Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Friday, August 6, 2021
10:00 a.m. to 4:00 p.m.
State Courts Building, Phoenix, Room 329/330

Telephonic Meeting: **(602) 452-3533**, Access Code**: 992 653 552**

Item no. 1	**Call to Order**	*Hon. Rebecca Berch, Chair*
Item no. 2	**Approval of the April 12, 2021 meeting minutes**	*Justice Berch*
Item no. 3	**Review of Title 8 legislative proposals**	*Elise Kulik*
Item no. 4	**Discussion of comments concerning R-20-0044 and related issues**	*All*
Item no. 5	**Roadmap** **Next meeting: tentative date – Wednesday, September 15, 2021**	*Justice Berch*
Item no. 6	**Call to the Public** **Adjourn**	*Justice Berch*

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

Juvenile Rules Task Force

Public Meeting, April 12, 2021
(All members and guests attending telephonically)

Meeting Minutes

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

Members absent: Denise Smith, Hon. Rick Williams

Guests: Carey Turner, Lori Green, Beth Ford, Shari Anderson Head

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 sixteenth Task Force meeting—its eleventh consecutive virtual meeting—to order at 10:00 a.m. The sixteenth meeting was prompted by the volume of prefiling comments to the second draft set of rules, which were posted on the JRTF webpage on February 17. The Task Force discussed many of those prefiling comments at its fifteenth meeting, on March 5, but members also recognized that it would be appropriate to refer a substantial number of comments to workgroups for further review and discussion. Between the March 5 and April 12 Task Force meetings, workgroups met nine times. Most of these meetings were three hours or longer. Workgroup 3, which has a majority of the rules on today's agenda, met four times. The Chair characterized the efforts of the workgroups as "impressive."

The primary matter on today's agenda is a review of workgroup changes to the second draft set of rules that were made subsequent to the March 5 Task Force meeting. There are more than 30 rules on today's agenda that contain recent substantive changes. A summary of each of those changes is contained in the meeting packet in a document titled "post-March 5 TF meeting workgroup revisions to the second draft set of juvenile rules." Some of these changes, although substantive, are relatively minor and should not require much discussion. The Chair requested workgroup leaders to present these changes, assisted by other workgroup members having special expertise on particular rules. The Chair noted that in addition to the document noted above, the packet also contains a revised Form 1; two new tables (a derivation table and a table of ICWA references); SB 1332 (Chapter 0144, Laws 2021); and clean and redline versions of a second draft of the rule petition. SB 1391 was also provided. This bill has not yet been signed by the Governor, but it is pertinent to Rules 206, 303, and 305 regarding the appointment of attorneys and GALs.

Recognizing the challenge of meeting the March 31 petition filing deadline, the Chair filed a motion on March 18 requesting a one-month filing extension. The Court granted the motion and the new petition filing deadline is April 30, 2021. On March 24, the Court also entered Administrative Order No. 2021-43. That Order appointed Randi Alexander to the Task Force to replace Magdalena Jorquez, who resigned from the Task Force because she is no longer with DCS.

Before proceeding to the comments, the Chair asked members to review draft minutes of the March 5, 2021 Task Force meeting. David Euchner, who spoke on March 5, wrote to say, "In the middle paragraph on page 3, in the middle of the paragraph, it says: 'One area of his comment asked whether the list of appealable final orders in Rule 103(b) was actually inclusive, as it purports to be.' In order to represent the language in page 5 of my comment, I think the phrase 'actually inclusive' should be changed to 'actually exhaustive.' The Chair concurred with Mr. Euchner's suggested change.

> **Motion:** With this modification, a member moved to approve the March 5, 2021 meeting minutes. The motion received a second and it passed unanimously. **JRTF 016**

The Chair proposed that the Task Force proceed through the rules on today's agenda in numerical order, beginning with the rules in Part I.

2. **Part I rules.** Judge Kreamer and Judge Armstrong presented the changes to Rules 102 and 104. Rule 102 ("definitions") now includes a definition for "A.R.S." Rule 102 also includes a new definition of "court day," which is intended to replace "business day" used elsewhere in the proposed set. A definition of "minute entry" was added to Rule 102 to replace the "minute entry" provisions in the prior version of Rule 324. The new Rule 102 definition includes a reference to Supreme Court Rule 125, which is the primary explanation of a minute entry; the new definition also provides that "an unsigned minute entry may constitute an order of the court. However, to be appealable, and order must be signed as required by Rule 601." The last change to Rule 102 is a modified definition of "parent," which now includes a second sentence derived from A.R.S. § 25-401(4). (See further a prefiling comment from Commissioner Bibbens.) The change to Rule 104 ("applicability of the rules of evidence, admissibility of evidence and reports") was in subpart (d)(9) ("reports offered but not admitted"). The change clarifies that a report that is marked but not admitted becomes part of the appellate record only by a party's supplemental designation of the record. (See further a change to Rule 604, *infra.*)

3. **Part II rules.** Rule 205 ("notice to appear; service; failure to appear") includes a subpart (c)(1) titled "provisional warrant." Workgroup 2 expanded the explanation of a provisional warrant. Generally, a provisional warrant is used to obtain the next court date for an alleged delinquent who failed to appear without the need for the juvenile's arrest and detention. Ms. Phillis noted that some counties are already using

these warrants, but they are called by different names and might be used differently. The workgroup intended that its explanation be sufficiently flexible to accommodate those variations on usage. The next rule, Rule 217 ("mandatory judicial determinations") was modified by Workgroup 3 upon learning that juvenile probation departments in the future might request Title IV funding for placement of a delinquent in a QRTP. Judge Quigley noted that Workgroup 3 added a reference to the Family First Prevention Services Act in section (a) ("application") of Rule 217. Most noteworthy was the addition of a new section (f) ("QRTP"), which refers the reader to Rule 335 when a child in placed in a QRTP in a delinquency proceeding.

Ms. Phillis observed that after discussing a prefiling comment concerning Rule 218(c) ("length of detention"), the workgroup recommended no changes to the draft rule. The rule precludes a juvenile from being held in detention for longer than 24 hours if no petition has been filed, or from being held if not brought before the court within 24 hours after the filing of the petition. In the vast majority of cases, these deadlines are met. But particularly in a smaller county, if a minor misses the initial court appearance by a short time, the next court appearance might be slightly past the deadline. Like the workgroup, the Task Force considered whether setting a flat 48-hour deadline might be clearer than two 24-hour deadlines. They both concluded, however, that each of the 24-hour deadlines was discrete, and a single 48-hour deadline might inadvertently extend rather than expedite the process. Accordingly, members made no changes to Rule 218(c) as previously proposed. Finally, in Rule 221(e) ("judgment of acquittal"), Ms. Phillis noted the use of the word "judgment," because there was not an appropriate substitute term. She added that the rule requires the court to enter a "judgment" rather than an "order of dismissal" because the latter term does not convey that the matter had proceeded to adjudication.

4. **Parts III rules.** Judge Quigley noted that the previous version of Rule 302 ("definitions") included sections (d) ("child's attorney") and (e) ("guardian ad litem"). However, sections (d) and (e) are not strictly definitions. Accordingly, the substance of section (d) was relocated in Rule 303(c) ("appointment of an attorney for a child"), and the substance of Rule 302(e) was moved to Rule 305 ("appointment of a GAL"). When SB 1391 becomes law, the Task Force should consider adding to these provisions that the attorney under Rule 302 does not have the role of a GAL, and vice versa in Rule 305. The relocated provision from Rule 302(e) included text that said, "A GAL is not bound by the client's expressed preferences or the attorney-client privilege." Some members objected to keeping this language in Rule 305, although they were unable to cite any authority that contravened the language. The word "privilege" is not in the corresponding current rule. After further discussion, members changed the language of the last sentence of Rule 305 to instead say, "A GAL is not bound by the minor's, incompetent's, or protected person's expressed preferences, and communications are not privileged." In related rules, a provision concerning an attorney's withdrawal from a case was modified by adding, "The attorney remains the person's attorney of record until the court grants the motion

to withdraw." (See Rule 304(c).) A definition of "parent" in Rule 307 ("duties of attorneys who represent parents, etc.") was deleted because it duplicated the definition of "parent" in Rule 302.

A modification to Rule 309 on "education requirements for court-appointed attorneys and GALs, section (d) ("later training") generated a lengthy discussion. The initial modification, which was proposed by Commissioner Bibbens and the Pima County LGBTQ Task Force, was limited to adding training on LGBTQ issues. At the March 5 meeting, members agreed to expand this amendment to include training regarding other similarly affected groups. Ms. Rosenberg contacted national experts, who proposed language that included the phrase, "diversity, equity, and inclusion." Ms. Rosenberg also observed that the name of the Court's Commission on Minorities recently changed to the Commission on Diversity, Equity, and Justice. However, a member noted the goal of that Commission was to increase diversity in the judiciary, a focus that went beyond the training contemplated under Rule 309. Members had various other concerns about the proposed new language for Rule 309(d). One concern was that the list of topics in section (d) had become so lengthy that the individual subjects were no longer distinctive. A second concern was the lack of a bridge between disproportionate involvement and other subjects, such as placement and services. Another concern was whether "diversity, equity, and inclusion," in the context in which they appeared in this draft, made sense, or whether the terms were popular but inapt as subjects for training of attorneys and GALs in child welfare proceedings. After discussion, members removed "diversity, equity, and inclusion" from the draft of Rule 309(d) and added "…cultural awareness, issues in the child welfare system related to race, ethnicity, disability, sexual orientation, gender identity and expression, and implicit bias, and other topics and issues concerning abused and neglected children." The Editorial Group will further review this language at its upcoming meeting.

In Rule 311 ("participants' rights"), section (b) ("right to be heard"), members agreed to a change that had been proposed by Ms. Jorquez. The former verbiage was, "have a right to be heard at any hearing regarding a child." The revised language is, "have a right to be heard regarding the child at any hearing." Workgroup 1 made changes to Rule 317 ("altering or amending a final order"). The changes included a new section (e) ("effect on appeal time"), which has two subparts: (1) appeal time extended, and (2) appeal time not extended. These changes, in conjunction with Rule 603, should clarify when the filing of such a motion extends the time for appeal. Rule 323 ("simultaneous dependency and legal decision-making/parenting time proceedings") now includes a revision proposed by Judge Warner: "… ~~the juvenile division has jurisdiction over~~ <u>the judge presiding over the juvenile case makes decisions concerning</u> the children."

