Juvenile Rules Task Force

State Courts Building, Phoenix

Meeting Minutes: January 24, 2020

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

Absent: Tina Mattison, Kent Volkmer, Hon. Rick Williams

Guests: Nina Preston, Chanetta Curtis, Nancy Rodriquez, Shari Andersen-Head, Rachel Roche

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

1. <u>Call to order; preliminary remarks; approval of meeting minutes.</u> The Chair called the fourth Task Force meeting to order at 10:00 a.m. She commended the members for their excellent attendance at Task Force meetings. She noted that some members have attended meetings of more than one workgroup, which helps to identify and address recurring issues in different parts of the rules. The Chair then reviewed materials in today's meeting packet. In addition to the agenda, draft minutes, and eighteen draft rules, the packet includes three other documents concerning the rules on today's agenda. The first document is a Maricopa County job description of a child welfare specialist, which is pertinent to Rule 40.1. The second document is a position statement from the National Council of Judicial and Family Court Judges concerning the use of CASAs as GALs; it pertains to several rules, including Rule 40. The third document concerns the pending delinquency rules and contains a proposed provision in Rule XX that defines "parent" as including "a parent, guardian, or custodian," thereby eliminating the need to make repetitive references in subsequent rules to all three. The Chair also advised that clean versions of the draft rules in today's packet may continue to show strikethrough and underline to flag noteworthy text changes.

The Chair then referred members to draft meeting minutes of the December 13, 2019 Task Force meeting. Members had no corrections to the draft.

> <u>Motion:</u> A member moved to approve the December 13, 2019 meeting minutes. The motion received a second and it passed unanimously. **JRTF 004** (<u>Staff note:</u> The motion approving the November 8, 2019, minutes, as shown on the first page of the December 13 minutes, should be numbered JRTF 00<u>3</u>.)

2. **<u>Report from Workgroup 2.</u>** The Chair began today's rules review with presentations from Workgroup 2 members.

Rule 11 ("attorney's appearance and withdrawal"). Ms. Phillis made the presentation. She noted that this rule was initially presented at the November 8 meeting and returned to the workgroup for further consideration. After the workgroup's subsequent revisions, each of the two sections (one on appearance, the other on withdrawal) now has one subpart for court-appointed counsel and a second subpart for a retained attorney. Under the revised provisions, a court-appointed attorney is "automatically relieved" from representation at the end of the case (i.e., no hearings are set and the time for filing a notice of appeal has expired), whereas retained counsel must file a notice of withdrawal when the case ends.

In response to a question about substitution of counsel, Ms. Phillis advised that substitutions are uncommon, but if one is requested, counsel would presumably follow routine substitution procedures. Another member asked whether court-appointed counsel could file documents after being automatically relieved, such as a motion for early termination of probation. Ms. Phillis advised that this rule would not answer this question; rather the answer should be in court-appointed counsel's contract with the county. She added that the filing of such a motion would probably be allowed in Maricopa County, which compensates court-appointed counsel on a per-case basis. Ms. McQuality said that clerks would prefer that court-appointed counsel memorialize their withdrawal in the case management system by a filing a notice, but Ms. Phillis explained that this would result in paperwork that the proposed rule would avoid. Members concluded the discussion by approving Rule 11.

Rule 12 ("the juvenile's attendance at court proceedings; restraints"). Mr. Meaux presented this rule on behalf of the workgroup. In section (a) ("personal appearance"), the workgroup added two events—a detention hearing and an advisory hearing—to a list of events requiring the juvenile's personal attendance. It also sequenced the events identified in this section in the order in which those events occur. Under draft section (b) ("telephonic or video appearance"), an appearance by telephone or video is considered a personal appearance. A subpart in section (c) ("voluntary appearance") said that the juvenile "has not provided an acceptable reason for the non-appearance." Members agreed that the court has discretion to determine what constitutes an "acceptable reason," but they changed this to instead say, "has not provided good cause for the non-appearance," which they agreed was a clearer legal standard. A member expressed concern that a juvenile's non-appearance at an advisory hearing might be deemed voluntary, and the court might issue a warrant, without confirming that the juvenile had been served with a summons. However, members concluded that section (d) ("failure to appear") took this into account, and that as a practical matter, a judicial officer will confirm that the juvenile was served before issuing a warrant. See further the discussion concerning Rule 26(b)(2), *infra*.

