. It may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 73 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.
- (d) **Burden of Proof.** The burden is upon the person seeking to set aside the adoption to prove the allegations contained in the motion by clear and convincing evidence.

- (e) **Procedure.** The court shall consider evidence, in the form of testimony and/or documents ~~which that~~ have been entered into evidence. ~~[Staff Note: Is this section necessary? At an evidentiary hearing, the court considers evidence.]~~
- (f) **Indian Child.** After the finalization of an adoption, the parent of an Indian child may withdraw consent to the adoption and petition the court to vacate the adoption decree on the grounds that the consent was obtained through fraud or duress under ICWA § 1913. Upon a finding that consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to the parent as soon as practicable. No ~~adoption~~ adoption ~~n~~ ~~[of an Indian child?]~~ that has been effective for at least two years may be invalidated unless otherwise permitted under State-state law. An Indian parent or custodian also may move to set aside an adoption for reasons other than fraud or duress, pursuant to Rule 74(f).
- (g) **Findings and Orders.** The court must make its findings ~~in writing~~, in the form of a signed minute entry or order. The court must advise the parties of their right to appeal and, if court sets the adoption aside, it must enter orders concerning custody of the child. If ICWA applies, the court must make findings and enter orders pursuant to the standards and burdens of proof as required under ICWA.

COMMITTEE COMMENT TO 2022 AMENDMENT

~~It was the opinion of the Committee that p~~Proceedings to set aside an adoption should be more formal than other types of juvenile proceedings due to the potential impact on all parties, particularly the child. ~~The court is urged to consider the appointment of a guardian ad litem for the child to assist the court in determining whether the child is dependent and whether it is in the child's best interest to set the adoption aside.~~

The Indian Child Welfare Act contemplates the return of the child to the parent or Indian custodian if the adoption is set aside. The court should return the child in the absence of clear and convincing evidence, including testimony of a qualified expert, that return of the child to the parent or Indian custodian would likely result in serious emotional or physical damage to the child.

~~There is nothing in this rule precluding the parent or Indian custodian from moving to set aside an adoption for reasons other than fraud or duress, pursuant to Rule 60(c), Ariz. R.Civ. P.~~

Rule 87. Modification of Post-Placement Agreements

- (a) Motion to Modify.** After a good faith attempt to mediate any disagreements, any party to a court-approved post-placement agreement under A.R.S. § 8-116.01 may move the court to enforce or modify the agreement. The motion must state the parties' efforts to mediate their disagreements before the motion was filed. The court will set a hearing and will notify the parties of the location, date, and time of hearing.
- (b) Procedure.** All disputing parties to the agreement will appear before the court. The proceedings will be conducted in an informal manner.
- (c) Findings and Orders.**
- (1)** At the conclusion of the hearing, the court will determine whether there has been a breach of the post-placement agreement, and whether the original agreement should be enforced or modified.
 - (2)** The court may order a modification of an approved agreement if it finds that modification is necessary to serve the best interests of the child and one of the following is true:
 - (A)** the modification is agreed to by the adoptive parents; or
 - (B)** exceptional circumstances have arisen since the agreement was approved that justify modification of the agreement.
 - (3)** The court must make its findings in a signed minute entry or order.

Rule 87. Modification of Post-Placement Agreements

~~[Staff Note: The rule does not describe what a “post placement agreement” is, or who the parties might be. In section (A), the term “court ordered post placement agreement” seems oxymoronic. Is it a court order or is it an agreement between the parties?]~~

(a) **Motion to Modify.** After a good faith attempt to mediate any disagreements, any party to a court-approved post-placement agreement under A.R.S. § 8-116.01 may move the court to enforce or modify the agreement. The motion must state the parties’ efforts to mediate their disagreements before the motion was filed. The court will set a hearing and will notify the parties of the location, date, and time of hearing.

~~[Staff Note: Is there a time requirement for setting the hearing?]~~

(b) **Procedure.** All disputing parties to the agreement will appear before the court. The proceedings will be conducted in an informal manner. ~~All documents the parties wish the court to consider will be marked and entered into evidence if admissible. [Staff Note: The preceding provision seems contradictory, i.e., the proceeding is informal, but when documents must be marked and admitted into evidence, the process seems more formal. Will the court hear testimony?]~~

(c) Findings and Orders.