Rule 324 ("providing notice of a change in a child's placement") is a new rule that also precipitated discussion. The objective of the rule is to assure that the parties' representatives receive prompt notice of a change in the subject child's whereabouts. Section (a) requires DCS to notify the child's attorney and GAL of the new placement

address, the type of placement, and contact information. Section (b) requires notice to the parent's attorney, but the notice must not include the new placement address or contact information, which is expressly confidential. Section (c) allows DCS to provide the notices under sections (a) and (b) "verbally or electronically, including by email." Section (c) requires that DCS provide the notices "as soon as practical before the child is relocated," and if not, "as soon thereafter as possible and no later than [blank] hours after the change of placement, excluding weekends and holidays." The ensuing discussion centered on the number of hours that should go in the blank space. Some members proposed 24 hours. They contended that the giving of notice by a voice or text message wouldn't be onerous and that counsel, especially children's counsel, had a substantial need to have this information provided as promptly as possible. Others thought 24 hours would not be doable in every county and that 72 hours would be more practical. Professor Bennett, whose comment was the genesis of this new rule, proposed 36 hours. One member noted that experienced case managers are currently providing notice within 24 hours without a rule requirement and without difficulty. Another member expressed concern about setting any time requirement if the rule did not provide a sanction for violations. On a straw vote, three-fourths of the members favored 24 hours, and one-fourth opposed that time limit. The petition should note the lack of unanimity.

Rule 326 is a new rule titled "required admonition and findings." The rule would supplant the admonition provisions that are already in various dependency, guardianship, and termination rules, however, those provisions remain in these rules. The workgroup inquired whether the Task Force preferred to retain Rule 326 and to delete those other provisions, or to simply delete Rule 326. The workgroup had no preference, nor did the Task Force. If Rule 326 is retained, members saw a need to carefully review the admonition provisions in those other rules to assure they are adequately replicated in the new rule. After discussion, members agreed to retain Rule 326 and to also retain the admonition provisions in the other rules, to note the duplication in the rule petition, and to solicit comments on stakeholder preferences.

Rule 335 ("Qualified Residential Treatment Program; Judicial Review") was introduced by workgroup 3 at the February meeting as Rule ZZ, and it has been the subject of ongoing revisions. Judge Quigley reviewed the most recent version of Rule 335. Section (b)'s definition of "qualified individual" now includes the waiver option under federal law in case DCS seeks such a waiver in the future. Section (c) ("time to complete the assessment and documentation") now distinguishes these various requirements and provides additional details. Members had a lengthy discussion of section (d) ("QRTP placement and approval"), particularly concerning the process and the time for notifying the parties and court of the placement and providing the assessment and supporting documentation. As a result of that discussion,

- In subpart (d)(1)(A), DCS must notify the parties of the child's placement in a QRTP within 24 hours, in the manner prescribed in Rule 324;

- In subpart (d)(2)(B), DCS must file a notice with the court of the child's placement in a QRTP not later than 5 days (formerly 10 days) after the placement;
- In subpart (d)(2)(A), upon receiving notice of the placement from DCS, the court must set a hearing on the placement not later than 60 days thereafter;
- In subpart (d)(2)(B), DCS must file a motion with supporting documents seeking approval of the placement no later than 10 days after receiving the assessment (under section (c), the assessment must be completed within 30 days after the placement); and
- In subpart (d)(2)(C), the court must consider specified items when deciding the motion, even if the motion is uncontested.

Judge Quigley further reviewed the required findings and orders in section (d), the process for continuing review of a QRTP placement in section (e), and discharge of the minor from a QRTP in section (f). In subpart (d)(4)(C), which contemplates entry of an order when the court does not approve the QRTP placement, members modified the workgroup's language to now provide that the court must "[order] DCS to investigate alternative placements and [set] a further hearing if necessary."

In Rule 346 ("guardianship adjudication hearing"), an amendment to subpart (g)(2)(E) now requires the court at the conclusion of the hearing to "direct DCS to assist the permanent guardian in making an application for guardianship subsidy, if available." (Rule 348(g), which concerns a successor permanent guardian, already includes such a provision.)

The former version of Rule 349 ("petition, motion, notice of hearing, and service of process and orders") included section (d) on service, but the section did not specify the manner of service. The workgroup addressed this omission in a new subpart (d)(1)(B). A termination petition must be served pursuant to Civil Rules 4.1 or 4.2. A termination motion must be served as provided by Juvenile Rule 106. If the matter involves the parent of an Indian child, additional service must be accomplished as provided in subpart (d)(2) ("service involving an Indian child"). A member noted that subpart (d)(1)(A) ("who must be served") required service on "any individual who is in loco parentis to the child." Members found this provision to be problematic (for example, would that person be entitled to services?), but they agreed the person should receive notice. They accordingly removed the in loco parentis language and substituted that service must be made on "the person with legal custody or decision-making regarding the child." They also removed service on the child's guardian because "parent" as defined in Rule 302 includes a guardian under Title 8 or Title 14.

Rule 350 ("initial termination hearing"), section (d) ("findings and orders") requires the court to address the parent and advise that a failure to appear at certain proceedings, including a settlement conference, could be deemed an admission of the allegations. A.R.S. § 8-537(C) does not mention a settlement conference, but it does

mention a status conference. While acknowledging that loss of parental rights is a significant consequence for failure to attend a court event, members accordingly deleted the reference to settlement conference and added status conference to this provision. A reference in Rule 351 ('termination adjudication hearing"), section (g) ("social study") to Rule 104(d)(4) was corrected to Rule 104(d)(5).

Judge Quigley concluded the presentation of Part III rules by noting Professor Bennett's comment about the attendance of attorneys and GALs at a DCS staffing. Workgroup 3 discussed his comment but determined the issues were too complex to resolve in the limited time that was available.

5. **Part IV rules**. Professor Atwood led the discussion. In Rule 402 ("meaning of terms"), members added a new definition: "'Agency' has the meaning provided in A.R.S. § 8-101(2)." The objective is to no longer refer to DCS as an agency. Any references in the proposed rules to "division" or "department" should also be changed to "DCS." Members also added a second sentence to the definition of "parent" in Rule 402 to make it consistent with the definitions of that word that appear in Rules 102 and 302.

Members considered together the changes to Rule 407 ("motions"), section (f) ("motions to set aside") and Rule 417 ("setting aside an adoption"). Professor Atwood explained that Workgroup 4 considered ways to relocate the substance of Rule 407(f) to Rule 417. It was not possible to do this, however, because Rule 407(f) addresses motions to set aside in adoption proceedings other than Rule 417 motions concerning final orders. Accordingly, the workgroup added a sentence at the end of Rule 407(f) that says, "If a motion under this section seeks to set aside a final order of adoption, Rule 417 also applies." The second, third, and fourth sentences of Rule 417(a) ("motion to set aside") were deleted, either because they duplicated or because they conflicted with other Part IV provisions. Members agreed that Rule 603 should include a reference to Rule 417, in addition to Rule 407(f).

6. **Part V rules.** Mr. Volkmer presented the changes to these rules on behalf of Workgroup 1. The changes were necessary because of the enactment of SB 1332. In Rule 502 ("petition and documentation requirements"), section (a) ("requirements"), the workgroup deleted a subpart that provided as a requisite for emancipation that the petitioner was not a ward of the court. However, because that information might be useful for the judge considering the emancipation petition, Task Force members added a provision in section (b) ("content of petition") requiring that the petition state whether the petitioner was a ward of the court or in the care, custody, or control of a state agency. The workgroup also added to section (b) a newly required allegation about "whether the petitioner is employed or has obtained an offer of employment." The workgroup made modifications in Rule 505 ("determination and order of emancipation") that corresponded with the modifications in Rule 502.

7. **Part VI rules**. Ms. Beckmann presented the Part VI rule changes. She began with Rule 601 ("right to appeal"), section (b) ("final orders"). In delinquencies, Workgroup 1 added a catch-all that an appeal may be taken from "any other order that is final pursuant to Arizona case law." Pursuant to the earlier discussion of the adoption rules, the provision in Rule (b)(2)(M) concerning motions to set aside now includes a reference to Rule 417. Also, recent input from a Division One judge prompted the workgroup to add a comment to the rule concerning subpart (b)(2)(E), which allows an appeal from an order in a dependency that removed a child who has been adjudicated dependent from a parent's physical custody. The comment recognizes the subpart (b)(2)(E) "may be considered inconsistent with certain case law," including *Jessicah C. v. DCS* (Division One, 2020), but, the comment continues, the Court has determined that such orders should be deemed final and appealable.

Rule 602 ("general provisions"), section (a), ("caption on the notice of appeal"), now an example caption that accommodates more than one child in the case. Rule 603 ("notice of appeal"), subpart (a)(3), now includes a reference to Rule 417 in the provisions on time extending motions. In the delayed appeal provisions of Rule 603(a)(5), the workgroup added a sentence that says, "Good cause may include but is not limited to clerical errors of counsel that are not attributable to the client." A modification to Rule 604 ("the record on appeal"), subpart (a)(1)(B), deleted a reference to reports marked but not admitted under Rule 104(d)(8); these reports are not part of the presumptive record under section (a) but they may be included in the record by a supplemental designation under section (b). At Mr. Euchner's suggestion, the workgroup removed in its entirety section (f) ("sanctions") concerning unnecessary supplemental designations. The workgroup acknowledged that this sanction is available under current Rule 105(J), but Task Force members concurred in removing the provision.

The final Workgroup 1 changes involved Rules 609 ("petition for review) and 610 ("appellate court mandate"). Under Rule 609, a party has 30 days to file a petition for review. Anecdotally, few petitions are filed in juvenile cases, but as a consequence of this rule, issuance of the mandate is unnecessarily delayed for 30 days, which adversely affects a child's need for finality and permanency. The workgroup addressed this dilemma by adding in Rule 609 a new section (b) titled "notice of intent to file petition for review." A party who intends to file a petition for review must file this new notice within 15 days after a disposition by the Court of Appeals. A party who files such a notice may ultimately decide not to file a petition, without consequence. However, a party who fails to file the notice within 15 days loses the opportunity to subsequently file one. Under new Rule 610(b) ("no notice of intent to file petition for review"), the Court of Appeals clerk may issue the mandate if a notice of intent is not timely filed.