Draft Rule 12(e) ("mechanical restraints") modified the current provision. The description of mechanical restraints was relocated from the end to the beginning of section (e). In addition, the workgroup revised a few of the factors justifying the use of restraints. Members discussed whether a proposed modification to the second factor ("the juvenile ~~is likely to flee~~, has expressed an intention to flee, or has previously attempted to flee") required a further edit, such as "has demonstrated or expressed an intention to flee" so the intention would not be limited to verbal or written expressions. Members concluded that the edit was unnecessary, and that a judicial officer could decide whether an expressed intention includes a demonstrated intention. The workgroup deleted the factor that "a juvenile detention officer…recommended the use of mechanical restraints," recognizing that a judicial officer rather than a detention officer makes that determination and because a detention officer would customarily provide input under the other factors. Members also agreed that the words "through counsel" (i.e., a juvenile…my object to the use of restraints through counsel") were unnecessary because counsel, not the juvenile, would ordinarily make the objection. Members then approved Rule 12 as modified.

Rule 13 ("attendance of witnesses and appearance of attorneys by telephone or video conference"). Ms. Beringhaus noted that in section (a) ("at adjudication proceedings"), the word "parties" was deleted in the phrase "all parties and witnesses must personally appear" to avoid confusion with Rule 12(b), which permits a juvenile, with court approval, to personally appear by telephone or video. She also noted that the workgroup clarified the language of section (b) ("at other proceedings"), but it made no substantive changes. Members approved the rule as presented.

Rule 14 ("combining hearings"). Ms. Phillis explained that the first sentence of the draft derives from the current rule, and the second sentence is new. Ms. Phillis explained that the current rule excludes transfer hearings, but the first sentence of the draft rule does not have this exclusion because a transfer hearing might lead to a plea and a disposition, which could be combined under the proposed rule.

The ensuing discussion focused on the second sentence, which says, "The court also may combine a delinquency hearing and a dependency hearing involving the same child." One member proposed adding criteria about when the court could combine these hearings, and suggested that some hearings, particularly adjudications, should not be combined. Another member was concerned that the rule might conflict with procedural requirements in statutes. Ms. Phillis replied that juvenile courts already combine hearings for cross-over youth, and this new sentence simply recognizes the current practice. A judge member observed that judicial officers exercise sound discretion in combining hearings; adding criteria could be problematic because situations can be fluid or unique, and a rule should not limit the judicial officers' ability to conduct hearings efficiently by combining them and doing what is in the child's best interests. A member proposed adding to this sentence the words "in accordance with the law," but others noted this would not be helpful because these words are implicit in every rule. At this

point, members approved Rule 14. The Chair noted that all the rules, including this one, will be open for public comment and opposing views.

Rule 15 ("motions"). Mr. Cardy observed that the workgroup's revisions to Rule 15 borrowed from the motion provisions of Criminal Rule 1.9. However, the 10 days permitted under Criminal Rule 1.9 for filing a response was shorted to 5 days in draft Rule 15 because of the compressed schedule of delinquency proceedings. Members agreed to these two edits in section (b) ("time for filing"): "A motion must be filed and served not later than 10 days…." Regarding the first edit (adding "and served"), Mr. Cardy noted that the workgroup deleted current section (b) ("filing"), which currently requires the filing party to provide a copy of the motion to the assigned judge and probation officer, and this proposed rule would supersede that provision. Regarding the other edit, members agreed that "not later than" will be the Task Force's convention going forward, and the phrase "no later than" when it appeared in subsequent sections of this rule was changed accordingly. A member observed that although draft section (b) included a time for filing a motion "unless otherwise ordered by the court," there was no comparable "otherwise ordered" provision in section (c) ("response and reply"). Members then reorganized the rule to permit the court to extend the time for filing a motion, a response, or a reply. With these changes, members approved Rule 15.

