

Task Force on the Rules of Procedure for the Juvenile Court

Meeting Agenda

Wednesday, September 15, 2021

10:00 a.m. to 3:00 p.m.

Telephonic access to the meeting: **602-609-7512** Access Code: **670 646 57#**

Item no. 1	Call to Order	<i>Hon. Rebecca Berch, Chair</i>
Item no. 2	Approval of the August 6, 2021 meeting minutes	<i>Justice Berch</i>
Item no. 3	Reports from workgroups Review of changes to the second draft set of rules subsequent to the August 6 Task Force meeting New rules for guardianship proceedings (Rules 349 and 350) and for adoptions (Rule 419 and forms, and a Family Law rule amendment) Tables and Forms	<i>All</i>
Item no. 4	Discussion of the first draft of a reply in R-20-0044	<i>All</i>
Item no. 5	Roadmap	<i>Justice Berch</i>
Item no. 6	Call to the Public Adjourn	<i>Justice Berch</i>

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, August 6, 2021**

Meeting Minutes

Members attending: Hon. Rebecca Berch (Chair), *Randi Alexander, Hon. Mark Armstrong, *Professor Barbara Atwood, *Beth Beckmann, *Beth Beringhaus, *Dale Cardy, *Kathleen Coughlin, *John Gilmore, Hon. Joseph Creamer, *Donna McQuality, *Tina Mattison, *Eric Meaux, *William Owsley, Christina Phillis, *Hon. Maurice Portley, *Hon. Kathleen Quigley, *Beth Rosenberg, *Denise Smith, *Denise Avila Taylor, *Edward Truman by his proxy Carey Turner, *Kent Volkmer, *Hon. Anna Young

Members absent: Maria Christina Fuentes, Hon. Patricia Trebesch, Hon. Rick Williams

Guests: Jessica Fotinos, *Elise Kulik, *Lawrence E. (Lawrence Espinoza), *Lori Ford, *Rebecca Masterson, *Melinda Sherwyn

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

(Individuals who attended telephonically are shown above with an asterisk.)

1. **Call to order; preliminary remarks; approval of meeting minutes.** The Chair called the seventeenth Task Force meeting to order at 10:03 a.m. The previous Task Force meeting was on April 12, and the Chair noted subsequent events. On April 28, the Task Force filed rule petition no. R-20-0044. Interim Rule 52.1 on QRTPs was a component of that petition, and the Editorial Group Plus met on June 21 to review public comments concerning Rule 52.1, which were submitted during a special comment period established by Court order. The Task Force filed a reply to those comments on June 24. The public comment period for the remaining rules proposed by R-20-0044 closed on July 23. The Editorial Group met on August 2, and Workgroup 3 met on August 3, to review those comments. On August 4, staff posted materials for today's meeting on the Task Force webpage. The same day, staff sent an email advising of the posting to Task Force members and to everyone who submitted a formal or informal comment during the pre-filing or public comment periods. The posted materials included two tables. One table summarized the comments concerning R-20-0044 that were submitted after the April 28 filing date; this table included summaries of several other pertinent, pending rule petitions. The second table concerned potential Title 8 statutory changes. Today's meeting focused on these tables and the comments, petitions, and legislation that are linked in those tables.

The Chair then asked members to review draft minutes of the April 12, 2021 Task Force meeting. Members had no corrections or additions.

Motion: A member moved to approve the April 12, 2021 meeting minutes. The motion received a second and it passed unanimously. **JRTF 017**

The restyled Juvenile Rules are available on SharePoint. Ms. Pennington will make changes to the SharePoint version during today's meeting as the Chair and members direct. The Chair requested that members refrain from making changes to the SharePoint documents pending the filing of the reply and a final version of the rules.

2. Review of Title 8 legislative proposals. Members had previously suggested amendments to Title 8, and on August 2 the Editorial Group discussed those potential amendments. Ms. Elise Kulik, a legislative liaison for the Administrative Office of the Courts ("AOC"), was present during that discussion. Today Ms. Kulik presented several amendments to the Arizona Revised Statutes that the Editorial Group recommended, which she subsequently formatted pursuant to legislative conventions. These formatted documents were included in the meeting materials. Ms. Kulik reviewed the following amendments at today's Task Force meeting. (There are corresponding changes to some of the restyled rules, which are shown in brackets.)

§ 8-237 ("statement or conduct of child; hearsay exception"), by adding "guardianship" to the types of proceedings in which statements or non-verbal conduct of a minor regarding acts of abuse or neglect are admissible;

§ 8-525 ("open court proceedings; closure; records"), by adding two references to § 8-537 to clarify proceedings that are open to the public [see further Rule 312];

§ 8-847 ("periodic review hearings"), by requiring DCS, if DCS is a party, to provide the required notice of review hearings to individuals identified in that statute [see further Rule 311];

§ 8-871 ("permanent guardianship of a child"), by deleting in subpart (A)(1) the words "filed by the department," which would allow a private party who filed a dependency petition to initiate a pre-adjudication guardianship [see further Rule 344];

§ 8-872 ("permanent guardianship; procedure"), by allowing service by certified mail of a notice of a pending guardianship action in a case subject to ICWA, as permitted by the ICWA regulations [25 C.F.R. § 23.111], in addition to permitting service to registered mail, which the statute already allows [see further Rule 349].