8. **Second draft rule petition; roadmap.** Staff initially drafted the rule petition, the Chair then reviewed and edited the document, and the draft was presented to members at the March 5 Task Force meeting. A second draft of the rule petition was included in the April 12 packet. The second draft takes into consideration discussions at

the March 5 meeting and at subsequent workgroup meetings. The Chair requested members who have comments or suggestions concerning the second draft to send them to staff as soon as possible. The Chair reminded members that their comments can address items on which there was not consensus. The petition will include a link to the rule-by-rule meeting minutes, which will be posted on the JRTF webpage and provide stakeholders with a record of Task Force discussions concerning each of the proposed rules. The filed petition will be accompanied by the rules, although due to document size limits on the Court Rules Forum, the rules might need to be filed as several separate documents.

The rules package will include the derivation and ICWA tables, which should facilitate navigation and make the rules more user-friendly. The package will also include forms. The Chair asked members whether it would be more functional to have the forms appended to the rules, as they are now, or instead to post them on the Arizona Judicial Branch website. Posting them on the website would facilitate making changes to the forms, if necessary, and members generally favored that option. However, the proposed rules should provide information concerning the location of the forms, who can change the forms, and the process for making changes.

Rule 335 will require an earlier effective date than the other rules. The petition will ask the Court to consider this rule on an expedited basis, at its August agenda. The rule is likely to generate comments. Members discussed the possibility of the Court accepting comments not only before the August agenda, but in conjunction with the general comment period for the rule petition. If the Governor signs SB 1391 into law, it would become effective 90 days after *sine die*. The Editorial Group, which will meet on April 14, should consider whether rules affected by that legislation should also be adopted on an expedited basis.

Deadlines derived from the Court's March 19, 2021 Order in R-20-0044 are as follows:

April 30, 2021:	Petition filing deadline
July 23, 2021:	Close of public comments (suggested deadline)
Sept. 30, 2021:	Petitioner's Reply is due (suggested deadline)
December 2021:	The Court will consider the petition at its December rules agenda
July 1, 2022:	Effective date of any adopted or amended rules

It is difficult to forecast the scope or volume of public comments on the rule petition. Regardless, members should plan on meeting in late July or early August to discuss public comments. Staff will begin contacting workgroup leaders regarding possible meeting dates. More than one Task Force meeting, or workgroup meetings in

the interval between future Task Force meetings, might be necessary. Members should also remain mindful of the potential need for future statutory amendments that conform to the proposed new rules or that adopt desirable changes. This initiative would require collaboration with the AOC's legislative group.

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

The Chair concluded the meeting by thanking members for their outstanding work and dedication to this project.

The meeting adjourned at 3:35 p.m.

08.06.2021: Potential Title 8 statutory changes

This table shows references in the rule by rule minutes [version ~~09.08.2020~~ 04.21.2021] to **<u>"legislative"</u>** in the context of potential statutory changes. A three-digit rule number is shown in brackets after the current rule number.

The Editorial Group ("EG") considered this table at its August 2, 2021 meeting. A note after each item summarizes the EG's conclusion.

Rule	Discussion
Rule 2 [102] Definitions	The definition of guardian ad litem raised two issues: must a GAL be an attorney, and is a CASA (court-appointed special advocate) a GAL? The Committee on Juvenile Court will discuss these issues at its next meeting. Meanwhile, Judge Armstrong noted that in other rules and statutes, the term "GAL" includes a CASA. (Draft Rule 5 discussed below concerns CASAs.) A corresponding legislative change would be necessary if the Task Force proposes a rule that a GAL must be an attorney. <u>Note:</u> See A.R.S. 8-221(I): "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. This guardian may be an attorney or a court appointed special advocate." See further Rule 38 below. **<u>EG</u>: The proposed rules do not conflict with the statutory amendments in SB 1391 (Laws 2021, Chapter 228). No additional legislative changes are needed.**
Rule 5 [112] Court-Appointed Special Advocate	Judge Armstrong's draft of Rule 5 eliminates references to "volunteer special advocate," a term used in current Rule 3; and differentiates CASAs and GALs. The proposed revisions might require legislative changes, and Judge Armstrong's draft noted the pertinent statutes that would require modification. Another member also observed that the changes proposed in this draft rule might require revisions to certain sections of the Arizona Code of Judicial Administration, particularly § 7-101 ("Court Appointed Special Advocate Program"). <u>Note:</u> The CASA program is authorized by A.R.S. § 8-523 and -524. **<u>EG</u>: The Editorial Group recommends adding to Rule 112 a reference to A.R.S. § 8-522 (which, as amended by SB 1391,**

	permits the court to appoint a special advocate in a dependency action.)
Rule 19 [215] Records and Proceedings	As the titles of the draft and the current rule suggest, the rule applies to access to records as well as access to proceedings. In section (a) ("juvenile court delinquency files") the court's records (also referred to as "files") are either in a "legal file" or a "social file." Mr. Meaux explained how the workgroup reorganized the provisions to delineate in a parallel manner when the public does, or does not, have access to these files, who maintains the files (the clerk versus a probation officer), and the contents of the files. Mr. Meaux noted that A.R.S. § 8-208 might require legislative changes to conform to the restyled rule. **EG: Concluded that this issue arose under a prior version of Rule 19, and that Rule 221 as proposed by R-20-0044 does not require a statutory amendment.**
Rule 23 [218] Detention and Probable Cause Hearing	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.

	<u>EG</u>: The EG believes this rule provision is consistent with A.R.S. § 8-821(D), and no statutory amendment is necessary. 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. **<u>EG</u>: Recent rule revisions (see, e.g., Rule 218(g) and 219(c)) have mooted the need for a statutory amendment.**
Rule 38 [303] Assignment and Appointment of an Attorney	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. § 8-221(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. <u>Note</u>: This discussion did not include the subject of SB 1391 (Laws 2021, Chapter 228.) See further the R-20-0044 comment summary, item 5, which concerns the recent amendments to A.R.S. §§ 8-221 and 8-522 and rule petition number R-21-0038. **<u>EG</u>: The concerns are moot with the enactment of SB 1391.**
Rule 41.2 [311] Participants' Rights	After further discussion, members agreed to the following changes. In subpart (a)(2), the words "any relative" were moved to follow rather than precede pre-adoptive placement (i.e., "pre-adoptive placement or any relative"). In section (e) ("review hearings"), the word

	"supplement" was replaced by the words "does not limit" ("this rule does not limit ~~supplements~~ the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.") The Chair added that the Task Force's rule petition should note the issue of who has a duty to provide notice, and the potential need for a legislative amendment if the Court adopts this draft rule. **EG: The Editorial Group proposes that A.R.S. § 8-847(B) be amended as follows:** **"B. At a proceeding to review the disposition orders of the court, the court, or DCS if DCS is a party, shall provide the following persons notice of the review and the right to participate in the proceeding."** **The amendment would codify current practices in Maricopa and Pima Counties and make those practices uniform statewide.**
Rule 61 [344] Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship ***See also Rule 64 [349]***	Although the federal regulations apparently permit service under Rule 61(c) by either registered or certified mail, the workgroup limited service to registered mail to be consistent with an Arizona statute. However, the Task Force's list of proposed legislative changes should include adding the option of certified mail, which is less expensive than registered mail. The revised rule was then opened for member comments. **EG: To be consistent with ICWA, A.R.S. § 8-872(B) should be modified as follows:** **"…In addition to the requirements of rule 5(c) of the Arizona rules of civil procedure, the notice shall be sent by registered or certified mail, return receipt requested, to any parent, Indian custodian and tribe of an Indian child as defined by the federal Indian child welfare act of 1978 (25 United States Code section 1903)."** ===== Another judge member advised that the original version of a bill concerning Title 8 guardianships would have allowed anyone to file a pre-adjudication guardianship petition, which is beneficial to everyone because it avoids the need for dependency proceedings, and the member suggested that this be added to the Task Force's list of proposed legislative amendments.

	<u>EG</u>: The following modification to A.R.S. § 8-871(A)(1) was proposed: **“A. The court may establish a permanent guardianship between a child and the guardian if the prospective guardianship is in the child's best interests and all of the following apply:** **“1. The child has been adjudicated a dependent child ~~or is the subject of a pending dependency petition filed by the department~~. If the child has not been adjudicated dependent, all parties must consent to the permanent guardianship. If the child has not been adjudicated dependent and any party objects to a motion for permanent guardianship, the court may schedule a settlement conference or mediation or may strike the motion and proceed with the dependency petition.”** **In conjunction with this modification, the EG proposed the following revision to <u>Rule 344(a)(2)</u>:** ***“Pre-adjudication Motion.*** **A motion may be filed before the dependency adjudication ~~only when the dependency petition was filed by DCS~~….**
Rule 62 [345] Initial Guardianship Hearing	One member disagreed with removing a reference to a permanency hearing in section (b) because A.R.S. § 8-862(f)(2) specifically includes that reference. Some members suggested that legislative changes to A.R.S. §§ 8-864 and 8-872 would be useful in clarifying what is otherwise an inconsistent and confusing statutory process. But even without those changes, a member proposed a new provision in Rule 60 (“permanency hearing”) that would expressly say that any hearing after a disposition hearing is a permanency hearing. **<u>EG</u>: The EG discussed the potential need for amending the time frames, which are currently unrealistic. Further discussion is pending.**

Also consider:

A potential conflict between Rule 41 [312] 8-525 and 8-537
<u>EG</u>: A.R.S. § 8-525 should be amended to avoid possible conflict with the text of

A.R.S. § 8-537. Consider an amendment to A.R.S. § 8-525 that cross-references A.R.S. § 8-537 and notes that the latter statute carves out an exception for termination adjudications and establishes a different standard. Elise will provide proposed text.

Note: Advise Ed Services of the need to educ judges on Rule 41c [312]/8-525

ADD: A.R.S. § 8-237 by adding the word "guardianship" as follows:

"The out of court statements or nonverbal conduct of a minor regarding acts of abuse or neglect perpetrated on him are admissible for all purposes in any adoption, dependency, guardianship, or termination of parental rights proceeding under this title if the time, content and circumstances of such a statement or nonverbal conduct provide sufficient indication of its reliability."

8-237. Statement or conduct of child; hearsay exception

The out of court statements or nonverbal conduct of a minor regarding acts of abuse or neglect perpetrated on him are admissible for all purposes in any adoption, dependency, GUARDIANSHIP or termination of parental rights proceeding under this title if the time, content and circumstances of such a statement or nonverbal conduct provide sufficient indication of its reliability.

8-525. Open court proceedings; closure; records

A. Except as otherwise provided pursuant to this section AND SECTION 8-537, court proceedings relating to dependent children, permanent guardianship and termination of parental rights are open to the public.