Rule 17 ("computation of time"). Ms. Beringhaus noted that section (a) ("computation") expressly follows the time computation provisions of Criminal Rule 1.3. She also noted that section (b) ("excluded time") is substantively unchanged from the current provision, but it has been extensively reorganized. She also explained that the "juvenile's inability to be arrested, cited, or detained in Arizona" falls within "the juvenile's absence," and therefore the former phrase was deleted. Members had no questions and approved Rule 17 as presented.

Rule 22 ("referral; diversion"). The current rule is titled "pre-petition investigation and diversion" but the current rule never mentions investigations and the title was revised accordingly. The draft rule focuses on two subjects: referral and diversion (because a high number of referrals are resolved by diversion.) Mr. Cardy, who presented this rule, suggested resequencing the five items in section (a) ("referral") so that the juvenile's name is the first item and a concise statement of facts is the fourth, and members agreed with his suggestion. Mr. Cardy also noted that four words in current section (a), which say that a referral can come from "an individual or agency," seemed unnecessary, and those words were deleted. In section (b) ("record of referral"), the workgroup changed "authorized juvenile court officer" to "authorized juvenile court personnel," because of vagaries about who or what constituted an "officer." In section (c) (currently titled "diversion or deferral"), the word "deferral" was removed from the title. Mr. Cardy explained that deferral is a post-petition process, which is largely county-specific, although the workgroup might at a later time address deferral in subsequent rules. Draft section (c) includes a new definition of "diversion" ("a way of resolving a referral under A.R.S. § 8-321 without filing a petition"). Section (d) ("submission")

restates the current rule but does not change its substance. Members approved the rule as modified.

Rule 24 ("content of a petition"). Mr. Cardy continued with a presentation of Rule 24. He noted that in section (a) ("content"), the workgroup deleted the sentence, "A prosecutor may file a petition alleging delinquent or incorrigible acts," because that is understood. Section (a) identified four informational items the petition must include. As in Rule 22, Mr. Cardy suggested resequencing these four items, with the name of the juvenile listed first and a concise statement of facts listed fourth, and members agreed. The fourth item refers to "the law or standard of conduct allegedly violated." The workgroup recommended removing "standard of conduct" because it is vague and confusing. Although some members thought "standard of conduct" was necessary to allege an incorrigible act, even an incorrigible act requires a violation of law, and after discussion, members agreed to delete that phrase. In section (b) ("amendments to a petition"), Mr. Cardy noted the workgroup's modification of the current rule clarifies that only a prosecutor can move to amend a petition. Members then approved draft Rule 24.

Rule 25 ("filing a petition"). Ms. Smith presented the rule. The workgroup shortened section (a) ("filing") by removing unnecessary verbiage. Section (b) ("time limit for filing") is substantively the same as the current rule, except that it includes a subpart on diversion that was previously contained in a separate section. A member proposed adding an actor to section (b) to clarify that only a prosecutor can file a petition, in contrast to a dependency petition, which a private person can file. After reviewing A.R.S. § 8-301, members thought this addition was not needed, but they agreed to reconsider this decision later, if necessary. Otherwise, Rule 25 was approved.

Rule 26 ("notice to appear; service; failure to appear"). Ms. Phillis presented Rule 26. She said that although the workgroup made no significant changes to section (a) ("notice to appear"), it made notable changes to section (b) ("service of the petition and notice to appear"). Under subpart (1), the initial attempt at service, like the current rule, is by first class mail. However, the current rule only requires service on a juvenile who is at least 14 years of age. The workgroup believes that every juvenile should be served, regardless of age. Also, the workgroup's draft of section (b) clarifies that "a single notice may be mailed to both the parent and the juvenile if they have the same residence address." Ms. Phillis advised that a notice to a parent has the same content as a notice to a juvenile.