Members made minor edits to Ms. Kulik's drafts and had the following comments.

Regarding the amendments to § 8-237, the Task Force should amend the corresponding provision in Rule 104(c) by adding the word "adoption," which was inadvertently omitted from that rule provision. Members agreed to this addition.

Regarding § 8-847 and § 8-871, DCS requested additional time to provide input. The Chair requested that DCS include Ms. Kulik if it submits further input to staff.

Regarding § 8-872, the proposed change is consistent with ICWA and should mitigate the cost of service. Professor Atwood noted that other statutes might require a similar amendment. Ms. Kulik requested Professor Atwood to inform her if that is necessary and she will add those statutes to her package of amendments.

Ms. Kulik also raised a suggested amendment to § 8-221 (“counsel right of juvenile, parent, or guardian; appointment; reimbursement; guardian ad litem”). This statute was recently amended by SB 1391 (Laws 2021, Chapter 228). A.R.S. § 8-221(A) as amended by SB 1391 requires the court to appoint an attorney for a child “in all” delinquency proceedings. This language is overbroad and could be mistakenly construed to require the appointment of counsel on a juvenile’s traffic citation. Ms. Kulik proposed a modification that would require the appointment of counsel “in all delinquency proceedings that may result in detention,” but this was problematic because a judge might not know before the first hearing whether the proceeding will result in detention, and also because many proceedings that won’t result in detention will result in a criminal record, and in those cases the child has a right to counsel. After a discussion of alternatives, members agreed to the following text: “... in all proceedings that allege a criminal offense under state law.” Ms. Kulik also proposed deleting the word “juvenile” in § 8-221(B), as amended by SB 1391, because a juvenile has a right to court-appointed counsel under section (A) without regard to the juvenile’s indigency. Members concurred with that deletion.

The Chair then asked whether members generally supported the changes to the six statutes presented by Ms. Kulik. Although there was no motion or formal vote on this question, there was unanimous support, subject to the qualifications described above. Ms. Kulik will revise the proposed amendments consistently with the members’ discussion today.

3. Discussion of comments concerning R-20-0044 and related issues. The items in the comment summary were numbered 1 through 14. Members discussed each item and collateral issues as they arose. Comments 1, 6, 7, and 14 were submitted informally, i.e., they were not filed on the Court Rules Forum.

Comment 1 (Barbara Vaught). Ms. Vaught’s informal comment concerned conflicting provisions in Rule 607(e)(3). The Editorial Group recommended deleting the last two sentences of the restyled rule, and members agreed.

Comment 2 (rule petition no. R-21-0021). The State Bar of Arizona filed R-20-0021. The rule petition’s proposed amendments to Civil Rules 4.1 and 4.2 would require the filing of a motion that requested judicial pre-authorization to serve case-initiating documents by publication. Restyled Juvenile Rule 329 incorporates the provisions of

Civil Rules 4.1 and 4.2 by reference. The Arizona Attorney General filed a comment contending that the State Bar's proposed amendments would be impractical in juvenile dependency proceedings.

Workgroup 3 agreed that it would be appropriate to have a publication provision that accounted for the unique requirements of dependency proceedings. Restyled Rule 329 concerns "service of the dependency petition, temporary orders, and notice of hearing." Rule 329(b) now says in part, "For dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows: ... [subparts 1, 2, and 3]." Workgroup 3 proposed adding a subpart 4 that would provide:

Service by Publication. A serving party is not required to file a motion for leave to serve by publication prior to initiating such service. At or before the publication hearing, the serving party must provide the court with an affidavit establishing reasonably diligent efforts to identify and locate the person being served and that service by publication was the best means of service practicable under the circumstances.

There is a slight difference in the phrasing of the second sentence of this proposed subpart and the corresponding sentence in the rules proposed by R-21-0021, but members did not believe it was a substantive difference and the two provisions were substantially identical. Members accordingly approved Workgroup 3's version.

Comment 3 (rule petition R-21-0036). The AOC filed three rule petitions (comments 3, 4, and 5) on June 30 seeking amendments to the current Juvenile Rules; these petitions requested expedited consideration on the Court's August rules agenda. The first of these petitions would implement legislative changes contained in SB 1332 (Laws 2021, Chapter 144); the petition proposed amendments to two emancipation rules, Rules 94 and 102. Although the Task Force had previously considered an earlier version of SB 1332, the Chair asked Mr. Volkmer, who led Workgroup 1's restyling of the emancipation rules, to review R-21-0036 and the chaptered version of SB 1332 and report his findings.

Comment 4 (rule petition R-21-0037). This AOC emergency rule petition concerns current Rule 83 ("documentation required to adopt") and implements changes required by SB 1831 (Laws 2021, Chapter 384). It appears that this legislation might require revisions to Rule 415, the corresponding restyled rule. Workgroup 4 will review the rule petition and then propose edits, if necessary, to the restyled rule.