B. At the first hearing in any dependency, permanent guardianship or termination of parental rights proceeding, the court shall ask the parties if there are any reasons the proceeding should be closed. For good cause shown, the court may order any proceeding to be closed to the public EXCEPT AS OTHERWISE PROVIDED IN SECTION 8-537. In considering whether to close the proceeding to the public, the court shall consider:

1. Whether doing so is in the child's best interests.

2. Whether an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.

3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.

4. Whether all parties have agreed to allow the proceeding to be open.

5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.

6. Whether an open proceeding could cause specific material harm to a criminal investigation or prosecution.

C. Subject to the requirements of subsection B of this section and section 8-807.01, a court proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality is open to the public.

D. At the beginning of a hearing that is open to the public, the court shall do the following:

1. Admonish all attendees that they are prohibited from disclosing any information that may identify the child and the child's siblings, parents, guardians and caregivers, and any other person whose identity will be disclosed during the proceeding.

2. Explain contempt of court to all attendees and the possible consequences of violating an order of the court.

E. A person who remains in the court after the admonition pursuant to subsection D of this section must abide by the court's order prohibiting disclosure of that information. The court may find a person who fails to do so in contempt of court.

F. The court may close an open proceeding at any time for good cause shown and after considering the factors prescribed in subsection B of this section.

G. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public or request a transcript be made of any previously closed

proceeding. In ruling on this request, the court shall consider the factors prescribed in subsection B of this section. The person who requested the transcript shall pay the cost of the transcript. If the court grants a request for a transcript of any closed proceeding, the court shall redact from a transcript any information that:

1. Protects the privacy, well-being or safety interests prescribed in subsection B of this section.

2. Protects the identity and safety of a person who reports child abuse or neglect and any other person if the court believes that disclosure of the DCS information would be likely to endanger the life or safety of any person.

3. The court has received that is confidential by law. The court shall maintain the confidentiality of the information as prescribed in the applicable law.

H. Any person may request to inspect court records of a proceeding involving the disclosure of DCS information regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court shall consider the factors prescribed in subsection B of this section. If the court grants the request, the court shall redact any information subject to the requirements of subsections B and G of this section and section 8-807.01.

8-847. Periodic review hearings

A. After the disposition hearing, the court shall hold periodic review hearings at least once every six months as required by federal law.

B. At a proceeding to review the disposition orders of the court, the court OR THE DEPARTMENT IF THE DEPARTMENT IS A PARTY shall provide the following persons notice of the review and the right to participate in the proceeding:

1. The authorized agency charged with the child's care and custody.

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

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

4. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in section 8-107.

5. The child, if twelve years of age or older.

6. The child's relative, as defined in section 8-501, if that relative files a written notice of right of participation with the court.

7. A person permitted by the court to intervene as a party in the dependency proceeding.

8. A physical custodian of the child within the preceding six months.

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

10. Any other person as the court may direct.

C. At the first periodic review hearing, the court shall consider whether a parent of a child who is under three years of age has substantially neglected or wilfully refused to participate in reunification services offered by the department.

D. At any periodic review hearing, the court shall consider the health and safety of the child as a paramount concern.

E. At any periodic review hearing the court shall determine:

1. Whether the department has identified and assessed placement of the child with a relative or person who has a significant relationship with the child.

2. Whether the parent or guardian has complied with the court order pursuant to section 8-824, subsection D, paragraph 6 or section 8-842 subsection B, paragraph 1.

F. If the court finds that a child is no longer dependent, before it dismisses the proceeding the court shall provide notice of the sibling information exchange program established pursuant to section 8-543 to the following:

1. An adult who is the former dependent child in the proceeding for whom the periodic review hearing is held.

2. A parent or guardian with legal custody of the former dependent child for whom the periodic review hearing is held.

8-871. Permanent guardianship of a child

A. The court may establish a permanent guardianship between a child and the guardian if the prospective guardianship is in the child's best interests and all of the following apply:

1. The child has been adjudicated a dependent child or is the subject of a pending dependency petition ~~filed by the department~~. If the child has not been adjudicated dependent, all parties must consent to the permanent guardianship. If the child has not been adjudicated dependent and any party objects to a motion for permanent guardianship, the court may schedule a settlement conference or mediation or may strike the motion and proceed with the dependency petition.

2. The child has been in the custody of the prospective permanent guardian for at least nine months. The court may waive this requirement for good cause.

3. If the child is in the custody of the department or agency, the department or agency has made reasonable efforts to reunite the parent and child and further efforts would be unproductive. The court may waive this requirement if it finds one or more of the following:

(a) Reunification efforts are not required by law.

(b) Reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child.

(c) The child is the subject of a pending dependency petition and there has been no adjudication of dependency.

4. The likelihood that the child would be adopted is remote or termination of parental rights would not be in the child's best interests.

B. The court may consider any adult, including a relative or foster parent, as a permanent guardian. An agency or institution may not be a permanent guardian. The court may appoint a person nominated by the child if the child is at least twelve years of age, unless the court finds that the appointment would not be in the child's best interests. The court shall consider the child's objection to the appointment of the person nominated as permanent guardian.

C. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional needs and safety of the child.

D. Unless otherwise set forth in the final order of permanent guardianship, a permanent guardian is vested with all of the rights and responsibilities set forth in section 14-5209 relating to the powers and duties of a guardian of a minor, other than those rights and responsibilities of the birth or adoptive parent, if any, that are set forth in the decree of permanent guardianship.

E. At the guardianship hearing, or by notice filed after the appointment of a permanent guardian or a successor permanent guardian pursuant to section 8-874, the guardian may advise the court as to the identity and contact information of potential successor permanent guardians.

F. The department or agency shall not be responsible for the requirements pursuant to subsection A, paragraph 3 of this section for a petition concerning a child who is not in the care, custody and control of the department or agency.

8-872. Permanent guardianship; procedure

A. Any party to a dependency proceeding or a pending dependency proceeding may file a motion for permanent guardianship. The motion shall be verified by the person who files the motion and shall include the following:

1. The name, sex, residence and date and place of birth of the child.

2. The facts and circumstances supporting the grounds for permanent guardianship.

3. The name and address of the prospective guardian and a statement that the prospective guardian agrees to accept the duties and responsibilities of guardianship.

4. The basis for the court's jurisdiction.

5. The relationship of the child to the prospective guardian.

6. Whether the child is subject to the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963) and if so:

(a) The tribal affiliations of the child's parents.

(b) The specific actions the person who files the motion has taken to notify the parents' tribes and the results of those contacts, including the names, addresses, titles and telephone numbers of the persons contacted. The person shall attach to the motion as exhibits any correspondence with the tribes.

(c) The specific efforts that were made to comply with the placement preferences under the Indian child welfare act of 1978 or the placement preferences of the appropriate Indian tribes.

7. The name, address, marital status and date of birth of the birth parents, if known.

B. The person who files the motion shall serve notice of the hearing and a copy of the motion on all parties as prescribed in rule 5(c) of the Arizona rules of civil procedure, including any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement. In addition to the requirements of rule 5(c) of the Arizona rules of civil procedure, the notice shall be sent by CERTIFIED OR registered mail, return receipt requested, to any parent, Indian custodian and tribe of an Indian child as defined by the federal Indian child welfare act of 1978 (25 United States Code section 1903).

C. The person who files the motion shall provide a copy of the notice of hearing to the following persons if the person has not been served pursuant to subsection B of this section:

1. The child's current physical custodian.

2. Any foster parent with whom the child has resided within six months before the date of the hearing.

3. The prospective guardian if the guardian is not the current physical custodian.

4. Any other person the court orders to be provided notice.

D. In a proceeding for permanent guardianship, on the request of a parent, the court shall appoint counsel for any parent found to be indigent if the parent is not already represented by counsel. The court may also appoint one for the child if a guardian ad litem has not already been appointed.

E. Before a final hearing, the department, the agency or a person designated as an officer of the court shall conduct an investigation addressing the factors set forth in section 8-871, whether the prospective permanent guardian or guardians are fit and proper persons to become permanent guardians and whether the best interests of the child would be served by granting the permanent guardianship. The findings of this investigation shall be set forth in a written report provided to the court and all parties before the hearing. The court may require additional investigation if it finds that the welfare of the child will be served or if additional information is necessary to make an appropriate decision regarding the permanent guardianship. The court may charge a reasonable fee for this investigation pursuant to section 8-133, if performed by an officer of the court. The court may waive the requirements of this subsection for good cause.

F. Before the court may appoint a guardian, the court shall require the prospective guardian to furnish either a valid fingerprint clearance card or a full set of fingerprints to enable the court to determine the applicant's suitability as guardian. If the prospective guardian does not submit a valid fingerprint clearance card, the prospective guardian shall submit a full set of fingerprints to the court for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

G. The person who files the motion has the burden of proof by clear and convincing evidence. In any proceeding involving a child who is subject to the Indian child welfare act of 1978, the person who files the motion has the burden of proof by beyond a reasonable doubt.

H. A court order vesting permanent guardianship with an individual divests the birth or adoptive parent of legal custody of or guardianship for the child but does not terminate the parent's rights. A court order for permanent guardianship does not affect the child's inheritance rights from and through the child's birth or adoptive parents.

I. On finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child if this order would be in the child's best interests and any other provision that is necessary to rehabilitate the child or to provide for the child's continuing safety and well-being. The court may order a parent to contribute to the support of the child to the extent it finds the parent is able.

J. On the entry of the order establishing a permanent guardianship, the dependency action shall be dismissed. If the child was in the legal custody of the department during the dependency, the court may order the department to conduct the investigation and prepare the report for the first report and review hearing. If the child was not in the legal custody of the department, the court may order the child's attorney or guardian ad litem to file a report for the report and review hearing. The court shall retain jurisdiction to enforce its final order of permanent guardianship. The court may order a report and shall set a review to be held within one year following the entry of the final order and may set such other and further proceedings as may be in the best interests of the child. Before a report and review hearing, the court may cause an investigation to be conducted of the facts and circumstances surrounding the welfare and best interests of the child and a written report to be filed with the court. The court may charge a reasonable fee for this investigation pursuant to section 8-133, if performed by an officer of the court.

K. The department or agency shall not be responsible for the requirements pursuant to subsections E, I and J of this section for a motion concerning a child not in the care, custody and control of the department or agency.

L. The court shall provide the guardian with written notice of the sibling information exchange program established pursuant to section 8-543.

