Juvenile Rules Task Force

Public Meeting, July 17, 2020
(Members, guests, and staff all attending virtually)

Meeting Minutes

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

Absent: Maria Christina Fuentes, Eric Meaux, Denise Avila Taylor, Kent Volkmer

Guests: Jerry Landau, Nina Preston, Carey Turner, Shari Andersen Head, Liana Garcia

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

1. Call to order; preliminary remarks; approval of meeting minutes. The Chair called the eighth Task Force meeting—its third consecutive virtual meeting—to order at 10:01 a.m. Participants were able to use video as well as audio during the first two hours of the meeting, but most members used only the audio and the video was discontinued for the afternoon session. The Chair advised that there had been 6 very well attended workgroup meetings since the June 12 Task Force meeting. She then reviewed materials for today's meeting. In addition to the draft June 12 meeting minutes and the rules and forms on today's agenda, the materials included (a) information concerning Mr. Landau's presentation on standardized juvenile warrants, (b) Form 4 of the current Juvenile Rules, and (c) a Division One opinion issued on June 23, 2020, *Francine C. v. DCS.*

The Chair then asked members to consider draft minutes of the June 12, 2020 Task Force meeting. There were no corrections to the draft.

Motion: A member moved to approve the June 12, 2020 meeting minutes. The motion received a second and it passed unanimously. **JRTF 008**

2. Standardized Juvenile Warrants. Mr. Jerry Landau, the Government Affairs Director for the Administrative Office of the Courts ("AOC"), presented this item. The AOC's Court Services Division had approached Mr. Landau about leading a workgroup to standardize juvenile arrest warrants forms if the AOC undertook such an initiative in the future. Mr. Landau has previously led a workgroup that standardized the arrest warrant forms in the Criminal Rules, and another workgroup that proposed further revisions to the warrant forms in Criminal Rule 41 (current Forms 2(a) and 2(b)). See pending rule petition R-20-0004. In conjunction with this agenda item, staff provided

members with juvenile arrest warrants from 4 counties (Mohave, Pima, Maricopa, and Yavapai), all of which were different. There were even variations in forms that were used within the same county. Mr. Landau noted that a standardized juvenile warrant form might be easier for use by stakeholders statewide, including law enforcement, because the fields of information would be phrased consistently, and the data fields would appear in uniform locations. Moreover, standardized juvenile warrant forms would be necessary if these warrants are eventually entered into an electronic database.

Mr. Landau then requested the members' input on whether standardized juvenile warrants were desirable. A member noted that juvenile arrest warrants differ from adult warrants because they might not result in the named juvenile's detention. Mr. Landau acknowledged that the word "warrant" was generic, that some counties are now using warrants in ways that did not mandate the juvenile's arrest, and that a standardization project would need to address those variations. Members had no further comments, and there appeared to be neither definitive support nor opposition for this project. Mr. Landau provided his contact information for anyone to provide additional information. Mr. Landau advised that he'll be presenting this issue to the Committee on Juvenile Courts next month. The Chair thanked Mr. Landau for his presentation.

The Chair then requested a report from Workgroup 2, followed by reports from Workgroups 4, 1, and 3.

3. <u>Report from Workgroup 2.</u>

Rule 19.1 ("mandatory judicial determinations"). Judge Trebesch presented Rule 19.1. She observed that this delinquency rule is a counterpart to dependency Rule 47.1 ("mandatory judicial determinations"), which Mr. Turner presented at the June 12 Task Force meeting. Judge Trebesch discussed the workgroup's restyling and streamlining of the rule, and how it clarified what findings were required and when they must be made. The members' ensuing discussion primarily concerned the workgroup's proposed comment to the 2022 amendment, which consisted of text relocated from introductory language of the current rule. The text might be informative for judicial officers who are unaware of the need to make the required findings, especially in the case of a delinquent who later becomes the subject of a dependency proceeding. However, the text in this comment does not provide a basis for making the required findings, and the consensus of the members was to approve the draft rule without the comment.