Comment 5 (rule petition R-21-0038). This AOC emergency rule petition proposes changes to several current rules resulting from the enactment of SB 1391. Members discussed concerns arising under SB 1391 during Ms. Kulik's presentation earlier today, and there were no remaining issues requiring further discussion.

Comment 6 (Brian Molitor and Judge Quigley). This comment proposed an amendment to Rule 303. Rule 303(a)(3) precludes an assigned attorney from accepting service of a petition on behalf of a parent who failed to personally appear. Judge Quigley explained that there are occasions where a parent has been located before the initial court hearing but, because of a work schedule, a medical issue, or incarceration, cannot appear at the hearing. The proposed amendment to this rule would permit the parent to authorize the attorney to accept service of a dependency petition. The Editorial Group agreed with the principle but suggested that the authorization be in writing, which could include a text message or email. The Editorial Group recognized that the writing would not be filed with the court, but it would be a good practice for the attorney to have that written confirmation if the parent subsequently contested the authorization. Task Force members discussed an alternative of memorializing the authorization by counsel's avowal on the record at the initial hearing. Judge Thumma's separate comment (comment 9) would also permit acceptance of service but only by adding that the parent has "never appeared in the proceeding." This language clarifies that the provision does not apply to the parent's failure to appear at a specific proceeding, but instead, that it applies when the parent has not yet appeared at any court hearing. The discussion concluded with the members' agreement to the following modification 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 has never appeared in the proceeding unless the parent, after communication with the assigned attorney, authorizes the attorney in writing to accept service or the attorney avows on the record that the parent expressly authorized the attorney to accept service ~~does not appear~~.

In conjunction with this revision, members also agreed to add a subpart to Rule 329(a) ("service or acceptance of service"), which provides that service is complete "when the assigned attorney accepts service on behalf of the parent under Rule 303(a)(3)."

Comment 7 (Judge Quigley and Professor Atwood). Although A.R.S. § 8-873 provides for the revocation of a permanent guardianship, the statute lacks a sufficiently detailed procedure and there is no corresponding process for revocation in either the current or the restyled rules. To fill this gap, Judge Quigley and Professor Atwood proposed a new Rule 3XX, which was included in the meeting materials. They recognized the new rule might be beyond the scope of the R-20-0044 reply, but a supplemental petition with a request for expedited consideration might allow the rule to become effective concurrently with the other restyled rules. Judge Quigley reviewed each section of the draft rule. Members had questions and concerns with the draft, however, including the following:

- Because there appears to be no statutory authority for the court to order DCS to prepare an investigative report following the filing of a revocation petition, can the court nonetheless require DCS to prepare an investigative report? Does

- the court have inherent authority to do so? If so, could the court order such a report if there was no allegation of abuse or neglect?
- What is the GAL's role in an investigation of the petition's allegations? Does the GAL's role depend on the grounds for the petition? For example, what is the GAL's role if the petition alleges that a parent has addressed the circumstances that preceded the guardianship?
 - How does A.R.S. § 8-873.01 regarding reunification services apply to this scenario? Are those services contingent on whether there is an ongoing dependency? Should the proposed rule refer to this statute? If the court orders reunification services, who at that point has custody of the child?

The Chair concluded the discussion on draft Rule 3XX by noting the need for further vetting, and she referred the matter to Workgroups 3 and 4 for follow-up.

Comment 8 (Rebecca Masterson). Ms. Masterson's comment made three suggestions. The first, suggesting an earlier effective date of Rules 303 through 306, seemed to be resolved by emergency rule petition R-21-0038, which was discussed above. (Ms. Rosenberg made a similar request, but implementation dates that aren't simultaneous pose logistical concerns and can be confusing for users.) Ms. Masterson's second suggestion was to add to Rule 306(f)(2) a requirement that attorneys and GALs must communicate with "other attorneys." Members acknowledged practical issues that arise when other individuals involved in a dependency proceeding, such as relatives or foster parents, are represented by counsel. Similar issues might arise even when those individuals have no attorney. Regardless, the issues might be better addressed by referring to the current ethical rules. The third suggestion was to allow a child to have advisory counsel at the pre-petition stage. Members agreed and added the words "or child" to Rule 303(e) ("advisory attorney") as follows: "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."

Comment 9 (Judge Thumma). Judge Thumma commented on multiple rules. His comment noted his prior submission of an informal pre-petition comment, and acknowledged that some of his current comments might have been previously considered by the Task Force. The rules below are in the order they were referenced in his comment.

Rules 205 and 208. These restyled rules provide for arrest warrants, but, like the current rules (see, e.g., Rules 12(D) and 26(D)), they do not mention probable cause to issue the warrants. Judge Thumma suggested adding a probable cause requirement to these restyled rules. Members were uncertain what probable cause would refer to, for example, probable cause that the juvenile committed an offense, or that the juvenile failed to appear, or that the failure to appear was willful? They concluded that the suggestion required more discussion than merely inserting the words "probable cause" into the rules, and they referred the comment to Workgroup 2. Regarding Judge Thumma's

comment concerning the term “provisional warrant,” Rule 206(c)(1) (“provisional warrant”) already contains a description of the warrant, and expressly adds that that warrant “may also be known as a discretionary warrant, a temporary detention warrant, or by other names.” Members saw no need to standardize the name for such warrants, although they agreed that a warrant for an individual’s actual arrest should consistently be referred to as an “arrest warrant.”