(reference to 8-221 post 9/29/21 effective date)

8-221. Counsel right of juvenile, parent or guardian; appointment; reimbursement; guardian ad litem

A. The court shall appoint an attorney for a child in all delinquency PROCEEDINGS THAT MAY RESULT IN DETENTION, dependency or termination of parental rights proceedings that are conducted pursuant to this title. The court shall appoint the attorney before the first hearing. The attorney shall represent the child at all stages of the proceedings and, in a dependency proceeding, through ~~permanency~~ DISMISSAL.

B. If a ~~juvenile,~~ parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person or persons unless the person knowingly, intelligently and voluntarily waives COUNSEL.

C. Before any court appearance that may result in institutionalization or mental health hospitalization of a juvenile, the court shall appoint counsel for the juvenile if counsel has not been previously appointed or retained by or for the juvenile.

D. The county board of supervisors may fix a reasonable sum to be paid by the county for the services of an appointed attorney.

E. If the court finds that the parent or guardian of a juvenile has sufficient financial resources to reimburse, at least in part, the costs of the services of an attorney appointed pursuant to this section, the court shall order the parent or guardian to pay to the appointed attorney or the county, through the clerk of the court, an amount that the parent or guardian is able to pay without incurring substantial hardship to the family. Failure to obey an order under this subsection is not grounds for contempt or grounds for withdrawal by the appointed attorney. An order under this section may be enforced in the manner of a civil judgment.

F. In a county where there is a public defender, the public defender may act as attorney in either:

1. A delinquency or incorrigibility proceeding when requested by the juvenile court.

2. Any other juvenile proceeding that is conducted pursuant to this title if the board of supervisors authorizes the appointment of the public defender.

G. In all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court may appoint a guardian ad litem to protect the juvenile's best interests. This guardian ad litem shall be an attorney. The guardian ad litem is not the child’s attorney.

H. Any guardian ad litem or attorney appointed for a juvenile shall meet with the juvenile before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The guardian ad litem or attorney appointed for the juvenile also shall meet with the juvenile before all substantive hearings. On a showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

This table summarizes

1. **formal comments posted on the Court Rules Forum concerning R-20-0044, which are available here. This link also provides access to the JRTF rule petition.**
2. **informal comments concerning R-20-0044 received via email**
3. **a pending civil rule petition, R-21-0021, regarding service by publication**
4. **three petitions for changing the current juvenile rules, which were filed by the AOC in response to recent legislative enactments**

There are also hyperlinks to individual Rules Forum comments and rule petitions in the left-hand column below. Items 3, 4, and 5 include links to session laws.

WORKGROUP REFERENCES	
Workgroup 1	**See comments 1, 3, 9, 10, 11, 12**
Workgroup 2	**See comments 5, 9, 11**
Workgroup 3	**See comments 2, 5, 6, 7, 8, 9, 10, 11, 12, 13**
Workgroup 4	**See comments 4, 5, 6, 7, 8, 9, 12, 13**

PLEASE NOTE: The Editorial Group met on August 6 and discussed many of the comments shown below. If the Editorial Group had a recommendation, the recommendation is shown at the end of the item, after the letters "EG."

Number + Source + Date	Summary
1. Barbara Vaught Via email 4.30.2021	Rule 607(e)(3), as filed, provides, (3) The Court of Appeals must order appellant to file the pro se brief no later than 15 days after the date of the order. No extensions may be granted absent extraordinary circumstances. Any appellee may file an answering brief and appellant may file a pro se reply brief as respectively provided in subparts (a)(2) and (a)(3). ~~The court may not grant relief without permitting the appellee to file an answering brief. No pro se reply brief may be filed.~~ Ms. Vaught commented, "should the last two sentences have been deleted? They seem to contradict the new sentence." Staff Note: Ms. Vaught is correct; the last two sentences are contradictory. They describe an alternative process that Division One disfavored. Staff recommends deleting the last two sentences. **EG: The Editorial Group recommends the deletion of the last two sentences, as shown above.**

2. AZ Attorney General [Rules Forum] 05.27.2021	The State Bar filed rule petition R-21-0021 in January 2021. The petition's proposed amendments to Civil Rules 4.1 and 4.2 would require a party seeking to effect service by publication to file a motion and obtain a court order that authorizes service in that manner. The JRTF petition, R-20-0044, includes Rule 329. Rule 329 governs service of a dependency petition. If service is not completed under Rule 329 (a) (providing papers to a parent at the preliminary protective hearing), Rule 329(b) then requires, inter alia, service "… 10 days before the hearing when a parent is served by publication. Service must be in the manner provided by Civil Rules 4(f), 4.1, or 4.2 …" In other words, the amendments proposed by R-21-0021 could impact service of process under Juvenile Rule 329. On April 30, the Attorney General on behalf of DCS filed a comment to R-21-0021. The AG's comment opposed R-21-0021. The comment said, in part: > The proposed amendment to Rules 4.1 and 4.2 is simple: it adds the requirement that prior to initiating service by publication, a party file a motion to do so, supported by an affidavit setting forth the party's "reasonably diligent efforts to serve the person." (Petition at Attachment A.) This motive—attempting to ensure that every effort is made to serve a party by a means other than publication whenever possible—is laudable in general, but the unintended consequences of this particular change make its application in juvenile matters exceptionally problematic. On May 27, the State Bar filed a reply that addressed the Attorney General's comment. The reply advised that the State Bar had considered juvenile proceedings before it filed its rule petition and concluded that "the proposed changes do not alter the current practice in juvenile court cases." Here is a link to R-21-0021, including the petition, comments, and reply. The Court will consider R-21-0021 at its August rules agenda. Does R-21-0021 suggest the need for any changes to Rule 329? **EG: Workgroup 3 might consider adding in Rule 329(b) an exception to the Civil Rules on publication that would be applicable in dependency cases.**

The AOC filed R-21-0036, R-21-0037, and R-21-0038 on June 30, 2021. The petitions are linked below. The chaptered versions of the respective legislative enactments are available by clicking on the hyperlinks. Each petition requested expedited consideration at the Court's August rules agenda. The petitions are open for public comments until October 1, 2021, a deadline that would allow the JRTF to file comments.

3. R-21-0036	This petition concerns current Rules 94 and 102 on emancipation. It implements legislative enactments contained in SB 1332 (Laws 2021, Chapter 144.) The Task Force considered this bill before filing its rule petition, but the workgroup should double-check emancipation Rules 502 and 505 to assure the legislative changes have been fully incorporated in the proposed rules.
4. R-21-0037	This petition concerns Rule 83 (restyled Rule 415) and implements a change contained in SB 1831 (Laws 2021, Chapter 384.) The petition notes that comments from Judges Kreamer, Quigley, and Young "were considered," but it does not discuss the content of their comments. Regardless, the legislation will require a change to the restyled rule. Among other things, birth parents can no longer withhold permission to disclose identifying information. Instead, they have to acknowledge in a notarized statement that the adoptee has the right to his or her birth certificate when he or she reaches eighteen. There also is a statutory procedure for the birth parent to leave contact information if the adoptee wants to contact the birth parent; it also allows the birth parent to say he or she wants no contact with the adoptee. See in SB 1831 the revisions to A.R.S. §§ 8-106(E) and 36-340(D). Staff note: Should the modification to the restyled rule simply reference the statute, as R-21-0037 proposes, or should it describe the statutory requirements? **EG: Refer to Workgroup 4 for consideration.**
5. R-21-0038	This petition concerns current Rules 10, 38, 40, 62, 64, and 65 and results from the enactment of SB 1391 (Laws 2021, Chapter 228.) The legislation amended A.R.S. § 8-221, which pertains to the appointment of counsel and GALs. The petition notes that "a draft was shared with the presiding juvenile court judges of Maricopa, Pima, and Yavapai counties, and their comments were considered," but it does not discuss the specific comments. However, in a subsequent email thread, Judge Kreamer wrote, The new Rule 206 does seem to have conflicting language paragraphs A and B. Paragraph A states that the juvenile has the right to counsel in proceedings "initiated by petition as provided by law." It does not reference a "citation." Paragraph B states that the court must appoint "upon the filing of a petition or citation." This does at least suggest that a juvenile is entitled to an attorney when only a citation is filed. I don't remember how "or citation" got into Rule 206, so I'm copying the two Marks to see if they know. I'm concerned about the "citation" language in 206 because I believe some "citations" don't result in court cases but instead result in diversion and shouldn't trigger the right to counsel. I therefore don't think the

	citation language should be added to the emergency rule (and should be taken out of 206). Staff thereafter sent an email that included these excerpts from the rule-by-rule minutes concerning Rule 10 (now Rule 206). ***[11.08.2019] Rule 10 ("appointment of an attorney").*** Ms. Phillis reviewed the four sections of this draft rule. Like Workgroup 4, Workgroup 2 prefers the word "attorney" rather than "counsel." In section (a) ("right to an attorney"), a member suggested adding for completeness, after the phrase "initiated by a petition," the words "or a citation," and Ms. Phillis agreed. The same words will be added after "a petition" in section (b). ***[12.13.19] Rule 10 ("appointment of an attorney").*** In section (a) ("right to an attorney"), after the phrase "right to be represented by an attorney in all delinquency proceedings initiated by a petition," members had previously added the words "or a citation." (They had made a corresponding change in section (b) ("appointment of an attorney").) Members reconsidered those revisions at today's meeting. Adding these words could require the appointment of counsel on citations to juveniles to appear in a municipal traffic court, or for other low-level offenses where the appointment of counsel might not be warranted. Members expressed concern with creating a right to counsel by rule—especially one that creates a financial burden on municipalities—that does not exist under the constitution or by statute. However, Ms. Phillis believed that a juvenile was entitled to court-appointed counsel even on a misdemeanor, because the juvenile could be detained on that charge. After reviewing A.R.S. § 8-221(B), members consolidated draft Rule 10(b) and (c) ("finding of indigent") into a revised Rule 10(b), which now simply provides, "**Appointment of an Attorney.** After the filing of a petition or citation in juvenile court, the court must appoint an attorney for the juvenile as provided in A.R.S. § 8-221." Staff noted that whether this reasoning still applies after the recent statutory amendments is a separate issue. R-21-0038 does not provide for the appointment of counsel when a case is initiated by citation. R-21-0038 uses the word "shall." Judge Armstrong suggested that all references to "shall" be changed to "must" to conform to the restyling convention. Compare the proposed amendments in R-21-0038 with the restyled rules, as follows: restyled Rule 206 with Rule 10, 303 with (38), 305 with (40), 345 with (62), 349 with (64), and 350 with (65).

