Juvenile Rules Task Force

Virtual Public Meeting, June 12, 2020
(All members, guests, and staff attending telephonically)

Meeting Minutes

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

Absent: Dale Cardy, Kent Volkmer

Guests: Nina Preston, Jessica Fotinos

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the seventh—and second virtual—Task Force meeting to order at 10:01 a.m. The May 8th meeting was cancelled, and today was the first Task Force meeting since April 3rd. However, the workgroups continued to meet; there were 13 workgroup meetings between April 3 and May 29. The Task Force has already completed its review of 39 rules, and if it completes most of the 22 rules on today's agenda, it will be about halfway through the set. Materials for today's meeting were available electronically. The materials included two recent Division One memo decisions, *Harmony F.* and *Emily B.*, that considered the right to effective assistance of counsel in termination proceedings. The materials also included a Division One order in *Leslie C.*, which involves a party's right to in-person attendance at a termination hearing.

Although participants had voice communication on a conference call line during today's meeting, Judge Kreamer raised the possibility of using video conferencing at future meetings. He and the members discussed the advantages of video (including the availability of visual cues and the Chair's enhanced ability to moderate discussions) and the drawbacks (less efficient visualization of documents and a continuing need to use SharePoint for document sharing.) Members expressed general interest in trying the use of video at a future meeting. The Chair requested staff to further investigate our use of video, and possibly to do a test-run at a workgroup meeting.

The Chair then referred members to draft minutes of the April 3, 2020 Task Force meeting. A member noted that at the top of page two, a reference in a topic title to Workgroup 3 was incorrect and should have instead referred to Workgroup 2.

Motion: A member moved to approve the April 3, 2020 meeting minutes with the aforesaid correction. The motion received a second and it passed unanimously. **JRTF 007**

The Chair advised that Workgroup 3 would begin today's reports, followed by Workgroups 1, 2, and 4.

2. Report from Workgroup 3. Workgroup 3 presented seven dependency rules.

Rule 38 ("assignment and appointment of an attorney; advisory attorney"). Although the Task Force approved Rule 38 at its January 24, 2020 meeting, Ms. Rosenberg informed members that Workgroup 3 added another sentence to section (c) ("appointment of an attorney or guardian ad litem for a child") during a subsequent discussion of the rule. Rule 38(c), as modified by the new, underlined sentence below, would provide:

> Children in dependency cases are presumed indigent and are entitled to a court-appointed attorney or a guardian ad litem, or both. The court must appoint an attorney for every child at the first hearing, but if the court has reason to believe that the child cannot communicate a position to an attorney because of the child's age, mental health, competency, or intellectual functioning, the court may instead appoint a guardian ad litem for the child.

Judge Kreamer expressed concern that this new sentence might inhibit Maricopa's practice of appointing an attorney for a child in every case. Staff noted the use of the word "instead" in this sentence rather than the word "also," which indicates the court would appoint one or the other rather than both. A member also noted that this provision might be incompatible with A.R.S. § 8-211(I), which provides in part, "In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile's best interests." Members discussed a potential need for a legislative change to this statute. Another member added that the workgroup's proposed provision might conflict with the Arizona Code of Judicial Administration concerning the appointment of a CASA. Judge Kreamer renewed his concern that this provision might require a change in Maricopa's current practices, which function well. Judge Quigley noted that the new sentence would not affect Pima's practices for appointments, which differ from Maricopa's.

Members did not approve this modification at today's meeting. Rather, Judge Kreamer will obtain input from his bench on this provision and determine if a modified provision would be workable in Maricopa County, as well as counties statewide. Members will also revisit the use of the term "competency," which is a criminal law concept that might be inappropriately used in a dependency rule.

Rule 39 ("appearance, substitution, and withdrawal; responsibility of parties"). Judge Quigley advised that the workgroup reviewed comments made during the April 3 meeting about whether the withdrawal provisions in draft section (c) were internally consistent. The workgroup concluded that the provisions were consistent and appropriate, and they made no further revisions. However, concerning a provision in section (d) ("attorney substitution"), subpart (2) ("within the same firm or office"), the workgroup proposed replacing the previous draft provision with these sentences: "If a pending case is transferred within the same law firm or governmental office, the court must be notified of the new attorney of record, including any changes in the physical or email address. An order of substitution is not required." Members agreed with the replacement sentences and approved Rule 39 with this modification.