Rule 208(e). This rule concerns a juvenile’s competence and was added to the restyling as a result of Judge Thumma’s prefiling comment. Members today declined to make further changes to this provision.

Rule 204. Rule 204(b) contains “time limits for filing” a delinquency petition. Judge Thumma suggested deleting the limits in the absence of a citation to applicable authority, or if the limits are retained, providing a remedy of dismissal with prejudice. After discussion, members declined both suggestions. Prosecutors occasionally exceed the specified limits, but appellate courts have been generally supportive of the prosecutors’ cause for doing so. Moreover, dismissal with prejudice is a severe remedy. When an objection regarding a time limit is raised, trial judges should be able to fashion an appropriate remedy, including but not limited to dismissal without prejudice.

Rule 303. Judge Thumma’s comment concerning this rule was discussed in conjunction with comment 6 above.

Rule 102. Judge Thumma observed that the use of “trial” and “adjudication” in different places throughout the rules suggested that the words had different meanings. They do not, but after considering Judge Thumma’s comment, members added a new clarifying definition in Rule 102 (“definitions”), section (z), which says, ““Trial” as used in these rules means an adjudication hearing.” Current section (z), which contains a definition of “UCCJEA,” will be re-designated as section (aa).

Rule 318 and other rules. Judge Thumma also noted that various rules refer to “judgment,” e.g., judgment of acquittal (Rule 221(e)), summary judgment (Rule 318), and judgment as a matter of law (Rule 319). He noted that there is no definition of “judgment” in the restyled rules and queried whether it meant the same as a final order, which is specifically described in Rule 601. Members declined to define “judgment,” as used in the rules referred to above, because the word is used in the context of a court process rather than to denote appealable orders. The terms that contain the word “judgment” are also user-friendly and encompassed within established legal parlance.

Rules 414 and 417. Judge Thumma asked why a Rule 414 action (“petition to revoke consent”) would be initiated by a petition, whereas a Rule 417 action (“setting aside an adoption”) would be initiated by motion. Members concluded that “petition” was properly used in Rule 414 because it might initiate a new case, whereas “motion” would be appropriate in Rule 417 because it would be filed in an existing case. Prompted by

Judge Thumma's comment, however, and after further discussion, members agreed to make clarifying revisions to the first sentence of Rule 414(a) ("petition to revoke consent") as follows: A person seeking to revoke ~~their~~ person's own consent to the adoption of a child before entry of a final order of adoption must file a petition stating the basis for the relief sought." Members discussed possible revisions to section (i) ("revocation of consent to adopt an Indian child"), but those changes will abide further Workgroup 4 discussions.

Rules 603 and 604. This comment notes the divergent use of 10, 12, and 15 day deadlines in Rule 603, while Rule 604 used 5, 7, and 13 day deadlines. Ms. Beckmann explained that she and the Task Force are well-aware of these divergences. After considering well-established deadlines in the current rules, however, and the application of rules for additional time for service by mail, she concluded that the respective deadlines in these two rules were reasonable and appropriate and designed to avoid confusion. Task Force members agreed with that conclusion.

Comment 10 (Judges Thumma and McMurdie). The focus of the comment is Rule 601(b)(2)(E), which provides that final orders (i.e., appealable orders) include "an order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody." A pre-filing comment from Judge Thumma regarding this provision resulted in the addition of a "comment to the 2022 amendment" concerning subpart (b)(2)(E). Nonetheless, the comment from Judges Thumma and McMurdie cited case law and practical reasons, such as delayed case resolution, why such orders should not be appealable; the comment requested the Court to not adopt this provision. The Editorial Group considered the comment on August 2. Ms. Beckmann led today's Task Force discussion and proposed a revised "comment to the 2022 amendment" that was circulated before today's meeting. Ms. Beckmann agreed that appellate courts "have not spoken with a single voice" on this issue. Referring to case law, however, Ms. Beckmann observed that removing a child from a parent's custody has a substantial impact upon the parent's rights and is appropriately characterized as a final appealable order. With regard to the length of time required to process an appeal noted in the judges' comment, the "comment to the 2022 amendment" expressly provides that nothing in the rule prevents a party from either requesting accelerated appellate review, or filing a special action if the remedy on appeal is not equally plain, speedy, and adequate. Ms. Beckmann noted that she did not anticipate many appeals under subpart (b)(2)(E). After discussion, members had no objection to including the revised "comment to the 2022 amendment" in the final restyled version.