Members discussed two due process issues: is a child more likely to receive notice if the child is mailed a separate copy of the notice? And what is the rationale or origin for the 14 years of age requirement? After discussion, no one had an answer to the latter question, and members concurred on removing that limitation. As to the former question, and for clarification, members added a clause in subpart (1) that requires service on the parent or guardian if the child is not living with the parent, which is a common scenario for a dually adjudicated child. Members are interested in receiving public

comments on both issues. Subpart (2) ("certified mail; personal service") did not require extensive discussion, and members agreed that the court "may approve" service by certified mail or personal service for not appearing at the advisory hearing after receiving a notice to appear by first class mail.

In section (c) ("failure to appear"), the workgroup added a new subpart concerning a "discretionary warrant." The term, which has not yet been defined in the rule, would allow the child or a law enforcement officer to call the court and get a new court date following a failure to appear. This warrant would presumably be used for minor offenses and only when the juvenile did not have a significant record or prior failures to appear. The document would still be referred to as a warrant to give the officer legal authority to stop and detain the child. Pima County already uses this process and refers to the court-issued document as a "provisional warrant." Members preferred that term, and it will be defined in Rule XX. Members did not believe that electronically issued provisional warrants would present processing challenges because they would be handled like other warrants. Members made stylistic changes to the wording of subpart (c)(2) to improve its clarity and to clarify that the court may issue a warrant under this section only for a juvenile. Members then approved Rule 26 as modified.

3. **<u>Report from Workgroup 1.</u>** Workgroup 1 presented next.

Rule 3.1 ("applicability of the Arizona Rules of Evidence"). Rule 3.1 was initially presented at the December 13 meeting. Today, Judge Armstrong confirmed the members' previous changes to this rule, including their resolution of the "must/may" alternatives. Judge Armstrong also did further research concerning section (b) ("other proceedings") and the appropriate evidentiary standard that judges should use in ancillary proceedings. Arizona case law indicated that formal rules of evidence do not apply in transfer, disposition, and probation hearings. A federal treatise, Wright and Miller, cited a Supreme Court decision for the proposition that the rules of evidence are inapplicable at a suppression hearing. (One Ninth Circuit case took a contrary view.) Arizona Rules of Evidence, Rule 104(a), also supports draft Rule 3.1(b). Judge Armstrong therefore concluded, and members concurred, that the text of draft Rule 3.1(b) is correct, and that the standards in the rules of evidence are relaxed in non-adjudication hearings.

Judge Armstrong then reviewed section (d) ("admissibility of reports"). First, he noted that the addition of draft Rule 3.1(d)(3) ("report ordered under Rule 61(f)") obviates the need for draft Rule 63(e) ("reports") and members agreed. Members then discussed Rule 3.1 subparts (d)(6) ("admission of reports") and (d)(7) ("available for cross-examination"). Mr. Withey had informally suggested a change to subpart (d)(6) that would require the court to admit a report into evidence "before" the court considers it. Although members initially adopted this suggestion, they agreed after further discussion that its effect would be to admit reports automatically, which was not their intent. They consequently used language like the previous draft ("If the court considers ~~and affords any weight to~~ a report under this section, the court must admit the report into evidence.")

(Staff Note: Workgroup 1 subsequently met and made further changes to this provision, which it will present at a future Task Force meeting.)

The phrase "available for cross-examination" is used in the current rule, but it is not defined. Subpart (d)(7) attempts to fill this gap by providing that a witness is available for cross-examination if the witness appears in court or is subject to the court's subpoena power. Some members reiterated their previous opposition: that the draft language would require a party who objects to the admission of a report to subpoena the author, which would undermine the purpose of the objection. These members noted that in addition to shifting a foundational burden to the objecting party, it would also shift to the objecting party the cost of procuring the witness' appearance, and that could be expensive if the witness is an expert. Members discussed alternatives. One alternative was to provide separate provisions governing the availability of case managers and experts. Another alternative was to require the actual presence of a case manager, although sometimes the case manager who authored the report is no longer employed by DCS. A drastic alternative would remove the phrase "available for cross-examination" from the content of this rule, but members rejected that option. Still another alternative was to limit "available for cross-examination" to an actual appearance in the courtroom or, possibly, availability by telephone. Members did not reach consensus on any of these options. 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).