Rule 41 ("public attendance at hearings"). Ms. Rosenberg explained that because of the length of the current rule, members relocated some of its current provisions to new Rules 41.1 and 41.2, which are discussed below. Rule 41 required the workgroup to consider A.R.S. § 8-525 and other statutory provisions parenthetically noted at the beginning of the draft rule. Ms. Rosenberg noted that the purpose of these statutes on open hearings was to allow the media, as well as the public, to attend dependency hearings, while at the same time maintaining the confidential nature of the proceedings. (However, see A.R.S. § 8-557, which excludes the public from termination adjudication hearings.)

A.R.S. § 8-525(D) requires an admonition. The statute says, "At the beginning of a hearing that is open to the public, the court shall … (1) admonish all attendees…." Are attorneys and parties included within the phrase "all attendees?" If the hearing is closed to the public, the statute does not require the court to give the admonition. Because only the parties and their attorneys would be present at a closed hearing, then arguably the admonition should not apply to parties and their counsel when the hearing is open. Accordingly, Ms. Rosenberg asked if the word "public" should be included in draft Rule 41(f) ("admonition at public hearings"). Her proposed change is shown here in brackets: "At the beginning of a hearing that is open to the public, the court must admonish all [public] attendees as follows…." The ensuing discussion led members to draft Rule 41(a), which is new and includes a definition of "public." After concluding that participants are more akin to the public than to parties, members agreed to remove the word "participant" from section (a)'s enumeration of who was not included within the meaning of "public." Section (a) as modified would therefore define "public" as "anyone who is not a party, an attorney, or a CASA." With that change in section (a), members agreed with the insertion of the word "public" in section (f) (that is, "the court must admonish all public attendees.") A member further observed that this qualification in the admonition is consistent with the fundamental right of parents to discuss their cases outside the courtroom, without being restricted by the admonition. Members approved Rule 41 as modified.

Rule 41.1 ("child's rights"). Judge Quigley reiterated that the substance of this new rule was imported from provisions in current Rule 41. New Rule 41.1 includes a requirement that at any hearing after the initial hearing, if the child is not present, the court must inquire whether the child requested to attend the hearing. A member suggested that the provision clarify who the judge should direct this inquiry to, but the majority believed the court did not require that direction. Another member asked what would happen in cases involving infants, but others agreed that the court can make appropriate determinations in those situations without the need for additional specificity in the rule. Members accordingly approved Rule 41.1 as presented.

Rule 41.2 ("participants' rights"). Judge Quigley again observed that the substance of this new rule is derived from current Rule 41. However, members discussed a provision in draft Rule 41.1(a) ("right to notice") that requires the DCS to give notice to participants in cases where the DCS is a party. A.R.S. § 8-847, as well as current Rule 41, require the court to give notice, although in practice, the DCS provides notice and the draft rule conforms to that practice. A member noted that this practice is more effective because DCS often has better contact information for non-parties than the court. Another member observed that the purpose of notice is best fulfilled if the court gives notice as required by statute, and the DCS also gives notice as required by rule. Another suggested that the court can discharge its duty to give notice by requiring a party, i.e., DCS, to do so. Ms. Jorquez requested an opportunity to bring this issue to her DCS colleagues, and members deferred their approval of this rule pending her discussion.

A recurring issue in this and other rules is whether to refer to court events as "hearings" or "proceedings." It appears that Title 8 statutes as well as the draft rules utilize both terms. The choice of which term to use can vary based on the context, and until determined otherwise, these draft rules will continue to use both terms.

Rule 44 ("disclosure and discovery"). Ms. Jorquez' presentation of this rule addressed issues raised during the April 3 meeting. Since then, the workgroup substantially revised and improved the draft. The timing provisions are now more consistent, and the sections are in a more rational sequence. Ms. Jorquez noted that section (c) ("ongoing disclosure requirement") applies in both uncontested and contested proceedings, whereas section (d) concerns pretrial disclosure statements in contested cases only. The section (d) term "pretrial disclosure statements" was utilized to accommodate practices in different counties, some of which refer to "disclosure statements" and others which called the identical filing a "pretrial statement." A Workgroup 4 member advised that her workgroup used the qualifier "relevant" in a corresponding rule regarding disclosure in adoption cases; and although section (a) ("generally") refers to a duty to disclose "relevant" information, "relevant" was added to section (c) before the word "document." Workgroup 3 modified the text in draft Rule 44(g) ("sanctions") and it is no longer flowery like the previous draft.