<table>
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<td>6.
Judge Quigley
(Brian Molitor)
Via email
07.06.2021</td>
<td>Judge Quigley wrote, "Brian Molitor, a former AG and now contract counsel who has worked in Pima. Cochise, and Santa Cruz pointed something out to me today that I think we should consider. It is the situation where a parent does not appear for the PHC/PPH but has spoken with the attorney assigned to represent them in advance of the PHC/PPH. Many times, the parent will give the assigned attorney permission to accept service. Sometimes the parent is at work and can't get out or is ill or a myriad of other reasons. This does not happen often, but it happens." Several members replied to Judge Quigley's email advising that they concurred with this suggestion.

Staff raised concerns. For example, does this proposal give the court jurisdiction over a parent who hasn't physically appeared? How is the absent parent given an admonition at the PPH? Can the attorney proceed at the PPH in the parent's absence? Does the absent parent retain or waive the right to a temporary custody determination? Does the proposal permit the parent's oral the authorization? Is counsel authorized to enter into agreements at the preliminary protective conference in the parent's absence?

Judge Quigley responded. The proposal would give jurisdiction if the parent gave permission to the attorney. The admonition is given through the attorney, and the parent signs the Notice which should be filed in the court's file, and then the parent is required to appear at the next hearing. This has been in practice for a long time now and it has worked well. When we do this, the attorney does proceed with the PPH. I have never had a case where the parent who is not appearing has asked for a TC determination. The parent has agreed with TC. I suppose it would depend upon why the parent was not there. And, yes I anticipate it would be oral authorization. The PPH is so much legal work and findings and not much colloquy other than ensuring they understand and answering questions at the end of the hearing but not all judges do this. As to parenting time/services, the atty could have that discussion in advance and advise the court what the client requests or objects to at the PPH. I am sure John Gilmore, Kasey Coughlin, Bill O and Chris P will have valuable insight and positions on the suggested language.

The proposed amendment to Rule 303 is as follows:

Rule 303. Assignment and Appointment of an Attorney; Advisory Attorney
a. Child's Position. The court must consider a child's objection to the appointment of the person nominated as successor permanent guardian. The court may appoint as guardian the person nominated by a child 12 years of age or older, unless the court finds it would not be in the child's best interests to do so.
b. Assignment of an Attorney.</td>
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	1. ***Assignment.*** The court must assign an attorney in a dependency proceeding to persons who are entitled to representation by law, including ICWA. 2. ***Duration.*** The assigned attorney must provide representation from notice of the assignment until the court formally appoints or otherwise relieves the assigned attorney. 3. ***Limitation.*** The assigned attorney is not attorney of record for purposes of accepting service of process for a parent who does not appear unless the parent, after communication with the assigned attorney, expressly authorizes counsel to accept service. See further Judge Thumma's comment below (item 9) concerning restyled Rule 303. **EG: The Editorial Group proposed the following amendment to Rule 303(a)(3):** **"Limitation. The assigned attorney is not attorney of record for purposes of accepting service of process for a parent who ~~does not appear~~ has never appeared in the proceeding unless the parent in writing expressly authorizes counsel to accept service."**
7. Judge Quigley Via e-mail 07.14.2021	Judge Quigley sent an email to her workgroup members in which she recognized that the restyled rules did not have a procedure for filing a petition to revoke a guardianship, and that the statute is sorely lacking in any procedure. See further A.R.S.§ 8-873. Members concurred in the suggestion that the Task Force propose such a provision. Professor Atwood thereafter prepared a draft Rule 3XX concerning a petition to revoke a permanent guardianship. The draft rule is at the end of this summary. Professor Atwood expressed concern that the Task Force might be simply too late to include this proposed new rule in the current revisions since it hasn't been vetted by the Task Force or sent out for public comment. She considered adding a shortened version to the existing rule on successor guardianships (calling it something like revocation and successor guardianship), but that might produce more harm than good. After discussion, workgroup members believed that the better course would be filing a new or supplemental rule petition, possibly with a request for expedited consideration (at the December rules agenda) so the rule could become effective concurrently with the other restyled rules.
8.	The comment focuses on Rules 303 through 306. The comment expresses concern that SB 1391 will become effective on September 29, 2021, whereas

Rebecca Masterson, Generation Justice Rules Forum 07.20.2021	the restyled rules won't be effective until July 1, 2022. (The petitioner might be unaware of R-21-0038, comment number 5 above.) Nonetheless, petitioner requests the following: - Expediting the adoption of Rules 303 - 306 to January 1, 2022 - Adding to Rule 306(f)(2) that attorneys and GALs must communicate with "other attorneys" - Amending Rule 303(e) to allow the assignment of counsel to a child before a petition is filed. **EG: Recommends adding "or child" to Rule 303(e) as follows: "Advisory Attorney. If authorized by a county, an attorney may be assigned to provide legal advice to a parent, ~~or~~ guardian, or child before a petition is filed."** **Maricopa and Pima Counties make counsel available before a petition is filed.** Executive Order: In connection with its discussion of the proposed amendment to Rule 303, the comment refers to federal Executive Order 13930, which is available here.
9. Judge Thumma Rules Forum 07.21.2021	Judge Thumma's comment concerned multiple rules. He noted at the beginning of the comment that some (if not all) of his comments have been shared informally with members of the Task Force, meaning they may have been considered and rejected before the Task Force filed the Petition. If, however, that consideration has not taken place, he asks that the Task Force consider these comments in formulating its Reply in support of the Petition. The current comment includes the following suggestions. Proposed Rules 205(c) and 208(d) addressing warrants do not require probable cause for issuance of a warrant. Suggest adding a probable cause requirement in all Proposed Rules addressing warrants, as Proposed Rule 224(c) does. See also Ariz. R. Crim. P. 3.1; U.S. Constitution 4th Amendment. Although referring to competence, Proposed Rule 208(e), the Proposed Rules do not provide procedural guidance for competency proceedings. Based on a comparable statutory scheme for competency, the Arizona Rules of Criminal Procedure provide procedural directives for competency proceedings. Ariz. R. Crim. P. 11. Suggest adding comparable rules for delinquency and incorrigibility proceedings. [Staff note: As a result of Judge Thumma's prefiling comment, the Task Force included in its April

	filing a new Rule 208(e): "Competence. A juvenile may not participate in a delinquency proceeding if the court determines that the juvenile is not competent. The procedure for making that determination is provided in A.R.S. §§ 8-291 through 8-291.11."] Proposed Rule 204 (discussing the time to file a delinquency petition) is a restyled carryover of current Rule 25. It is, in substance, a limitations period for what needs to happen before a delinquency petition is filed that is set forth by rule (not statute) that becomes applicable after a juvenile case begins. See Proposed Rule 101(a) ("These rules apply in all juvenile court proceedings, . . ."). Suggest either specifying the authority for Proposed Rule 204 or deleting it. If Proposed Rule 204 is retained, suggest specifying what happens if the deadline (45 + 30 days if further investigation is required) is not met. That would appear to be, either technically or practically, dismissal with prejudice (as it is not clear how the defect could ever be cured), although Proposed Rule 204 and current Rule 25 are silent on the point. **EG: The Editorial Group expressed concerns regarding dismissal with prejudice, and believe that there might be extenuating circumstances that don't merit that action.** In referencing (and defining) warrants, the Proposed Rules use non-identical terms that would appear to benefit from further definition or clarity. Proposed Rule 205(c)(1) refers to a "provisional warrant," with a statement of what such a warrant authorizes, adding that "[a] provisional warrant may also be known as a discretionary warrant, a temporary detention warrant, or by other names." Proposed Rule 205(c)(2) then uses "[w]arrant" and "warrant for the juvenile's arrest," apparently to mean something different from a "provisional warrant." Elsewhere, the Proposed Rules reference an "arrest warrant." Proposed Rules 212(b)(2); 218(a) and 224(c) (referencing both "[w]arrant" and "arrest warrant"). Historically, different terms have been used in Juvenile courts for warrants, including "non-mandatory warrant," "temporary custody warrant" (Arizona or nationwide), "bench warrant" or "arrest warrant." Suggest a (1) definition of the various warrants being referenced and (2) further consideration of whether using exact terms (rather than what appear to be close synonyms) to describe the different types of warrants would add clarity. Suggest, for Proposed Rule 303(a)(3), that the provision be changed to read "The assigned attorney is not attorney of record for purposes of accepting service of process for a parent, guardian, or Indian custodian who HAS NEVER APPEARED IN THE PROCEEDING" (to clarify that it is not the failure to appear at a specific hearing but, instead, having never appeared at any hearing in the proceeding).

	EG: See number 8 above. The Proposed Rules reference both "trial" and "adjudication" at different places, which could be read as suggesting the two different terms mean two different things. Suggest (1) defining the terms as meaning the same thing in Proposed Rule 102; (2) using one term (not both) consistently throughout, or (3) if they are intended to mean two different things, defining them accordingly in Proposed Rule 102. **EG: The Editorial Group recommends adding a definition to Rule 102 as follows:** **"(z) 'Trial' as used in these rules means an adjudication hearing."** The Proposed Rules variously refer to "summary judgment," Proposed Rule 318; "judgment as a matter of law," Proposed Rule 319; "judgment," Proposed Rule 603(a)(3)(C); and "final judgment," Proposed Rule 601(a). The Proposed Rules, however, do not define "judgment" or "final judgment," and it is unclear what would constitute a "judgment" or a "final judgment" in Juvenile court. Suggest either using a definition (or definitions) to distinguish between the different terms, or using one term to do the work (perhaps using "final order," which is a defined term) throughout and eliminating references to judgments (Proposed Rule 317 seems to take this latter approach). Does a person seeking to revoke that person's consent to an adoption file a motion or a petition? Proposed Rule 414(a) states "A person seeking to revoke their own consent to adoption of a child must file a petition stating the basis for the relief sought," but then refers to Proposed Rule 417 for such post-adoption challenges; Proposed Rule 417 states "A person seeking to set aside a final order of adoption must file a motion to set aside the order . . ." Suggest clarifying by adding something in Proposed Rule 414 like "A person seeking to revoke their own consent to the adoption of a child BEFORE ENTRY OF A FINAL ORDER OF ADOPTION must initiate such a challenge by filing a petition stating the basis for the relief sought." Proposed Rule 603(a)(2) & (3) uses 10, 12 and 15 days for various deadlines for certain actions and Proposed Rule 604(b), (c) & (d) uses 5, 7 and 12 days for various deadlines for various other actions. Suggest considering using one common period (or set of periods) to avoid a trap for the unwary while, at the same time, not causing undue delay.
10. Judges Thumma and McMurdie	This comment address Rule 601(b)(2)(E), which provides that an order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody is a final and appealable order.