Rule 20 ("intercounty transfers"). Ms. Smith presented the rule. The reorganized rule focuses on three matters: transfer of a disposition hearing, post-disposition transfer of a case, and courtesy probation supervision. Each of these matters presents an issue concerning the need for the sending and receiving counties to confer regarding a transfer, and who within each county—a judicial officer, a court administrator, or a probation officer—should be holding that conference. Ms. Smith said that when the juvenile resides in another county, some counties will do a pre-disposition transfer without much in the

way of consultation. This is especially so in Pinal County, which adjoins two larger metropolitan counties. But prosecutor members in those two counties expressed a preference for retaining dispositions in their counties, i.e., the county in which the offense occurred, even when the juvenile resides in another county. Post-disposition transfers of probation supervision and courtesy transfers, on the other hand, are more routine when the juvenile lives in another county, especially when the juvenile is already on probation in another county. However, transfers are not automatic.

Members also considered situations where the sending county's attempt to initiate a consultation fails to produce a response in the receiving county; or when the court approves a request to transfer based on an anticipated change of residence, but neither the juvenile nor the juvenile's family ever moves or moves only temporarily. Judge Quigley advised that she has discussed with other stakeholders a rule for change of venue in dependency cases, and she believes issues that arise in dependency venue transfers might also arise with transfers of probation. She therefore suggested, and members agreed, that the dependency rules workgroup should have further discussions with the delinquency rules workgroup on this topic. Finally, the delinquency rules require the disposition hearing to be held within 30 days after the adjudication. It might not be practical to process a pre-disposition transfer of a detained juvenile within 30 days. One member proposed a rule amendment that would exclude time for processing the transfer. However, another member noted that such an amendment could result in a case having an undetermined date for disposition and suggested instead that the juvenile waive time for disposition when the court approves a pre-disposition transfer. Workgroup 2 will consider codifying that suggestion.

Rule 28.1 ("admission or change of plea"). Ms. Phillis presented this new rule at the June 12 Task Force meeting, and members at that time requested Workgroup 2 to review the immigration consequences in subpart (b)(2)(D) to assure that the text was appropriate for a delinquency proceeding. Ms. Phillis advised the Task Force today that the workgroup did so. The workgroup replaced "pleading guilty," "admitting guilt," or "admission of guilt" in the draft with "admitting to a delinquent act" or an appropriate variation of that phrase. In response to a question, Ms. Phillis advised that the admonition appears in the rule with quotation marks because a judicial officer customarily reads it verbatim. In section (b)(3) ("determine compliance with victim's rights"), the words beginning with "been complied with by and find that" and continuing to the end of (b)(3) were deleted as unnecessary. The provision now concludes with the words "the victim has been afforded rights provided under law." Members approved Rule 28.1 with these revisions.

4. **<u>Report from Workgroup 4.</u>** Workgroup 4 presented Rules 73, 74, 75, and 86.

Rule 73 ("Disclosure and Discovery in Contested Adoptions"). Ms. Coughlin presented Rule 73. She noted that most of its content mirrors dependency Rule 44 ("disclosure and discovery"). The titles of Rule 73 and section (c) ("pretrial disclosure statement in contested adoption") emphasize that these provisions apply in contested proceedings. Subpart (a)(4) ("ongoing disclosure requirement") confirms that the duty to disclose in these cases is ongoing. In subpart (b)(4), which requires the disclosure of witnesses, a member suggested that disclosure include a witness' email address. A member proposed changing the words "competent and potentially significant evidence" in section (d) ("sanctions") to "relevant evidence," but after noting that the former phrase was also used in Rule 44(g) ("sanctions"), members declined to make that change. Ms. Coughlin pointed out a workgroup note at the end of the draft, which suggested that this rule would be more sequential if it appeared after Rule 79 on filing a petition.