Comment 11 (Dawn Williams). Ms. Williams' comment concerned Rules 104, 218, 313, 324, 329, 333, 334, 335, and 601. Members recalled that they previously had lengthy discussions of the issues raised by her comment on (a) Rule 104 regarding caseworker reports and the use of "may" and "must;" (b) Rule 218 and the release of a juvenile to DCS when a detention hearing is not timely held; (c) the deadlines for DCS to provide notice of a child's change of placement under Rule 324; and (d) affording a parent a

temporary custody hearing under Rules 333 and 334. In addition, her issues regarding publication under Rule 329 and the appealability of an order under Rule 601(b)(2)(E) were discussed earlier in today's meeting within the context of comments 2 and 10. A colleague of Ms. Williams, Mr. Turner, agreed that there was no need to further discuss those portions of Ms. Williams' comment, but the record of R-20-0044 should reflect the Attorney General's position regarding those rule provisions for the Court's further consideration.

Mr. Turner requested, however, that the Task Force consider Ms. Williams' comment concerning Rule 313. Rule 313(a)(2)(C) presently allows "a designee of DCS when DCS is not a party in the case" to request a court order allowing access "upon a showing that inspection is required to carry out DCS[s] responsibilities." Ms. Williams' comment asked that the rule include a new provision 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. Members expressed concern that this would allow DCS to have access to delinquency records for its investigation in a Part III proceeding, but Mr. Turner indicated that it would not, and that access to delinquency records would be governed by Part II provisions. Another member preferred that a judge review DCS requests for access to records on a case-by-case basis, because the information is sensitive and should not be presumptively available. Another member had no such concerns because the DCS access would presumably further the welfare of a child. Members also discussed the meaning of "designee" in the provision noted above; does it include a DCS caseworker, or must it be someone outside the DCS organization? Members generally agreed that the restyled version of the rule already included the functionality DCS requested, but the Chair requested Workgroup 3 to re-examine the provision in light of today's discussion.

Ms. Williams' comment also requested that Rule 335 on QRTPs mirror the language of interim Rule 52.1 on QRTPs that the Court will consider and might approve at its Rules Agenda later this month. The Chair confirmed that the final version of Rule 335 submitted with the reply will do so.

Comment 12 (Professor Paul Bennett). Professor Bennett's comment concerned (a) the opportunity of parents and children to participate in Child and Family Team ("CFT") meetings, and (b) the admissibility of DCS caseworker reports and the admission of a parent's controverting report. Professor Bennett had previously submitted a substantial portion of this comment prior to the petition filing, which Task Force members included in their discussion of Rule 324 at the April 12 meeting. The discussion at today's meeting further indicated that CFT meetings are facilitated by a behavioral health agency, rather than DCS, and focus on behavioral health issues and treatment plans. Reported attorney experiences vary. Some attorneys do attend CFT meetings. Some attorneys are not given notice of CFT meetings, and others chose not to attend. Some attorneys are reluctant to have their clients attend in counsel's absence. Because these meetings may deal with crisis situations, they are sometimes set on short notice, which poses challenges for the

attendance of attorneys representing every party. In large measure because CFT meetings are out-of-court and do not involve a court procedure, members were reticent to have further rule-based specifications. See, however, Rule 306 (“duties of child’s attorney or a child’s GAL”), section (g) (“attend meetings”), which provides, “To the extent possible, a child’s attorney and GAL should attend or provide input at a DCS staffing, Foster Care Review Board review, and Child and Family Team meeting.”

Members also discussed Professor Bennett’s comment concerning reports. Does a DCS report admitted at an initial hearing remain admitted for all subsequent hearings? Members believed the report would need to be readmitted at those hearings. Also, if the court “must” review and “may” admit a DCS report under Rule 104(d) (“admissibility of child safety worker’s report”), must a court similarly treat a report submitted by a party other than DCS? One member noted that parties do in fact submit such reports, and they should receive similar treatment. Another member observed that private party reports are often argumentative and include unfounded assertions.

Members made no rule revisions during their discussion of these comments.

Comment 13 (Amanda Glass). Ms. Glass proposed adding an identical subpart to Rules 332, 334, 341, 342, 343, 345, 346, 350, and 351, which would require the court to make a finding that identifies the adult who has special education decision-making authority for a child, as required by the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400, et seq.), and as referenced by A.R.S. § 8-514.08. The Editorial Group and Workgroup 3 agreed with the proposal but preferred to add the provision to a single rule rather than to nine separate rules. The proposed language, which was presented to, discussed by, and agreed upon by the members, would be located in Rule 310(c). In conjunction with this addition, the title of the Rule 310 would be modified as follows: “child’s rights; special education.” New section (c) would provide:

(c) Special Education. In a dependency, Title 8 guardianship, or termination of parental rights action, DCS must promptly 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.

Comment 14 (staff). The April 12 meeting minutes reflect the members’ division on whether to include a new Rule 326 titled “required admonition and findings” in lieu of admonition provisions in other Part III rules, or whether to exclude Rule 326 and retain the present admonition provisions. Members agreed to include Rule 326 in the petition filing and to solicit comments from stakeholders concerning their preferences. The comment period closed with no formal or informal comments on this topic, so the issue that was undecided at the April 12 meeting remained undecided. The sense of the members today was to keep Rule 326 and for emphasis, to retain the other admonition

provisions as well. Workgroups 3 and 4 should review those provisions to assure there is no unwarranted or unhelpful redundancy or conflict.