Rule 6 ("change of judge"). Provisions for a change of judge are currently in Rule 2. Judge Kreamer noted that draft Rule 6(a) expands on the current rule's definition of "judge" by including a judge pro tem in addition to a commissioner. Section (a) also adds a definition of "presiding judge," which is defined to include the presiding judge's designee. Section (b) is simply titled "for cause," and in parallel, section (c) is titled "without cause." The grounds cited in the current rule for a change for cause ("if a fair and impartial hearing cannot be had by reason of the interest or prejudice of the assigned judge") have been deleted. Draft Rule 6(a) instead refers to A.R.S. § 12-409(B), which includes similar language as well as other grounds. The affidavit required under subpart (b)(2)(A) is no longer limited to an affidavit from the moving party. Subpart (b)(3) allows the presiding judge to decide the challenge summarily and without holding a hearing. The waiver provisions of subpart (b)(5) apply only if the party has participated in a contested hearing, and not simply an uncontested one, before the judge in question.

The workgroup revised subpart (c)(1) to clarify that a party has a right to only one request without cause. Current Rule 2(B)(3) says that a party "loses the right," but the workgroup changed this to "waives the right," which is clearer and consistent with the terminology in draft Rule 6(b). Judge Kreamer also reviewed the provisions of subpart (c)(4) concerning remand by an appellate court. Unlike some other sets of restyled rules, a remand under this draft does not renew the right to a change of judge when the case remains assigned to the original judge. The revised subpart clarifies that the time for

filing a request following remand begins to run with a notice that the case has been reassigned to a new judge. Members then approved Rule 6.

4. <u>Report from Workgroup 3.</u> Workgroup 3 presented four rules.

Rule 38 ("assignment and appointment of an attorney; advisory attorney"). Judge Quigley initially presented this rule at the November 8 meeting, and today she presented modifications to the previous draft. The title of section (b) (formerly, "appointment of an attorney") was revised (now, "appointment of an attorney for parent or guardian") to reflect its more focused content. A newly added section (c) ("appointment of an attorney or guardian ad litem for a child") states, "children in dependency cases are presumed indigent and are entitled to a court-appointed attorney or a guardian ad litem, or both." A new section (e) ("advisory attorney") says, "if authorized by a county, an attorney who is neither assigned nor appointed may provide legal advice to a parent or guardian before a petition is filed." Judge Quigley explained that an advisory attorney is useful for facilitating resolutions when parents seek pre-petition advice. A member requested that this provision say "assigned" rather than "neither assigned nor appointed" to assure that the county pays for these services. Members agreed with the request. Another member requested that in section (a), the phrase "representation by law or by ICWA" conclude with a period after "law" because ICWA is law. Members accordingly changed the provision to say, "by law, including ICWA." Members approved Rule 38 as modified.

Rule 40 ("appointment of a guardian ad litem"). Mr. Gilmore presented this rule. Section (a) ("guardian ad litem for a child") provides that the court may appoint a GAL or a CASA to protect the bests interests of a child. Section (a) further provides that the GAL must be an attorney. One member asked whether this provision was consistent with A.R.S. § 8-221, which provides a child the right to counsel. Mr. Gilmore replied that Rule 40.1 allows the GAL to file pleadings, which implies that the GAL must be an attorney. Judge Young noted that allowing the court to appoint a CASA makes the provision compliant with the Child Abuse Prevention and Treatment Act ("CAPTA"). Members then added the words "or CASA" to the title of the rule. In the body of section (a), members added the words "or both" after the words "may appoint a guardian ad litem or a CASA," which clarifies that the court can appoint either a GAL or a CASA, or if the circumstances require, the court can appoint a GAL and a CASA. Judge Young noted the requirement that a GAL be an attorney is a topic on the January 30 agenda of the Committee on Juvenile Court.

The workgroup combined current sections (b) and (c), both of which lack titles, into a new section (b) with the title "guardian ad litem for parent, guardian, or Indian custodians." However, draft section (b) did not say that the GAL needed to be an attorney, although that was the members' intent. To address this, members added a new section (a) ("generally") that says, "a guardian ad litem appointed under this rule must

be an attorney." The subsequent sections were renumbered (b) and (c), and the attorney requirement was deleted from the second section because section (a) applies to both.