Because Rule 73 applies in contested adoption proceedings, a member asked when a proceeding becomes contested. Members responded that intervening in an adoption proceeding, objecting to a proceeding, or revoking parental consent could all be events that precipitate a contested adoption. To add clarity to Rule 73, members agreed that the rule should include specificity, i.e., "an adoption is contested when…." The workgroup will draft additional language, but it will be mindful of not triggering a disclosure requirement when it's not warranted. The workgroup also will consider how disclosure should be undertaken if opposition to a petition occurs at a later stage of the proceeding, for example, because of an ICWA issue that's raised belatedly.

Rule 74 ("motions"). Professor Atwood presented Rule 74. She noted that the workgroup's draft eliminated almost all the content of the current rule. The workgroup draft simply says, "Any motion in an adoption proceeding must conform to, and is subject to, the requirements of Rule 46 ['motions']." But Professor Atwood asked whether the summary judgment provisions in Rule 46 should apply to adoption proceedings; if they do not, the cross-reference in draft Rule 74 to Rule 46 would be misleading. However, at least one member believed partial summary judgment might be appropriate in an adoption. As a separate issue, A.R.S. § 8-123 permits a collateral challenge to an adoption order within one year following its entry, so motions to set aside an adoption order might not fit well within the 3-month or 6-month time limitations in Rule 46(f) ("motion to set aside a final order"). See further the discussion of Rule 46.1, infra. Workgroup 3 will present Rule 46 later today, and the Task Force deferred further consideration of Rule 74 pending that presentation.

Rule 75 (as proposed, "confidentiality; release of information") and Rule 86 (currently, "adoption records"). Mr. Owsley presented these two rules, which both address confidentiality of information. Current Rule 75 deals generally with release of information, but it does not detail the process, which is in Rule 86. The workgroup accordingly consolidated Rule 86 with Rule 75, and Rule 86(a) and (b) have become Rule 75 sections (b) ("request for records") and (c) ("records of Indian adoption.") Members

agreed that consolidation of these rules was appropriate. However, they noted that the provisions of section (a) ("confidentiality of adoption records") and section (b), although taken verbatim from Rule 86, merely parse the requirements of A.R.S. § 8-121. Members suggested that the rule should refer to the statutes without trying to summarize them. Another member suggested deleting the Committee Comment to Rule 75 because its references to federal statutes now appear in section (c). The Task Force returned the rule to the workgroup for consideration of these suggestions.

5. Workgroup 1. Ms. Beckmann presented a newly drafted Rule 46.1, a newly proposed Rule 30(c), and three new forms concerning appeals.

Rule 46.1 ("altering or amending a final order"). The workgroup drafted this rule to provide a mechanism for bringing potentially appealable issues to the attention of the trial court within the limited time allowed for filing a notice of appeal. A motion under Rule 46.1 would serve as a time-extending motion under draft Rule 104. The need for such a procedural rule was highlighted by Division One's June 23, 3020 opinion in *Francine C.*, particularly paragraphs 22 and 23. ("There is no explicit juvenile rule authorizing a motion for reconsideration or clarification of a dependency or termination order.") Draft Rule 46.1 hits a "sweet spot" by mitigating delays in the appellate process that often result from the filing of a post-judgment motion, and by allowing parties to promptly raise issues that are amenable to correction by the trial court, which could make an appeal unnecessary.