Members had divergent opinions regarding the timing requirement in section (f) ("disclosure in contested hearings other than adjudications"). Subpart (f)(2) would require, if a contested hearing does not require a report prepared by DCS, that the parties disclose all relevant information "at least 10 days prior to the hearing or as ordered by the court." Some members favored a 5-day limit and contended that this would facilitate the parties' compliance with the rule. Other members thought 10 days was more reasonable and noted that the provision would permit the court to "order otherwise" when circumstances warranted a shorter time. On a straw poll, 12 members supported 10 days, and 7 would use 5 days. The draft will therefore specify 10 days, but the Chair requested that the rule petition flag this issue for the Court. Members approved Rule 44 as modified.

Rule 47.1 ("mandatory judicial determinations"). Mr. Turner began his presentation of Rule 47.1 by noting how the draft reorganized the current sections of this rule. He also advised that some determinations specified in this rule are mandated by federal law, while others are required under Arizona law. He reviewed each section of the draft. Section (c) ("the court's first order") is commonly referred to as the "contrary to welfare order." Under section (e) ("the periodic review hearing," also known as a "report and review"), if the court has not previously made a "reasonable efforts" finding, it must do so within 60 days after removal. This is substantively the same as the current rule. During his presentation of section (h) ("12 months after removal and thereafter"), the words "be in writing" were added. Section (j) ("extended foster care finding") was added in 2019 following a legislative enactment, and this section includes a reference to the pertinent statute, A.R.S. § 8-521.02. Mr. Turner suggested adding to section (j) the words "in writing," and those two words were added after "court must determine."

Judge Kreamer inquired whether section (c) refers to an emergency order removing the child from the home, or the first order during a subsequent court hearing. In response, it was noted that subpart (c)(2) refers to an order entered "in a dependency proceeding," that is, after a dependency petition was filed. Because a dependency petition has not been filed when an emergency order is entered, there is not yet a "dependency proceeding." According, the reference in section (c) means the first court order in a pending dependency proceeding. Professor Atwood asked if Rule 47.1 should contain ICWA requirements. Mr. Turner replied that the requirements in the draft rule mirror federally mandates in any dependency proceeding, and that ICWA matters are addressed elsewhere. Finally, Judge Armstrong suggested a change in subpart (c)(2), from "60 days of the removal" to "60 days after the removal." After making that change, members approved Rule 47.1 as presented.

3. <u>Report from Workgroup 1.</u> Following up on the Task Force discussion at the April 3 meeting, Ms. Beckmann advised that she had researched whether other states recognize claims of ineffective assistance of court-appointed counsel in juvenile cases. However, because of the volume of items on today's agenda, she requested that a

discussion of her research be deferred to a future meeting. Ms. Beckmann then continued her presentation of the appellate rules, beginning with Rule 103.1.

Rule 103.1 (general provisions"). A portion of the substance of current Rule 103, sections (a) and (b), became new Rule 103 ("right to appeal"). New Rule 103 addresses who may appeal and orders that can be appealed, and members approved new Rule 103 at the April 3 meeting. New Rule 103.1 includes the remaining provisions of current Rule 103 and concerns subjects such as the form of the caption, suspension of the appeal, appointment of counsel, and applicability of the ARCAP.

Workgroup 1 concluded that provisions concerning the caption of a juvenile appeal in current Rule 103(a) don't work well in practice. The workgroup replaced those provisions with a more concise and easier to understand Rule 103.1(a) ("caption on the notice of appeal") that focus on the abbreviated name of the child who is the subject of the appeal. Rule 103.1(b) concerns the suspension of a trial court order pending the appeal. Although workgroup members agreed that the juvenile court is in the best position to determine whether its order should be stayed, A.R.S. § 8-235(B) authorizes only the appellate court to do so. Although the draft rule therefore conforms to the statute, the workgroup suggests a statutory amendment that would allow a juvenile court to stay its orders. Sections (c) ("priority of juvenile appeals") and (f) ("bond") are uncontroversial.