Rules Forum 07.21.2021	The comment cites legal (existing case law) and practical (delayed resolution and delayed permanency) reasons why such orders should not be appealable. The petition requests that the Court not adopt this provision. Comment number 11 contains a similar request concerning Rule 601(b)(2)(E). **EG: The Editorial Group discussed this comment but had no resulting recommendation.**
11. Dawn Williams, AZ Attorney General Rules Forum 07.22.2021	This comment proposes modifications to Rule 104, 218, 313, 324, 329, 333, 334, 335, and 601. See the Appendix to the comment. For Rule 104, which concerns the admission of reports, the comment proposes changing "may to "must" in subparts (d)(2), (d)(4), and (d)(7) (Regarding DCS court reports, see further Professor Bennett's comment, item number 12.) Regarding Rule 218, when a detention hearing is not timely held and rather than releasing the child to DCS, this comment instead proposes that juvenile probation be required to contact the DCS hotline. In Rule 313, would add a new subpart allowing DCS to have access to confidential information without a court order when DCS is not a party to the case but has been ordered to conduct an investigation in the case. In new Rule 324, the comment proposed deletion of the words "because relocation was necessary to protect the child" and to enlarge the required time for DCS to provide notice from 24 hours to 72 hours. In Rule 329, the comment proposes adding a new section (j) concerning service by publication. **EG: See item 2 above.** In Rule 333, the comment proposes to strike language that would permit a parent who was not served and did not appear for the PPH to request a review of temporary custody at the initial dependency hearing. The comment proposes the deletion of text in Rule 334 that would require the court to conduct, upon a parent's request, a temporary custody hearing at the initial dependency hearing. In Rule 335 on QRTPs, the comment proposed modifications that track the changes proposed by the JRTF in its reply concerning interim Rule 52.1. Staff note: Please see the JRTF reply regarding Rule 52.1 to confirm that Rule 335 conforms to the proposed final version of Rule 52.1.

<table>
<tr><td></td><td>The comment to Rule 602 proposes to delete subpart (b)(2)(E) – as also proposed by the McMurdie/Thumma comment number 11 above – and the Task Force comment to Rule 602 concerning this subpart.</td></tr>
<tr><td>12.
Paul Bennett
U of A Law
Rules Forum
07.23.2021</td><td>Professor Bennett's comment contends that attorneys for children and parents should be able to attend and participate in Child and Family Team meetings conducted by DCS. His comment says, "CFT's have become more and more significant as appellate courts place an increasing burden on parents and families to object to and offer alternatives to the case plans imposed by DCS…. Children in CFTs need their lawyers at their side." He says that there's an unwritten rule that children's attorneys cannot participate in CFTs, that they don't always get notice of the meetings or are being told they are not allowed to attend or can attend but cannot speak. He believes ER 4.2 should not be a barrier to participation.

As to attorneys for a child, He proposes adding a new section h to restyled Rule 306:

(h) In order for attorneys and GALs to meet the obligations of informed representation above:

(1) Attorneys or GALs for a child are not subject to Rule 4.2 of the Rules of Professional Conduct for the limited purpose of communicating with child safety workers in CFTs or otherwise. Such communications may be initiated by the attorney or GAL for a child without the permission of the Assistant Attorney General assigned to the dependency action.

(2) The Assistant Attorney General assigned to the dependency action shall make reasonable efforts to:

(i) Inform attorneys or GALs for a child of scheduling and contact information for child and family team meetings and how to provide input to DCS staffings;

(ii) Inform DCS child safety workers that attorneys or GALs for a child may and are encouraged to fully participate in child and family team meetings and to provide input to DCS staffings;

(iii) (iii) Assure that DCS provides timely disclosure as required by these rules.

His comment says, "I can hear the DCS objections in my head. I'm sure there were instances of inappropriate behavior by some lawyers in the past. However, if an attorney abuses the privilege, there are other mechanisms to</td></tr>
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	deal with that. The benefits of attorney or GAL participation far outweighs the risk of attorney misbehavior." As to <u>attorneys for a parent</u>, Professor Bennett contends, "The same rules should also apply to parents' attorneys. Parents can be just as bullied or confused or discouraged at a CFT as their child. It does not help children and families for parents to participate in these essential meetings without the help of their attorneys. It does not help children and families that the silence or acquiescence of a confused or overwhelmed parent at a CFT can somehow constitute a waiver of DCS's essential obligation to provide reasonable reunification efforts when those parents do not have the full assistance of counsel. We are fooling ourselves if we believe that the same parents who have been determined to lack capacity are able to negotiate what goes into their case plans without the active help of their attorneys. It is not a fair process if their attorneys cannot fully participate." Finally, as to <u>DCS court reports</u>, Professor Bennett says, "I cannot think of another area of law where one party can present evidence to the Court – including otherwise inadmissible evidence -- and the other parties cannot. The Court Report rule is inherently unfair and one-sided. … "I commend the new rule that no longer requires a judge to admit Court Reports into evidence. However, why not allow – not mandate – that any other party may submit a timely report that must be reviewed by the judge and may be admitted as well? Maybe parties will offer those reports and maybe they won't. But what is the downside to allowing parents and children the same ability to communicate to the court that the government has? The upside is that the judge will have more information at the onset of the hearing that can enable a more informed decision and save court time. And the opportunity to be heard would be equal. … "A second issue is whether these reports, once admitted, remain admitted for all subsequent hearings including severance trials. The current and proposed rules are not very clear. If a report has been introduced at a prior hearing – e.g., a preliminary protective hearing or dependency review – DCS takes the position that it now admitted (past tense) for all subsequent hearings including severance trials. I hope this rule has changed that. But it seems unclear. "The difficulty is that these reports serve several purposes. For preliminary protective hearings and dependency reviews, they give the Judge necessary information to make short term decisions. The standard of proof is different. Hearsay is allowed at a preliminary protective hearing and a review -- not in

	a severance trial. However, when the same report is deemed already admitted in the severance trial, the report is being utilized entirely for evidentiary purposes. Early and permanent admission of a DCS report becomes a hearsay loophole that undermines the procedural protection of what should be the most constitutionally protected proceeding – the government permanently taking a child from a family. The current DCS position is remarkably unfair to the other parties who, at the time the report was initially admitted, may have had no issue or nothing was being contested. But later on, when termination is at stake, with different factual issues and a different burden of proof, DCS argues that it is too late to object. That is why I would favor an explicit rule that specifies that all DCS reports and attachments must be reintroduced at any termination or guardianship hearing." Note: For a contrary view, see the Attorney General's discussion of DCS court reports in its comment, item number 11. Click on the link to the AG's comment and see pages 2 through 5. Article: Professor Bennett appended to his comment a 2021 academic article titled "Contact with Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US counties." The article noted that "The comparatively extreme rates of foster care placement and TPR [termination of parental rights] in Maricopa, AZ, led to very high rates of both events for all children in that county, except Asian/Pacific Islanders." **EG: The Editorial Group discussed Professor Bennett's comment but there was no resulting recommendation.**
13. Amanda Glass AZ Ctr for Disability Law Rules Forum 07.24.2021	This comment proposes adding an identical subpart to the "findings" section of each of the following rules: Rule 332 (PPH), Rule 334 (IDH), Rule 341 (Review Hearing), Rule 342 (Motion for Return of the Child), Rule 343 (Permanency Hearing), Rule 345 (IGH), Rule 346 (GAH), Rule 350 (Initial Termination Hearing), and Rule 351 (Termination Adjudication Hearing). The new subpart would require the court to make the following finding: > … identify the adult who has special education decision-making authority as to this child at this time in accordance with federal regulations at 34 C.F.R. § 300.30; … The comment explains that the Individuals with Disabilities Education Act (IDEA) is a federal law from which special education rights are derived. 20 U.S.C. § 1400, *et. seq*. It is under the IDEA that students with disabilities may be identified as eligible for and provided special education and related services through an Individualized Education Program (IEP).

	Determining who can make decisions for a child who needs special education begins with the IDEA's complex definition of "parent." A child cannot be evaluated or begin to receive special education services until an IDEA Parent has given written permission. In most cases it is the IDEA Parent who consents to the first evaluation. It is the IDEA Parent who consents to services beginning under the IEP or disagrees with the IEP that the school district is proposing and uses the special education hearing and appeal system to get the services the child needs. Making sure that each child in the care of a child welfare agency has an effective IDEA Parent is the best way to ensure that children with disabilities in out-of-home care get help to achieve their learning potential. IDEA's implementing regulations define "parent" as: (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or (5) A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act. [34 C.F.R. § 300.30(a)] In some cases, the IDEA Parent for a given child will be obvious. However, for some dependent children, there can be more than one adult at any given time who meet the definition of "parent" under IDEA. Determining which adult is the IDEA Parent in those situations is important to provide clarity to the child's school system and to avoid conflicts and power struggles between adults to the detriment of the child. A.R.S. § 8-514.08 mirrors what is already enshrined in the federal IDEA regulations and places some responsibility on the Department of Child Safety (DCS) to provide a child's public education agency (school) with the name of someone able to act as the child's IDEA Parent. Students in foster care are 2 to 3 times more likely than their peers not in care to have disabilities that should qualify them for special education. Although they are entitled to services and supports, Arizona foster youth with disabilities are routinely denied those necessary accommodations and end up in inferior learning environments because they lack consistent educational

	advocates. The result is that foster youth with disabilities are more likely than their peers to face poor educational and employment outcomes. The IDEA is built on the premise that all parents play an active role in their child's education and are equipped to advocate to the school for their child's needs. For many populations, but especially for children in foster care, this premise does not hold. Without a consistent special education "parent," these students have no one to push back against schools that are not acting in a child's best interests, and many foster children go unidentified as eligible for services or are short-changed when it comes to having their disability-related needs met. One way to help improve educational outcomes for foster youth is to ensure, from the moment a child enters the child welfare system, that all parties know who the IDEA Parent is. The IDEA itself and A.R.S. § 8-514.08 provide some help in determining who that person is, but there are situations that present ambiguity and undermine advocacy efforts. Having clarity on who the IDEA Parent is for a given foster child is valuable for the child, the IDEA Parent, school districts, and DCS. Without knowing who the IDEA Parent is, schools are unable to know who to invite to IEP meetings, who to request informed written consent from before conducting special education evaluations, and who will have standing when it comes to disputing school decisions. Without knowing who the IDEA Parent is, DCS will not know whose information to share with the child's school, as required by A.R.S. § 8-514.08. The practice now appears to be that the dependency court will not weigh in on who the IDEA Parent is unless a conflict arises, and a party petitions the court for an order. However, to avoid delay and confusion, we recommend that rules be adopted that will require dependency courts to proactively make these determinations, rather than waiting until a conflict arises. **EG: The Editorial Group proposed adding to Rule 310 ("child's rights") a new section (c) shown below and modifying the title of the rule to "child's rights; special education."** **(c) Special Education. In a dependency, Title 8 guardianship, or termination of parental rights action, DCS must notify the court concerning the child's entitlement to special education services, related services, or an initial evaluation, under A.R.S. §§ 15-761 through 15-774. The court must enter a signed order designating a person, other than a DCS child safety worker, who has special education decision-making authority as to the child, as provided in A.R.S. § 8-514.08.**
14. Staff	This item concerns Rule 326. The April 12, 2021 Task Force meeting minutes state,