Ms. Beckmann then reviewed the text of the draft rule. Section (a) ("generally"), subpart 1 ("meaning of final order") provides that "final order" has the same meaning as set out in Rule 103(b). Subpart (2) is titled "grounds for altering or amending a final order." The grounds identified in subpart (2) are partly but not wholly derived from Family Law Rule ("FLR") 83 ("altering or amending a judgment.") For example, the ground that the court did not enter sufficient findings of fact or conclusions of law was derived from a Civil Rule. The ground concerning an irregularity in the proceedings synthesizes two grounds in FLR 83. Grounds contained in other rule sets that are akin to a motion for reconsideration, or that concern errors in the admission of evidence, or overlooked evidence, were excluded in draft Rule 46.1 to discourage repetitive proceedings and because they would invite delay. However, draft Rule 46.1 includes the grounds of newly discovered evidence and a clerical mistake. The draft provides that the trial court as well as a party can move to alter or amend a final order. A member asked whether the court can make a sua sponte motion under this rule after a party has filed a notice of appeal. The ensuing discussion indicated that this scenario, or any sua sponte motion under the draft rule, might cause confusion about when a party must file a notice of appeal. Ms. Beckmann then reviewed the remaining procedural sections of the draft rule, which generated additional discussion.

- Is relief available under Rule 46.1 for any order, or only a final order? Ms. Beckmann's response is that Rule 46.1 was designed to apply only to final orders.

- Can a party file motions under both Rule 46 and Rule 46.1? Rule 46 has time limits grounded in Civil Rule 60, whereas Rule 46.1 has a much shorter 10-day limitation. However, nothing in the draft precludes a party from filing motions under both rules. Members discussed the possibility of merging all or portions or these two rules but doing so might be complicated because Rule 46.1 applies only to final orders, whereas Rule 46 applies to any order. Rule 46 would also permit a motion, for example, based on newly discovered evidence under Civil Rule 60, which allows a longer time for filing the motion, whereas a party must file a motion based on newly discovered evidence under Rule 46.1 within 10 days after entry of the order. However, this duality parallels the Civil Rules, which allow motions for newly discovered evidence under the short time required by Civil Rule 59 or within the longer period allowed under Civil Rule 60. Ms. Beckmann raised the possibility of expressly characterizing motions under Rule 46 that are filed within 10 days after entry of an order as time-extending motions, which might obviate the need for a separate Rule 46.1. Members made no decision on merging Rules 46 and 46.1, but the workgroup should further consider this option.

- A.R.S. § 8-123 permits a party a full year to cure irregularities in an adoption proceeding, and that time greatly exceeds the time allowed under draft Rule 46.1. Ms. Beckmann noted that draft Rule 46.1 is a Part III rule, so it would not apply to adoptions, which are governed by Part IV of the Juvenile Rules.

- Are certain grounds in subpart (a)(2), such as newly discovered evidence, in effect providing grounds for a motion for new trial, a motion that is not allowed under the current rules? Perhaps, but the likelihood of new evidence being discovered within 10 days after entry of the final order is remote, and in circumstances when it does happen, Rule 46.1 would offer a prompt method for obtaining relief. Because a Rule 46.1 motion would be a time-extending motion, the workgroup should consider what are the most appropriate reasons for extending the time for filing a notice of appeal.

- Will some grounds, including newly discovered evidence, require an evidentiary hearing, which would unduly delay an appeal? Again, that is possible, but the requirement of raising the issue within 10 days after entry of the final order should minimize delay.

- Accident or surprise should not be available grounds for relief under Rule 46.1 because those grounds are vague and ambiguous. Members agreed with this observation and removed those grounds from the draft.

Workgroup 1 will revisit Rule 46.1 and consider today's comments and discussion. If the workgroup continues to recommend that the proposed rules include a separate Rule 46.1, it will work to assure that the rule's provisions harmonize with the provisions of Rule 46, which Workgroup 3 will present later today.

Rule 30 ("disposition") section (c) ("amended final order"). Although Rule 30 is assigned to Workgroup 2, Workgroup 1 proposed adding a new section (c) to the rule that would permit a party in a delinquency proceeding, within 10 days after entry of a final order, to move the court to amend its order to correct errors or to make additional findings. This addition is an analog of Rule 46.1, but the grounds in section (c) are much narrower. After Ms. Beckmann presented the rule, members of Workgroup 2 expressed their concerns that this new provision would require the juvenile to be personally present for a court hearing on these post-disposition motions, which could include motions to amend a restitution order, make an additional finding, or enter a modified term of probation. They thought this might be burdensome for the juvenile and generally unwieldy. Moreover, the court's findings at a delinquency disposition hearing are more limited than in a Part III proceeding, so there is less need for amending them. Members agreed that the proposed new section would not work well in the delinquency context, and it was removed from draft Rule 30.