Additional comments. Members considered two additional items during today's meeting.

- (A) *Adoptions.* On a motion to set aside an adoption under Rule 417, the court may appoint a GAL for the child. Professor Atwood relayed a comment from Judge San Angelo that would also permit the court in that circumstance to appoint an attorney for the child. Members agreed that this would be appropriate, but they also asked whether the court had similar authority under Rule 414 ("petition to revoke consent") to appoint an attorney for the child, particularly if that petition did not arise in the context of a dependency. The Chair requested Workgroup 4 to consider whether there is statutory or other authority for these appointments.
- (B) *Signatures.* Rule 105 ("form of filed documents") is modeled on Civil Rule 5.2 ("form of documents") and contains provisions similar to those in the civil rule regarding paper and electronic filing. Staff noted, however, that neither the current nor the restyled Juvenile Rules contain an analog to Civil Rule 11(a), which contains a requirement for a signature on filed documents. Staff suggested that the Task Force consider adding to Rule 105—as a new section (f) titled "signature"—the content of Civil Rule 11(a) ("signature"). The suggested addition was added to SharePoint, and members reviewed and approved it. What is now Rule 105(f) will be re-designated as Rule 105(g).

4. Roadmap. The Chair set the next Task Force meeting for Wednesday, September 15. A meeting room is not currently available, and if a room does not become available, the meeting will be virtual, possibly by Zoom or telephonic only. The Task Force should not meet after September 15 because of the additional work that staff must do to prepare documents for the September 30 reply filing deadline. Workgroup 3 has another meeting scheduled in August, and the Chair encouraged Workgroups 1, 2, and 4 to meet, if necessary, as soon as possible. If members have other "nits" or comments, please send them to the Chair and staff. The Editorial Group will consider them at its next meeting, on August 31. In light of the ongoing editorial work, the Chair requested, and a member made, the following motion:

Motion: That the Chair has the members' authority to work in conjunction with staff and others to (1) prepare and finalize the reply; (2) revise the appendices to the reply, including the restyled rules, as deemed necessary and appropriate; and (3) if there is not another Task Force meeting, to finalize today's minutes. The motion passed unanimously. **JRTF 0018**

5. **Call to the public; adjourn.** Mr. Lawrence Espinoza (Lawrence E.), Ms. Lori Ford, and Ms. Melinda Sherwyn responded to the Chair's call to the public and addressed the members.

The meeting adjourned at 3:08 p.m.

This is Petitioner's reply.

As a preliminary matter, Petitioner notes that Task Force members have continued to work diligently on this massive project. In the short ten-week interval between the close of the public comment period and the filing of this reply, workgroups met four times, the Editorial Group also met four times, and the Task Force met twice. There was ongoing work on the restyled rules before and after these meetings. Put simply, hundreds of additional member-hours laid the foundation for this reply.

This reply has three primary parts. The first part responds to comments submitted on the Court Rules Forum and discusses changes to the rules resulting from those comments. The second part notes other rule petitions that were filed during the 2021 rules cycle, and how those petitions impacted further changes to the restyled rules. The third part discusses changes to the restyled rules that the Task Force made on its own initiative, and which improve the grammar, syntax, and organization of the restyled rules. Some of these changes add new content and accordingly are substantive changes.

I. Reply to Public Comments. The Task Force considered the following Rules Forum comments on the Task Force's rule petition number R-20-0044.

Comment from Rebecca Masterson. Ms. Masterson's comment made three suggestions. The first, suggesting an earlier effective date of Rules 303 through 306, seemed to be resolved by an emergency rule petition (R-21-0038) discussed in Part II of this reply. Ms. Masterson's second suggestion was to add to Rule 306(f)(2) a requirement that attorneys and GALs must communicate with "other attorneys." The Task Force acknowledges practical issues that arise when other individuals who are involved in a dependency proceeding, such as relatives or foster parents, are represented by counsel. Similar issues might arise even when those individuals have no attorney. Regardless, the issues might be better addressed by referring to the current ethical rules. Ms. Masterson's third suggestion was to allow a child to have advisory counsel at the pre-petition stage. The Task Force agreed and added the words "or child" to Rule 303(e) ("advisory attorney") as follows: "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."

Comment from Judge Samuel Thumma. Judge Thumma commented on multiple rules. His comment noted his prior submission of an informal pre-petition comment and acknowledged that some of his current comments might have been previously considered by the Task Force. The rules below are in the order they were referenced in his comment.