(1) At the conclusion of the hearing, the court will determine whether there has been a breach of the post-placement agreement, and whether the original agreement should be enforced or modified.

(2) The court may order a modification of an approved agreement if it finds that modification is necessary to serve the best interests of the child and one of the following is true:

(A) tThe modification is agreed to by the adoptive parents; or-

(B) Eexceptional circumstances have arisen since the agreement was approved that justify modification of the agreement.

~~(e)~~(3) The court must make its findings in ~~writing by order or a signed~~ minute entry or order.

Rule 104.1. The Record on Appeal

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

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

(A) Includes all documents filed with the clerk before the record is transmitted, and in a delinquency case, **the disposition file under Rule 30(a)(6)**. No other filings may be transmitted without an order from the appellate court.

(B) Includes all exhibits admitted into evidence, as well as any report offered into evidence but not admitted under Rule 3.1(d)(8).

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

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

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

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

(C) *From an order transferring a juvenile for prosecution as an adult:* transcripts of the probable cause and public-safety phases of the transfer hearing.

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

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

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

(G) *From an order establishing or denying a guardianship or an order granting or denying a motion or petition to terminate parental rights:* transcripts of the

contested guardianship, termination, or other hearing that generated the order being appealed.

- (H) *From an order denying an adoption certification under A.R.S. § 8-105 and Rule 77:* the transcript of the hearing under Rule 77(d).
- (I) *From an order granting or denying an adoption petition:* transcripts of any hearing on the validity of a parent's consent to adoption and the adoption hearing.
- (J) *From an order granting or denying a petition for emancipation:* transcripts of any hearings on the petition.
- (K) *From any other final order:* transcripts of any hearing that resulted in that order.

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

(b) Appellant's Supplemental Designation.

- (1) No later than 5 days after filing a notice of appeal, the appellant may file "appellant's supplemental designation of record" that requests the juvenile court clerk to include in the record transmitted to the court of appeals the following, which the party reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal:
 - (A) Any exhibit that has been marked and offered but not admitted into evidence; and
 - (B) All or part of the transcript of any designated proceeding that is not part of the presumptive record under section (a), but that directly or indirectly resulted in the order from which the appeal is taken.
- (2) The appellant's supplemental designation of record also may request the juvenile court clerk to delete exhibits or transcripts from the presumptive record.
- (3) The appellant must serve the supplemental designation of record on all parties, on each court reporter who reported a designated proceedings, and as applicable, on the court's transcript coordinator. The certified transcript on appeal must not include any proceeding or portion of any proceeding excluded from the presumptive record under this subpart.

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

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

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

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

(A) show good cause for supplementing the record; and

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

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

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

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

court may impose sanctions under ARCAP 25, as made applicable in juvenile appeals by Rule 103.1(i).

Rule XX. Definitions [Cross reference current Rule 9]

~~"Parent" as used in the delinquency rules includes a parent, guardian, or custodian.~~

~~"Provisional warrant" is _____.~~

12/3: relocate the definition of parent to Rule 22 ("referral diversion")

Form 5(a)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN _____ COUNTY

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

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

- 1. The disposition order entered on _____, following the order adjudicating the juvenile delinquent or incorrigible.
- 2. The order of restitution entered on _____, after the juvenile was adjudicated delinquent or incorrigible and after the entry of the disposition order referred to in subparagraph (1).
- 3. The disposition order in a probation violation proceeding entered on _____, following a finding that the juvenile violated probation.
- 4. The order entered on _____, transferring the juvenile for prosecution as an adult.

ATTORNEY REPRESENTATION

If the juvenile is the appellant:

The name of the attorney representing the juvenile in the superior court is _____. This attorney was court-appointed or privately retained. If counsel was court-appointed, specify the custodian of the client’s file: _____.

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

If the State of Arizona is the appellant: The name of the office representing the State in the superior court: _____.

AVOWAL BY THE APPEALING PARTY'S ATTORNEY (Applicable when a notice of appeal is filed by the attorney for the juvenile.)

The undersigned attorney avows that the attorney has communicated with the client after entry of the order being appealed, as required by Rule 104(b)(4) of the Rules of Procedure for the Juvenile Court, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.

Dated this _____ day of _____, 20__.

Signature, attorney for appellant

Name, address, telephone number

Attorney for _____.