Form 5(a) ("notice of appeal: delinquency/incorrigibility proceeding") and Form 5(b) ("notice of appeal: dependency, severance, Title 8 guardianship, adoption, emancipation proceeding"). Ms. Beckmann presented two notices of appeal, one for use in delinquency cases, and the second for appeals in other juvenile court cases. The core issue with these forms was whether to add or remove language that requires counsel to consult with the client before filing a notice. She noted that current Form 4 is a certification for counsel to file in the juvenile court when counsel is not filing a notice of appeal, but nonetheless wants to certify an inability to locate or communicate with the client. Form 4 has dubious value, and counsel almost never use it. In a delinquency case, the juvenile has the right to an *Anders*-type review, which would be foreclosed if counsel was unable to certify that he or she had consulted with the client. Ms. Beckmann accordingly recommended that Form 5(a) not include a consultation section.

There is no analog to an *Anders* review in an appeal from other juvenile cases, and the question was whether the juvenile rules should require that counsel consult with the client in those other cases before filing a notice of appeal. Ms. Beckmann presented three options: (1) that the form require counsel to certify that a consultation occurred prior to filing the notice; (2) that counsel certify an inability to contact or communicate with the client, but certify that the appeal is meritorious; or (3) that the form not contain any

certification but that the rule provide that counsel cannot file a notice without first consulting with the client. She added that Rule 104 provides a safety net in the third scenario because it would permit a delayed appeal if the client subsequently appeared and if the other requirements of that rule are satisfied. Members did not favor the filing of a notice of appeal in these cases when the client could not be located. They agreed that the notice of appeal form should include counsel's certification that he or she had in fact consulted with the client, and that counsel should not be permitted to file the notice without this certification. Workgroup 1 will need to modify Rule 104 and Forms 5(a) and 5(b) in accordance with that decision.

During the discussion of these forms, members also agreed that there was no benefit in including current Form 4 in the restyling rules. A member asked whether an appeal from a juvenile disposition under Form 5(a) includes an appeal from the adjudication, or if the adjudication is separately appealable. Ms. Beckmann advised that the adjudication issues are raiseable in the appeal from the disposition, but the workgroup will consider ways that the form can clarify this. Another member thought Form 5(b) was too complex, and that it should be simplified by removing boxes 1 through 11 and retaining only item 12, with the addition of specifying the order being appealed. However, other members disagreed, noting that this series of individual checkboxes serves to clarify for clerks and court reporters the documents and transcripts that are necessary for the record on appeal. The checkboxes should mitigate the tendency of the appealing party to request a transcript of every trial court proceeding, even when the proceeding is not pertinent to the issues on appeal.

Form 6 ("supplemental designation of the record"). This is a new form. It correlates with Rule 104.1 (the record on appeal"), and Form 6 includes cross-references to that rule. The form is designed to allow counsel, in an orderly and easily understood way, to designate additional documents, exhibits, or transcripts for inclusion in the record on appeal. Members had no questions or comments concerning the form, but the form will need to be properly formatted.

6. <u>Workgroup 3.</u> Workgroup 3 presented two rules.