07.28.2021	"Rule 326 is a new rule titled 'required admonition and findings.' The rule would supplant the admonition provisions that are already in various dependency, guardianship, and termination rules, however, those provisions remain in these rules. The workgroup inquired whether the Task Force preferred to retain Rule 326 and to delete those other provisions, or to simply delete Rule 326. The workgroup had no preference, nor did the Task Force. If Rule 326 is retained, members saw a need to carefully review the admonition provisions in those other rules to assure they are adequately replicated in the new rule. After discussion, members agreed to retain Rule 326 and to also retain the admonition provisions in the other rules, to note the duplication in the rule petition, and to solicit comments on stakeholder preferences." None of the comments to the rule petition indicated a preference. The Task Force should therefore decide whether it will (1) retain Rule 326, and modify the admonition provisions of other dependency, guardianship, and termination rules, or (2) eliminate Rule 326, and renumber the subsequent rules in Part III. Is there a third option, e.g., one that would retain Rule 326 with modifications?

Rule 3XX. Petition to Revoke a Permanent Guardianship

a. **Generally.** The child, a parent or the guardian of the child, or any party to the dependency may petition for the revocation of an order granting permanent guardianship pursuant to A.R.S. § 8-873.

b. **Petition.** The petition must state what significant change of circumstances have occurred that support a revocation as required by A.R.S. § 8-873(A) and be verified by the person filing the petition. A notice of hearing must be filed with the petition.

c. **Notice**. The person filing the petition must provide a copy of the petition to the parent(s) and the permanent guardian. If the child is an Indian child, the person must provide notice as required by ICWA.

d. **Court's Duty.** Upon receiving a petition to revoke the permanent guardianship the court:

1. must appoint a guardian ad litem for the child and appoint the former attorney for the child, if available, or a new attorney; (how do we deal with this when case comes in via dependency petition); and
2. may set a status/initial hearing within 45 days after the filing of the petition; and,
3. may order DCS to investigate and provide a copy of the report to the court 5 business days prior to the hearing.

e. **Status/Initial Hearing.** At the status/initial hearing the court must determine whether:
   1. a copy of the petition was provided as required by (c);
   2. notice as required by ICWA was provided if the child is an Indian child;
   3. DCS provided the report of its investigation;
   4. to disclose the DCS report or a redacted report to the parties;
   5. the parent(s), permanent guardian, guardian ad litem, or child's attorney object to the petition; and
   6. to grant the petition, continue the hearing, or set a contested hearing.

f. **Burden of Proof.** The petitioner has the burden of establishing by clear and convincing evidence there was a significant change in circumstances that supports a revocation as required by A.R.S. § 8-873 (C) or (D).

g. **Contested Hearing.** The court may consider evidence admissible under 104(b), which may include hearsay.

h. **Procedure.** The court must consider the following:
   1. the child's position if at least twelve years of age;
   2. the duration of the guardianship;
   3. the level of contact between the parent and the child during the guardianship; and,
   4. any other relevant factor.

i. **Findings.** All findings must be contained in a signed minute entry or order. Before the court may revoke the order granting permanent guardianship, the court must find whether it is in the child's best interest and

1. state findings related to the considerations in subsection (h);
2. make findings pursuant to ICWA if the child is an Indian child; and
3. if the court grants the petition, find by clear and convincing evidence whether:
    i. there was a significant change in circumstances; or,
    ii. the parent remedied the circumstances in the guardianship motion when the pre-adjudication guardianship was ordered and that return of the child would not create a substantial risk of harm to the child's physical, mental, or emotional health or safety.

j. **Orders.** The court must enter orders:

1. Granting or denying the petition to revoke the guardianship.
2. If the guardianship is revoked:
    (A) the court may order reunification services for the parent; or,
    (B) the court may order a case plan of guardianship, even if no successor guardian is identified; and
    (C) the court may order DCS to investigate
3. other orders that may be appropriate.

Rule 3XX. Petition to Revoke a Permanent Guardianship

a. **Generally.** The child's guardian~~,~~ or any party to the dependency~~a parent or the guardian of the child~~, ~~or any party to the dependency~~ may petition for the revocation of an order granting permanent guardianship pursuant to A.R.S. § 8-873.

b. **Petition.** A verified ~~The~~ petition must be filed and ~~state what~~a~~llege~~ state a factual basis describing a significant change of circumstances supporting a revocation ~~have occurred that support a revocation~~ as required by A.R.S. § 8-873(A). ~~and be verified by the person filing the petition.~~ A notice of hearing must be filed with the petition.

c. **Notice**. The person filing the petition must provide a copy of the petition to the parent(s) and the permanent guardian. If the child is an Indian child, the person must provide notice as required by ICWA.

d. **Court's Duty.** Upon receiving a petition to revoke the permanent guardianship the court:

1. must appoint a guardian ad litem and attorney for the child ~~child and appoint the former attorney for the child, if available, or a new attorney~~; (how do we deal with this when case comes in via dependency petition); and
2. must~~ay~~ set an~~ status/~~initial revocation hearing within 45 days after the filing of the petition~~; and~~,
3. ~~may order DCS to investigate and provide a copy of the report to the court and to the parties 5 business days prior to the hearing or *DCS proposed language*: the court may provide a minute entry to the DCS hotline that a petition to revoke was filed. DCS must provide its investigative report to the parties or a notice to the court that no investigation was conducted, 5 business days prior to the hearing.~~

e. **Status/Initial Hearing.** At the ~~status/~~initial revocation hearing the court must determine whether:

1. a copy of the petition and notice was provided as required by (c);

2. DCS provided the report of its investigation to the court;
3. ~~to disclose the DCS report or a redacted report to the parties;~~
4. the parent(s), permanent guardian, guardian ad litem, or child's attorney object to the petition; and
5. to grant the petition, continue the hearing, or set a contested hearing.

f. **Burden of Proof.** The petitioner has the burden of establishing by clear and convincing evidence there was a significant change in circumstances that supports a revocation as required by A.R.S. § 8-873 (C) or (D).

g. **Evidence ~~Contested Hearing~~.** The court may consider evidence admissible under Rule104(b)..~~, which may include hearsay~~.

h. **Procedure.** The court must consider the following:

1. the child's position if at least twelve years of age;
2. the duration of the guardianship;
3. the level of contact between the parent and the child during the guardianship; and,
4. any other relevant factor.

i. **Findings.** All findings must be contained in a signed minute entry or order. Before the court may revoke the order granting permanent guardianship, the court must find whether it is in the child's best interest and

1. state findings related to the considerations in subsection (h);
2. make findings ~~pursuant to~~ required by ICWA if the child is an Indian child; and
3. if the court grants the petition, find by clear and convincing evidence whether:
   i. there was a significant change in circumstances after the order for permanent guardianship of a child previously adjudicated dependent and revocation is in the child's best interests; or~~,~~
   ii. the parent remedied the grounds alleged ~~circumstances~~ in the ~~guardianship~~ motion for~~when~~ the pre-adjudication guardianship ~~was ordered~~ and ~~that~~ return of the child would

not create a substantial risk of harm to the child's physical, mental, or emotional health or safety.

j. **Orders.** The court must enter an order~~s:~~ granting or denying the petition to revoke the permanent guardianship and, if the guardianship is revoked, may:

~~1. Granting or denying the petition to revoke the guardianship.~~
~~2. If the guardianship is revoked:~~

(A) ~~the court may~~ order reunification services for the parent; or,

~~(B)~~~~the court may~~ order a case plan of guardianship, even if no successor guardian is identified; ~~and~~

~~(C)the court may order DCS to investigate~~

~~3.~~2. enter other orders that may be appropriate.

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A. The child, a parent of the child, the guardian of the child or any party to the dependency proceeding may file a petition for the revocation of an order granting permanent guardianship if there is a significant change of circumstances, including:

1. The child's parent is able and willing to properly care for the child.

2. The child's permanent guardian is unable to properly care for the child.

B. The court shall appoint a guardian ad litem for the child in any proceeding for the revocation of permanent guardianship.

C. The court may revoke the order granting permanent guardianship of a child who previously has been adjudicated a dependent child if the party petitioning for revocation proves a change of circumstances by clear and convincing evidence and the revocation is in the child's best interest. When making this determination, the court shall consider all of the following:

1. The child's position on the revocation of the guardianship if the child is at least twelve years of age.

2. The duration of the guardianship and the level of contact between the parent and the child during the guardianship.

3. Any other relevant factor.

D. The court may revoke the order granting permanent guardianship of a child who has been the subject of a dependency petition but who has not been adjudicated a dependent child and order that the child be returned to the child's parent if all of the following are true:

1. The child, parent of the child, party to the dependency petition or guardian petitions the court for revocation.

2. The court finds by clear and convincing evidence that the parent has remedied the grounds alleged in the guardianship motion.

3. The court finds by clear and convincing evidence that the return of the child would not create a substantial risk of harm to the child's physical, mental or emotional health or safety. When making this determination, the court shall consider all of the following:

(a) The child's position on the revocation of the guardianship if the child is at least twelve years of age.

(b) The duration of the guardianship and the level of contact between the parent and the child during the guardianship.

(c) Any other relevant factor.

E. The court may set a case plan of guardianship after revocation of a permanent guardianship even though no successor guardian has been identified if the court has ordered that no reunification services be provided to the child's parent.