Rules 205 and 208. These restyled rules provide for arrest warrants, but, like the current rules (see, e.g., Rules 12(D) and 26(D)), they do not mention probable cause to issue the warrants. Judge Thumma suggested adding a probable cause requirement to these restyled rules. The Task Force was uncertain what that probable cause requirement would refer to, for example, probable cause that the juvenile committed an offense, or that the juvenile failed to appear, or that the failure to appear was willful? The Task Force concluded that merely inserting the words “probable cause” into the restyled rules was an inadequate remedy. Instead, it added introductory language in Rule 205 (“notice to appear; service; failure to appear”), section (c) (“failure to appear”), which says, “The court may issue a warrant under this rule only if the court has found probable cause that the juvenile has committed an offense alleged in the petition.”

Judge Thumma’s comment also concerned the term “provisional warrant,” Rule 205(c)(1) (“provisional warrant”) already contains a description of the warrant, and expressly adds that that warrant “may also be known as a discretionary warrant, a temporary detention warrant, or by other names.” The Task Force saw no need to standardize the name for such warrants. It agreed, however, that a warrant for an individual’s actual arrest should consistently be referred to as an “arrest warrant” and it added “arrest” before “warrant” where it was appropriate to do so. **Members should revisit the issues in this paragraph at the September 15 meeting.**

Rule 208(e). This rule concerns a juvenile’s competence and a provision was added to the version of the rules submitted with this rule petition as a result of Judge Thumma’s prefiling comment. The Task Force declined to make further changes to this provision.

Rule 204. Rule 204(b) contains “time limits for filing” a delinquency petition. Judge Thumma suggested deleting the limits in the absence of a citation to applicable authority, or if the limits are retained, providing a remedy of dismissal with prejudice. After discussion, the Task Force declined both suggestions. Prosecutors occasionally exceed the specified limits, but trial courts reportedly have been receptive to the prosecutors’ cause for doing so. Moreover, dismissal with prejudice would be a severe remedy. When a juvenile raises an objection regarding a time limit, the Task Force believes that a trial judge should be able to fashion an appropriate remedy, including but not limited to dismissal with or without prejudice.

Rule 303. The Task Force discussed Judge Thumma’s comment concerning this rule in conjunction with a related informal comment. Rule 303(a)(3) precludes an assigned attorney from accepting service of a petition on behalf of a parent who failed to

personally appear. The informal comment noted that a parent who has been located before the initial court hearing might occasionally be unable to appear at the hearing because of a work schedule, a medical issue, incarceration, or another difficulty. The proposed Task Force amendment to Rule 303(a)(3) would permit the parent in such circumstances to authorize the attorney to accept service of a dependency petition. The authorization must be in writing, or the attorney must avow on the record that the parent expressly authorized counsel to accept service. The proposed amendment includes the phrase “never appeared in the proceeding,” as Judge Thumma suggested.

The Task Force also proposes a companion amendment to Rule 329(a), which concerns service of the dependency petition, by adding a new subpart providing that service of the petition is complete “when the assigned attorney accepts service on behalf of the parent under Rule 303(a)(3).”

Rule 102. Judge Thumma observed that the use of “trial” and “adjudication” in different places throughout the rules suggested that the words had different meanings. They do not, but after considering Judge Thumma’s comment, the Task Force added a new clarifying definition in Rule 102 (“definitions”), section (z), which says, ““Trial” as used in these rules means an adjudication hearing.” Current section (z), which contains a definition of “UCCJEA,” was re-designated as section (aa).

Rule 318 and other rules. Judge Thumma noted that various rules refer to “judgment,” e.g., judgment of acquittal (Rule 221), summary judgment (Rule 318), and judgment as a matter of law (Rule 319). He noted that there is no definition of “judgment” in the restyled rules and queried whether it had the same meaning as a final order, which is specifically described in Rule 601. The Task Force declined to define “judgment,” as used in these rules, because the word is used in the context of a court process rather than to denote appealable orders. The terms that contain the word “judgment” are also part of widely recognized legal parlance.

Rules 414 and 417. Judge Thumma asked why a Rule 414 action (“petition to revoke consent”) would be initiated by a petition, whereas a Rule 417 action (“setting aside an adoption”) would be initiated by motion. The Task Force concluded that “petition” was properly used in Rule 414 because it might initiate a new case, whereas “motion” would be appropriate in Rule 417 because it would be filed in an existing case. Prompted by Judge Thumma’s comment, however, and after further discussion, the Task Force agreed to make clarifying revisions to the first sentence of Rule 414(a) (“petition to revoke consent”) as follows: “A person seeking to revoke their person’s own consent to

the adoption of a child before entry of a final order of adoption must file a petition stating the basis for the relief sought.”

Rules 603 and 604. Judge Thumma’s comment notes the divergent use of 10, 12, and 15-day deadlines in Rule 603, while Rule 604 used 5, 7, and 13-day deadlines. The Task Force is well-aware of these divergences. After considering well-established deadlines in the current rules, however, and the application of rules for additional time for service by mail, the Task Force concluded that the respective deadlines in these two rules were reasonable and appropriate and designed to avoid confusion, and it made no changes.