Rule 46 ("motions"). Mr. Gilmore presented Rule 46. There were no substantive changes in section (a) ("form"). In section (b) ("filing"), the workgroup considered but decided against adding a requirement that the moving party submit a notice of hearing with the motion. However, if there is no assigned judge, the proposed rule requires that the motion be provided to the presiding judge rather than the court administrator, which the current rule requires. Members discussed the time limits in section (c) ("response"), which is 10 days if the motion is served by mail and 5 days when served by other methods. Section (d) ("court ruling") permits the court to rule on a motion when the time for a response has expired or if no party objects, unless a rule or statute provides otherwise. The workgroup's draft of section (e) ("motion for summary judgment")

contained modified times; the motion must be filed not less than 45 days before trial (rather than 30 days under the current rule), and a response must be filed within 20 days thereafter (the current rule does not specify a time.) This new timing should avoid the necessity of the court considering the motion on the day of, or immediately before, the trial. Members again discussed the matter of the availability of summary judgment in an adoption proceeding, with one member observing that at one time, no one filed summary judgment motions in dependency cases until they realized the rules did not preclude them from doing so. (The possibility of Rule 74 continuing to include a reference to Rule 46 will abide further discussion by Workgroup 4.) If summary judgment will dispose of an adjudication in a Part III proceeding, should the rule actively encourage parties to file them? After discussion of this question, Judge Young offered to submit proposed language that addresses the matter.

Section (f) ("motion to set aside a final order") led to a discussion of whether the provision should apply to any order, or only to a "final" order. An order under Rule 59 is not a final order, so adding the word "final" to section (f) excludes consideration of a ruling that might be amenable to a motion under this section. Members also discussed whether a motion to set aside a "final order" under section (f) would be considered a time-extending motion under Rule 104. Section (f) includes references to Rule 60, and a member observed that an order denying a motion to set aside under Rule 60 would be an appealable order under Rule 103(b), so the use of "final" would be appropriate. Members discussed bifurcating Rule 46, leaving sections (a) through (d) within the rule, but creating another rule, possibly numbered 46.2, for specific motions, such as motions for summary judgment or to set aside. Although members generally approved Rule 46 sections (a) though (d), these other issues will require further discussion by Workgroup 3.

Rule 49 ("preliminary protective conference"). This is the first rule that Workgroup 3 is presenting in Part III, Subpart 3 ("dependency"). Judge Quigley presented the rule and reviewed each section, beginning with the title of the rule. The title of the current rule is "pre-hearing conference," which does not specify what conference the rule concerns. The revised title is "preliminary protective conference." Several of the edits to this draft rule were necessary to conform text to that title change. In section (d) ("procedure"), Judge Quigley added the words "parenting time" to conform to a statutory change and current terminology. The other workgroup edits to Rule 49 were primarily stylistic. Members discussed the use in section (d) of the word "must" in the phrase "must meet outside the presence of the judge," and after discussion, they declined to change that to "may." Section (e) ("use of statements") provides that statements made by parties and participants during the conference "are not protected and may be used in future proceedings." A member suggested that making those statements confidential would encourage candor during the conference, but other members disagreed and noted that this is an information-gathering process, and that to impose confidentiality would unreasonably interfere with the introduction

of pertinent evidence at the preliminary protective hearing. Members had no other questions or comments and they approved the rule as presented.

7. **Roadmap; call to the public; adjourn.** The Chair advised that the Editorial Group has set its first meeting for Monday, July 20, 2020. The Editorial Group will review rules on which the Task Force has reached consensus. It will work on improving the rules' syntax and grammar, and assuring consistent use of terminology, substantive and procedural consistency, and compatibility with other sets of rules and statutes. The Editorial Group's members are Justice Berch, Judge Armstrong, Judge Kreamer, Judge Quigley, Ms. Beckmann, and Mr. Meltzer.

The Chair confirmed the dates for future Task Force meetings: August 21, September 25, October 23, November 20, and December 18, 2020. At the June 12 meeting, the Chair requested staff to determine a date for adding another meeting, if one becomes necessary. Staff determined that the most feasible date is Friday, December 4, 2020. The Chair asked members to confirm with staff their availability for a meeting on December 4.

There was no response to a call to the public.

The meeting adjourned at 3:00 p.m.