Form 5(b)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

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

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

- 1. The order entered on _____, granting the dependency petition and adjudicating the child or children dependent, or denying or dismissing the dependency petition.
- 2. The disposition order entered on _____, after the child has or children have been adjudicated dependent.
- 3. The order entered on _____, granting or denying a motion to intervene.
- 4. The order entered on _____, relieving the Department of Child Safety of its obligation to provide reunification services.
- 5. The order entered on _____, removing a child who has been adjudicated dependent from a parent's or guardian's physical custody.
- 6. The order entered on _____, terminating visitation.
- 7. The order entered on _____, granting or denying the petition or motion for termination of parental rights.
- 8. The order entered on _____, denying the application for adoption certification under A.R.S. § 8-105 and Rule 77 of the Rules of Procedure for the Juvenile Court, after a hearing under Rule 77(h).
- 9. The order entered on _____, granting or denying the adoption petition.
- 10. The order entered on _____, granting or denying a Title 8 guardianship petition or motion.

- 11. The order entered on _____, granting or denying the juvenile's petition for emancipation.
- 12. The order entered on _____, altering or amending a final order under Rule 46.1 of the Rules of Procedure for the Juvenile Court, either by motion of a party or on the superior court's own motion, or a denial of a motion under that rule.
- 13. The order entered on _____, granting or denying the motion to set aside a final order under Rule 46.2(b) of the Rules of Procedure for the Juvenile Court, or Rule 74(f) of the Rules of Procedure for the Juvenile Court.
- 14. The order entered on _____, which is a final, appealable order under Arizona law.

ATTORNEY REPRESENTATION (Not applicable to a government agency)

The name of the attorney representing the appealing party in the superior court is _____.

This attorney was court-appointed or privately retained.

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

Yes. No.

ATTORNEY REPRESENTATION (Government agency)

The name of the individual attorney representing the appellant in the superior court is: _____,

AVOWAL BY THE APPEALING PARTY'S ATTORNEY

The undersigned attorney avows that the attorney has communicated with the client after entry of the order being appealed, as required by Rule 104(b)(4) of the Rules of Procedure for the Juvenile Court, discussed the merits of the appeal, and obtained authorization from the client to file this notice of appeal or cross-appeal.

Dated this ___ day of _____, 20__.

Signature, attorney for appellant

Name, address, telephone.

Counsel for _____.

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

Signature of appellant/cross-appellant

Name, address, telephone

Dated this __ day of _____, 20__.

Signature of appealing party

Copies of the foregoing to:

DELIVERED

DELIVERED hearing that resulted in that order.

Form 6

Caption

In re: Dependency as to YZ

Supplemental Designation of the Record

NOTE: The presumptive record on appeal is specified in Rule 104.1, of the Rules of Procedure of the Juvenile Court. It includes all documents filed and exhibits admitted in the juvenile court and the transcripts for the hearing that resulted in the order from which the appeal is taken, which are specified in Rule 104.1. This form may be used by a party to add items to or delete from the presumptive record. The appellant or appellee must serve the supplemental designation of record on all parties, on each court reporter who reported a designated proceeding, and as applicable, on the court’s transcript coordinator.

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

APPELLANT’S SUPPLEMENTAL DESIGNATION OF RECORD

Excluding items or transcripts. Pursuant to Rule 104.1(a), the appellant requests the juvenile court clerk to exclude the following documents, exhibits, or transcripts from the presumptive record on appeal because the documents, exhibits, or transcripts are not necessary for the appellate court’s proper consideration of the issues raised by this appeal (if none is excluded, write “none”; if a transcript is deleted, specify the nature of the hearing and date).

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

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

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

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

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

APPELLEE’S SUPPLEMENTAL DESIGNATION OF RECORD

Additions to the presumptive record. In addition to the presumptive record described in Rule 104.1(a) of the Rules of Procedure for the Juvenile Court, the undersigned requests the juvenile court clerk to include in the record transmitted to the court of appeals the following items, which the undersigned reasonably believes may be necessary for proper consideration of issues likely to be raised on appeal, and which appellant has not already requested in a supplemental designation of record.

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

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

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

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

Addition of deleted portions of the presumptive record. Appellee requests the following documents, transcripts or portions of transcripts, or other items that are included in the presumptive record on appeal under Rule 104.1(a), but appellant deleted in a supplemental designation of record. The undersigned reasonably believes these deleted portions of the record may be necessary for proper consideration of issues likely to be raised on appeal.

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

Dated + Signed:
Certificate of Service