Section (d) ("suspension of rules") permits the appellate court to suspend a rule, except the rule regarding the time for filing a notice of appeal. Section (e) ("appointment of counsel") permits the juvenile or appellate court to appoint an attorney for a party to an appeal; the workgroup believes its draft is consistent with the process used in Pima County for making appointments from a list maintained by the Office of Court Appointed Counsel. Section (g) ("continuing juvenile court jurisdiction") permits the trial court to "proceed within its legal authority on a remaining or new issue," but it omits a provision in current Rule 103(G) that allows the trial court to grant the appellant's motion to dismiss the appeal; this was omitted because the workgroup believes that dismissal is customarily the appellate court's prerogative. A provision that Rule 103.1(g) does not authorize the juvenile court to extend the time for filing briefs, motions, and other documents in the appellate court appears at the end of draft section (g).

Section (h) ("Arizona Rules of Civil Appellate Procedure") incorporates by reference 17 specified ARCAP rules and sections of rules. The introductory words in the corresponding provision of current Rule 103(G)—that adopts the referenced ARCAP rules "to the extent that they are not inconsistent with or expressly varied by these rules"—was deleted because it causes confusion and undermines certainty. A reference in section (h) to the applicability of ARCAP 4 includes an exception for the case caption, which is governed by draft Juvenile Rule 103.1(a) discussed above. Another reference to computing deadlines notes an exception that allows the juvenile court to excuse the

untimely filing of a notice of appeal, which is explained below. Members discussed whether to incorporate ARCAP 22, which concerns motions to reconsider. Members believed that in many cases, these motions simply delay the issuance of the mandate; if there truly are errors, a party can file a petition for review. Moreover, a motion to publish, which is often filed as a Rule 22 motion, could still be filed outside the scope of Rule 22. On the other hand, the appellate court can summarily deny a motion to reconsider, which minimizes the extent of delay. Members deferred to a later time a determination about including a reference to Rule 22. With reference to ARCAP 24, which pertains to the issuance of mandates, a caveat in draft Juvenile Rule 103.1(h) allows the appellate court to immediately issue its mandate upon counsel filing an affidavit of no colorable claim under a provision currently located in Rule 106(G).

Members approved Rule 103.1 except for the issue noted above regarding the inclusion of a reference to ARCAP 22.

Rule 104 ("notice of appeal"). In addition to having a convoluted title ("Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal"), current Rule 104 is lengthy and touches on multiple subjects. The workgroup's draft focuses Rule 104 on only the notice of appeal and separates other subjects in the current rule into new, freestanding Rules 104.1 and 104.2.

Ms. Beckmann observed that subparts (1) and (2) of draft Rule 104(a) ("time for filing a notice of appeal and notice of cross-appeal") are clearer and more concise than the current provisions, and these subparts generated no questions or comments. She then explained a newly proposed subpart (3) ("effect of certain post-judgment motions on notice of appeal; amended notice of appeal"). Currently, after a notice of appeal is filed, a trial court cannot consider either a Rule 46(e) motion to set aside the judgment, or—under a rule to be drafted that will use as a starting point Juvenile Rules 52(b) and 59(d) and Family Law Rule 83—a motion to alter or amend the judgment. However, if the juvenile court could consider either of these motions, it might make the appeal moot, or limit the issues on appeal, and therefore serve judicial economy. New subpart (3) would accordingly extend the time for filing a notice of appeal or cross-appeal until the trial court has entered a final order disposing of these motions, and then allow a party to file a notice of appeal after the court enters that order. If a party had previously filed a notice of appeal, the party would notify the appellate court of the pendency of the motion, and the appellate court would suspend the appeal until it is notified of the disposition of the motion. If the juvenile court denies the motion, the draft provides that the appealing party could file an amended notice of appeal.