Although section (c) now suggests that a GAL would protect another person's interests, a member would add to the draft a provision that the GAL's job is not necessarily to act in the person's (parent's) best interests, but rather, it is to advocate on the person's behalf. The member believes that the proper role of the GAL in these circumstances is to assist the person by ascertaining and communicating their wishes. Other members reported that they have seen parents' GALs advocate for termination of their parental rights, which might not serve parents' wishes or their best interests. Another member questioned whether section (c) is consistent with A.R.S. § 8-221 or provisions of the Arizona Code of Judicial Administration ("ACJA"). Should Rule 40(c) clarify the GAL's role and authority? Judge Quigley informed members that Judge Jay Polk had recently raised an issue at a State Bar committee meeting concerning the process for appointing a GAL under the civil rules; he had proposed the appointment of a special investigator, rather than a GAL, to make a preliminary determination of incapacity. Should the Task Force consider a similar process for the juvenile rules? Judge Quigley advised that Workgroup 3 will study these issues further, and that it also might propose changes to the statute.

Rule 40.1 ("duties and responsibilities of an appointed attorney and guardian ad litem for a child"). Mr. Gilmore also presented Rule 40.1. Although he reviewed each section of the draft rule, he noted that the workgroup did not make many changes because another committee had recently drafted the current rule. However, for ease of use, staff added about a dozen titles to the currently untitled provisions of this rule. Mr. Gilmore noted that the workgroup also added a new sentence in section (a) ("explain the role") that says, "the attorney must represent the position of the child and the guardian ad litem must advocate for what is in the best interests of the child." Regarding section (c) ("participate in the proceeding"), member discussed whether a GAL could call or cross-examine witnesses; they agreed that GAL had that authority.

The workgroup's draft of section (d) ("meet with the child") allowed "trained support staff" to fulfill the responsibility of having "meaningful communication" with the child before every substantive hearing after the preliminary protective hearing. The provision does not expressly require face-to-face contact because the child might be out-of-state, and because some adolescent children reportedly prefer communications by text messaging or other electronic means. Although Rule 40.1 does not define "support staff," Ethical Rule 5.2 does. After further discussion, members agreed to delete "trained support staff" from section (d) because the subject is addressed in section (h) ("use support staff"). Moreover, members agreed to retain a sentence in section (d) that provides, "upon a showing of extraordinary circumstances, a judge may modify the requirements of this section regarding a particular substantive hearing." In section (e) ("observe placements"), Mr. Gilmore noted that the workgroup clarified the requirement by including the words "if practical and appropriate." A subsequent provision that

requires the attorney and GAL to "identify conflicts of interest" was deleted because that requirement is addressed in the Ethical Rules. The workgroup recommended retaining a portion of the current comment; Judge Armstrong then recommended changing the title from "comment" to "comment to the 2022 amendment." After agreeing to these recommendations, members approved Rule 40.1 as modified.

Rule 40.2 ("duties and responsibilities of attorneys and guardians ad litem who represent parents, guardians, and Indian custodians"). Judge Young presented Rule 40.2. She initially noted that the workgroup modified the current title to inform readers that the rule applied to GALs as well as attorneys, and to those who represent guardians and Indian custodians as well as parents. Like restyled Rule 40.1, restyled Rule 40.2 includes section titles. Current section (A), which is untitled, but which concerns ethical conflicts, was deleted for the same reason a corresponding provision in Rule 40.1 was removed—that the identification of conflicts is addressed in the Ethical Rules. A new section (a) ("meaning of parent") defines a "parent" for purposes of this rule to include a parent, a court-appointed guardian, and an Indian custodian, which avoids the need to repeat this trilogy throughout the rule. A provision concerning communicating with the parent, which is in current section (F), was relocated as section (b) ("communicate with the parent") to give it primacy and to emphasize its importance. The workgroup modified section (c) ("explain the role"), which corresponds to current section (B); and Task Force members further modified the provision for consistency with revisions to Rule 40. As revised, it says, "an attorney must explain to a parent the attorney's role and the ethical obligations associated with that role."

