Juvenile Rules Task Force

Public Meeting, November 20, 2020
(Members and guests attending telephonically)

Meeting Minutes

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

Members absent: Beth Rosenberg, Kent Volkmer

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

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

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

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

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

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

2. Report from Workgroup 2.

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

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

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

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

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

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

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

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

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

3. **<u>Report from Workgroup 1.</u>** Workgroup 1 presented 4 rules.

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

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

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

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

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

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

(3) whether the person has requested DCS to be placement for the child, and if so, the status of the request; and

(4) whether the person seeks to file a motion for change of physical custody to that person.

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

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

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

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

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

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

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

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

4. <u>Report from Workgroup 4.</u>

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

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

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

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

Rule 37 ("definitions"). Judge Quigley presented this rule. Although members approved Rule 37 at a previous meeting, it was on today's agenda because the workgroup added a new and significant definition. The definition says, "'Parent,' as used in Part III, and in addition to the definition in Rule 2, includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian." The intent of the definition is to avoid saying "parent, guardian, or Indian custodian" multiple times in the Part III rules, and to simply say "parent" as a reference to all three.

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

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

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

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

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

(a)(2) requires the party moving for judgment as a matter of law to specifically identify the basis of the motion and supporting law and facts. When considering the motion, subpart (a)(3) requires the court to view the evidence and reasonable inferences in the light most favorable to the petitioner. Finally, subpart (a)(4) permits the court to grant the motion "only if the facts in support of the petition have so little probative value that no judge could reasonably find for the petitioner."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting adjourned at 2:52 p.m.