Subpart (a)(4) clarifies that other than as provided in (a)(3), a post-judgment motion does not extend the time for appeal. Subpart (a)(5) ("delayed appeal or cross-appeal") is the analog for current Rule 108(b), which was curiously located at the end of the appellate rules. The current provision has now been relocated in draft Rule 104 with

the other provisions concerning notices of appeal. The draft rule on delayed appeals contains a different standard than the current rule, "good cause" rather than "excusable neglect," because the latter focuses on counsel's inaction and excludes reasons that might involve client-based good cause or show another legitimate basis for allowing a delayed appeal. The draft rule, unlike the current rule, includes a provision that requires the moving party to file a notice of appeal once the court grants a motion to file a delayed appeal, a step that is occasionally overlooked. At a member's suggestion, the word "juvenile" was added to this subpart to clarify that the motion to file a delayed appeal is heard by the juvenile court, not by the appellate court.

Section (b) addresses the content of the notice of appeal. Forms for the notice of appeal currently used in Pima County allow the appealing party, who is usually represented by trial counsel rather than appellate counsel, to check a series of boxes for designating the record on appeal, but often trial counsel, out of an abundance of caution, will check every box, which is unnecessary and expensive. Ms. Beckmann will look later at revisions to these forms. Subpart (b)(4) requires a notice of appeal to include an attorney's certification confirming that counsel discussed the merits of the appeal with the client and obtained the client's authorization to file the notice. The subpart includes an elaborate process to assure the notice contains this certification. It does not allow the juvenile court to immediately strike the notice, because if the omission is later corrected and a notice is refiled, it could be untimely. But if the notice ultimately lacks the certification, the rule allows the juvenile court to direct the clerk not to process the appeal, or the appellate court to dismiss the appeal. The intent of these provisions, which are also in the current rule, is to make the filing of a notice of appeal thoughtful and deliberative, and to reduce the number of appeals that clients have no genuine interest in pursuing.

Section (c) ("distribution of the notice") is restyled and straightforward, and members had no questions or comments on this section. Members then approved Rule 104 as presented.

Rule 104.1 ("the record on appeal"). This new rule is derived from current Rule 104, sections (D) through (J). The new rule is designed, among other things, to remove from juvenile court clerks any uncertainly about what to include in the record on appeal. Draft section (a) therefore creates a "presumptive" record on appeal, which includes filed documents, admitted exhibits, and transcripts of proceedings that relate to the final order. The transcripts in the presumptive record are identified in subpart (a)(2) by referring to the pertinent hearing. These hearings generally correspond to provisions in draft Rule 103 concerning orders that are appealable. A provision at the end of subpart (a)(2) allows the appellant to exclude a transcript from the presumptive record, but as a practical matter, it's unlikely that counsel would do that.

Section (b) permits the appellant to promptly file a "supplemental designation of record," which can identify an exhibit that was marked and offered but not admitted into evidence, or a transcript that was not in the presumptive record but directly or indirectly resulted in the order from which the appeal is taken. Under section (c), the appellee within a short time thereafter can file a separate supplement designation. The condition for any party's supplement designation is that the designating party "reasonably believe" that the item is "necessary for proper consideration of issues likely to be raised on appeal." After the time has passed for filing a supplemental designation under sections (b) or (c), a party can file a motion in the appellate court requesting supplemental designation, with the burden becoming higher as more time passes following the appellate clerk's notice that the record is complete. The required showing initially is good cause; if the motion is file thereafter, the burden becomes extraordinary circumstances. A provision in section (f) permits the appellate court to impose sanctions under ARCAP 25 on a party who adds unnecessary items or transcripts to the presumptive record. Members approved Rule 104.1 as presented.

Rule 104.2 ("notice of non-participation"). This rule derives from current Rule 104(C)(2). Although it retains the substance of the current rule, it is more focused and comprehensible as a reorganized and free-standing rule. A member noted a conflict between draft section (a), which requires a party to file a notice of non-participation in the appellate court, and draft section (b), which requires filing of the notice in the juvenile court. Members resolved the conflict by deleting the filing location in section (a), thereby retaining in section (b) the juvenile court as the only place for filing the notice. With this correction, members approved Rule 104.2.

4. <u>Workgroup 2.</u> Workgroup 2 presented three rules.