Section (e) is titled "participate in proceedings," and contains provisions concerning both attorneys and GALs. Members agreed that it would be appropriate to separate the respective responsibilities of attorneys and GALs that are detailed in this rule. Accordingly, references in section (e) to the GAL will be deleted, the title of Rule 40.2 will be modified by removing a reference to the GAL, and a new rule (possibly numbered 40.3) will detail the GAL's duties. Members further agreed that because there are lengthy but similar provisions in Rules 40.1 and 40.2 concerning continuing education, and to avoid duplication, those provisions will be removed from these rules and combined in a new rule. Members also agreed to delete the proposed comment to Rule 40.2 and to incorporate its substance in the body of the rule, including a statement that Rule 40.2 applies to retained as well as court-appointed attorneys.

5. <u>Report from Workgroup 4.</u> Professor Atwood then presented two rules on behalf of Workgroup 4.

Rule 63.1 ("successor permanent guardianships"). The current rule includes references to various sections of A.R.S. § 8-872, which are followed by text that substantially duplicates what's in the statute. The workgroup retained the statutory references but removed the redundant text. Members observed that this approach is reasonable because (a) even if the statutory language changes in the future, the rule will continue to be correct, and (b) any differences between the language of the rule and that

of the statute could raise legal issues. Most users of these rule are law-trained and can readily locate the statute. One member suggested referring to the statute generally and deleting the section references, but members retained the statutory section references because they correspond to the section references in the rule. Professor Atwood added that the rule uses the phrase "if the child is an Indian child," which should be the convention going forward when a rule refers to the applicability of ICWA. Members discussed but declined the suggestion to include a requirement in this rule for submission of a proposed order. They also declined a suggestion that the rule refer to the appointment of a GAL or an attorney for the child, because Rules 38 and 40 would be applicable. Members concluded the discussion by approving Rule 63.1.

Rule 63.2 ("initial successor permanent guardianship hearing"). Professor Atwood reviewed each section of the draft rule. In sections (a) ("generally") and (c) ("procedures"), members changed a reference to Rule 63.1(d) to instead refer to A.R.S. § 8-874(D), because Rule 63.1(d) directs the moving party to provide notice as required by the statute. Professor Atwood noted that Rule 63.2(d) ("child's position") resembles the language of a corresponding provision in Rule 63(d)(3). In section (g) ("provisional permanent guardian"), members discussed whether to include criteria for the appointment of a provisional permanent guardian, but they declined to do so because judges will use their discretion and the statute does not contain criteria. In section (h) ("other orders"), Task Force members removed the words "natural or adoptive" before parents. The workgroup had previously changed "relatives or kin" to "relatives or others." Members also rephrased portions of section (i) ("denial of the motion") by changing, for example, "if the motion to appoint a successor permanent guardian is denied" to "if the court denies the motion or does not appoint a successor permanent guardian…." It made other stylistic changes to this section but in doing so, it did not intend any substantive deviation from the statutory provisions regarding reunification services. Members concluded their discussion by approving Rule 63.2.

6. <u>Roadmap; call to the public; adjourn.</u> The next three Task Force meetings are set for February 28, April 3, and May 8. These meetings will be in Room 119 and will begin at 10:00 a.m. After factoring in the number of rules members approved at today's meeting, the Chair estimated that during the November, December, and January Task Force meetings, members had approved about 25% of the rules. By extrapolation, a discussion of the remaining 75% of the rules would require nine meetings. However, our goal is to circulate a complete draft of the rules after the October 23rd meeting, which is only eight meetings away. Accordingly, and to meet this goal, members will need to maintain the pace of approval shown at today's meeting. If that isn't feasible, the Task Force might need to schedule one or two additional meetings. The Chair noted that because of the annual rule petition cycle, the Court does not favor extensions of time to file rule restyling petitions. The Chair appreciates the members' continuing good attendance at workgroup meetings, and the excellent quality of their work product.

There was no response to a call to the public. The meeting adjourned at 3:47 p.m.