Rule 23 ("detention and probable cause hearing"). Ms. Phillis noted that the workgroup revised the intake process described in this rule, so it more accurately reflects actual practices. Mr. Meaux and Ms. Smith obtained further input on the process from their respective staffs to assure the rule's accuracy. Ms. Phillis proceeded to review each section of draft Rule 23, including draft section (c) ("length of detention"), which affirms the existing 24-hour requirement for filing a petition or complaint when the juvenile has been detained.

If a detention hearing is not conducted within 24 hours after the filing of a petition or criminal complaint, then subpart (c)(2) requires that the juvenile be released to a parent or other responsible person, and if there is none, be released to DCS. Although release to DCS is allowed under the current rule in this circumstance, a member asked about the legal authority for doing so. The inquiring member noted that by statute, DCS cannot assume custody without first completing an investigation, which might ultimately determine that DCS custody is not required. Another member responded that if there was no parent or responsible person, the juvenile would be considered abandoned upon

release from detention, and other than releasing the juvenile to DCS, the only remaining alternative would be releasing the juvenile back to the street, which is unacceptable. Judge Kreamer advised that he Maricopa County bench is working with DCS and other stakeholders to informally address this. The remedy might include reporting the situation on the DCS hotline, as provided by A.R.S. §§ 8-455 and 8-456, and that would trigger a DCS investigation. To add clarity to the rule provision, Judge Kreamer proposed adding the words "to assume physical custody" in subpart (c)(2) ("if no parent or other responsible person can be located to assume physical custody, the court must release the juvenile to DCS.") On a straw poll, two members opposed this rule amendment because they believed this provision is not legislatively authorized. However, the other members approved this amendment.

Section (f) permits the court to enter a pre-adjudication order requiring DNA testing pursuant to A.R.S. § 13-610(O). The workgroup found the taking of a DNA sample before the juvenile's adjudication legally and logistically problematic. The workgroup requested the members to defer approval of section (f) until the workgroup clarifies the legal requirements or, if appropriate, suggests a legislative change. With that caveat, members approved Rule 23.

Rule 28 ("advisory hearing"). Ms. Beringhaus began the presentation of Rule 28 by noting that the change of plea provisions in current Rule 28 were relocated to a new, free-standing Rule 28.1, because a change of plea does not always occur at a Rule 28 advisory hearing. She then reviewed each section of draft Rule 28, including section (b) on time limits. The restyled rule reiterates that the advisory hearing for a detained juvenile must be held within 24 hours after the filing of the petition, but it also clarifies that if a 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 filing. Members noted that advisory hearings for detained juveniles are frequently conducted with the detention hearing (although in Yavapai County, if the detention hearing occurs on a weekend, the advisory hearing is held the following Monday.) Draft subpart (c)(6) includes a provision concerning DNA testing, and the observations Ms. Phillis made about DNA testing in her presentation of Rule 23 also apply here. Except for revisiting the DNA provision, members approved Rule 28 as presented.

Rule 28.1 ("admission or change of plea"). Ms. Phillis explained that this new rule is based on the substance of current Rule 28(C), but the workgroup also used the change of plea provisions in the criminal rules as a model this new rule. Ms. Phillis reviewed the draft. Rule 28.1(a) would allow the juvenile to enter an admission "at any pre-adjudication or adjudication hearing." Section (b) ("procedure"), subpart (2) ("advise the juvenile of rights") requires the court to advise the juvenile of immigration consequences. Members reformatted the provision by adding a period after "immigration consequences," and then describing those consequences in subsequent sentences. Members had concerns that the workgroup's draft language might be suitable for a

criminal defendant, but certain terms, such as "pleading guilty" or "admission of guilt," were not appropriate for a juvenile proceeding. The Chair requested the workgroup to make the requisite changes. Members also commented on subpart (b)(3) ("determine compliance with victim's rights"). They agreed that saying "rights provided under law" was appropriate in lieu of enumerating each right. However, they believed the phrase "right to be present and, if present, to be heard" was inaccurate, and they changed that to "right to be present and to be heard." Members will review the workgroup's revisions to the subpart on immigration consequences at a future meeting.

5. **Workgroup 4.** Workgroup 4 presented eight rules, most of which were brief or revisited.

Rule 65 ("initial termination hearing") and ***Rule 66 ("termination adjudication hearing").*** Professor Atwood explained the workgroup's recent revisions to Rule 65(f) and a parallel provision in Rule 66(g), which both concern a parent's failure to appear at a termination hearing. An issue with the workgroup's previous versions of these sections is that they required the court before proceeding to a hearing to first acknowledge that the petitioner had proven grounds upon which relief could be granted. However, determining whether those grounds were proven was the purpose of conducting a hearing. The revised language addresses this contradiction by saying that "the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (1) [that concern a parent's failure to appear] are satisfied and the petitioner or moving party can meet the burden of proof required for termination." Subsequent provisions in both rules were modified by adding specific references to federal ICWA statutes and regulations. Rule 66(h) also included a corrected reference to Rule 3.1(d)(4) concerning the social study.

A member noted that if a termination proceeding was initiated by motion, service of the motion might have been made on the parent's attorney rather than the parent, and the parent might not have personally received the requisite admonitions concerning the need to appear at court hearings. It is therefore important to assure the parent has been served with the required admonition forms before these hearings. Members then approved the changes to these two rules.

Rule 67 ("scope of rules"). Professor Atwood noted that Rule 67 is the first of the adoption rules (Part IV of the current rules.) Draft Rule 67 is brief and for the most part tracks language used in Rule 36 ("scope of rules," which is the first rule in current Part III.) Members had no questions or comments and the rule was approved as presented.

Rule 68 ("meaning of terms"). Professor Atwood noted that the definition of "parent" in section (a) ("generally") is inclusive ("parent includes…") rather than exclusive. The workgroup's draft said that "'parent' includes the birth parent whose parental rights have not been terminated, etc." but a member noted that an adoptive

parent's rights can also be terminated, so the revised draft says "includes the birth or adoptive parent, etc." The workgroup shorted the explanation of "investigative report" in section (a) because the required substance of the report is prescribed by statute. Revised section (b) on ICWA placement preferences includes cross-references to pertinent federal authority. Members approved Rule 68 as presented.

Rule 69 ("appointment, appearance, and withdrawal of counsel"). Ms. Coughlin reviewed the revisions, which for the most part conformed to the provisions of Rule 39 ("appearance, substitution, and withdrawal; responsibility of parties"). Members discussed whether a provision in current Rule 69, that the court "shall order the person to provide proof of financial resources by filing a financial questionnaire provided by the court," was directive or permissive. The workgroup concluded that although the court must inquire into the party's ability to pay, it may do so by oral questions or by requiring written information, and it used the word "may" in these provisions. A member observed that the court appoints counsel in adoption cases only infrequently. Ms. Coughlin requested the editorial group to harmonize a phrase in Rule 69(b)(1) ("personally appearing") with a corresponding phrase in Rule 39(a)(1) ("appearing personally"). Members then approved Rule 69.

Rule 70 ("appointment of guardian ad litem"). Mr. Owsley presented Rule 70. Rather than duplicating what is already contained in a dependency rule, the workgroup reduced current Rule 70 to a single sentence that says, "The court may appoint a guardian ad litem in an adoption proceeding under the standards set forth in Rule 40." Members had no questions or comments and approved the draft rule.

Rule 71 ("telephonic testimony; video conferencing"). Judge Portley advised that Workgroup 4's revisions to this rule were pending Workgroup 3's revisions to Rule 42, which concerns the same subject. Judge Quigley added that Workgroup 3's revisions to Rule 42, although still in progress, will be modeled on Family Law Rule 8.

Rule 72 ("computing and extending time"). Judge Portley noted that Rule 72 includes a reference to Civil Rule 6 and governs extensions as well as computations of time. Rule 72 is like Juvenile Rule 43, which has the identical title, but Rule 72 does not contain a cross-reference to Rule 43. Members approved Rule 72 as presented.

6. <u>Roadmap; call to the public; adjourn.</u> The Chair confirmed the dates for future Task Force meetings: July 17, August 21, September 25, October 23, November 20, and December 18, 2020. She requested staff to determine a date for adding another meeting, if one becomes necessary. The editorial group will begin its review of the approved rules shortly.

There was no response to a call to the public.

The meeting adjourned at 3:18 p.m.