Comment from Judges Thumma and McMurdie. The focus of this comment is Rule 601(b)(2)(E), which provides that final orders (i.e., appealable orders) include “an order entered in a dependency removing a child who has been adjudicated dependent from a parent’s physical custody.” A prefiling comment from Judge Thumma regarding this provision resulted in the addition of a “comment to the 2022 amendment” concerning subpart (b)(2)(E). Nonetheless, the comment from Judges Thumma and McMurdie cited case law and practical reasons, such as delayed case resolution, why such orders should not be appealable; the comment requested that the Court not adopt this provision. The Editorial Group and the full Task Force considered the comment. These discussions resulted in a revised “comment to the 2022 amendment.”

The Task Force recognizes that appellate courts “have not spoken with a single voice” on this issue. Nonetheless, removing a child from a parent’s custody has a substantial impact upon the parent’s rights and is appropriately characterized as a final appealable order under case law. With regard to the length of time required to process an appeal noted in the judges’ comment, the revised “comment to the 2022 amendment” expressly provides that nothing in the rule prevents a party from either requesting accelerated appellate review, or filing a special action if the remedy on appeal is not equally plain, speedy, and adequate. As a practical matter, the Task Force does not anticipate a significant number of appeals under subpart (b)(2)(E).

Comment from Dawn Williams (Arizona Attorney General’s Office). Ms. Williams’ comment concerned Rules 104, 218, 313, 324, 329, 333, 334, 335, and 601. The Task Force previously had lengthy discussions of the issues raised by her comment on (a) Rule 104 regarding caseworker reports and the use of “may” and “must;” (b) Rule 218 and the release of a juvenile to DCS when a detention hearing is not timely held; (c) the deadlines for DCS to provide notice of a child’s change of placement under Rule 324; and (d) affording a parent a temporary custody hearing under Rules 333 and 334. In

addition, her issues regarding publication under Rule 329 is discussed in Part II of this reply, and the appealability of an order under Rule 601(b)(2)(E) was discussed immediately above.

Ms. Williams' comment also addressed Rule 313. Rule 313(a)(2)(C) presently allows "a designee of DCS when DCS is not a party in the case" to request a court order allowing access "upon a showing that inspection is required to carry out DCS['s] responsibilities." Ms. Williams' comment asked that Rule 313 include a new alternative provision 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. Several members preferred that a judge review DCS requests for access to records on a case-by-case basis, as required by current Rule 47(A)(2)(c) and the restyled rule, because the information is sensitive and should not be presumptively available. One member had no such concerns because DCS access would presumably further the welfare of a child. Members generally agreed that the restyled version of the rule already included the functionality DCS requested and they made no changes to Rule 313. It's also noteworthy that the corresponding current rule, Rule 47, was the subject of review only a few years ago by a blue-ribbon Supreme Court workgroup that considered a range of stakeholder viewpoints; that group did not incorporate in Rule 47 the provision Ms. Williams now requests.

Ms. Williams' comment also requested that Rule 335 on QRTPs mirror the language of interim Rule 52.1 on QRTPs that the Court approved at its August Rules Agenda. The final version of Rule 335 submitted with this reply does so.

Comment from Professor Paul Bennett. Professor Bennett's comment concerned (a) the opportunity of parents and children to participate in Child and Family Team ("CFT") meetings, and (b) the admissibility of DCS caseworker reports and the admission of a parent's controverting report.

Professor Bennett had previously submitted a substantial portion of his comment prior to the petition filing, and his informal comment was included in the Task Force's discussion of Rule 342 ("motion for return of the child) at the April 12 meeting, before filing this rule petition. (Please see the rule-by-rule minutes posted on the Task Force webpage, at pages 121 to 123, for that discussion.) The discussion at today's meeting further indicated that CFT meetings are facilitated by a behavioral health agency, rather than DCS, and frequently focus on behavioral health issues and treatment plans. Reported attorney experiences vary. Some attorneys do attend CFT meetings. Some attorneys are not given notice of CFT meetings, and others chose not to attend. Some

attorneys are reluctant to have their clients attend in counsel's absence. Because these meetings may deal with crisis situations, they are sometimes set on short notice, which poses challenges for the attendance of attorneys representing every party. In large measure because CFT meetings are out-of-court and do not involve a court procedure, the Task Force was reticent to have further rule-based specifications. See, however, Rule 306 ("duties of child's attorney or a child's GAL"), section (g) ("attend meetings"), which provides, "To the extent possible, a child's attorney and GAL should attend or provide input at a DCS staffing, Foster Care Review Board review, and Child and Family Team meeting."

The Task Force also discussed Professor Bennett's comment concerning caseworker reports. Does a DCS report admitted at an initial hearing remain admitted for all subsequent hearings? The Task Force believes the report would need to be readmitted at those later hearings, although this is perhaps more a subject for judicial education than for a court rule. Also, if the court "must" review and "may" admit a DCS report under Rule 104(d) ("admissibility of child safety worker's report"), must a court similarly treat a report submitted by a party other than DCS? One member noted that parties do in fact submit such reports, and they should receive similar treatment. Another member observed that private party reports are often argumentative and include unfounded assertions. The Task Force reached no consensus on the issue.

The Task Force concluded its discussion of Professor Bennett's comment without making rule revisions.

Comment from Amanda Glass. Ms. Glass proposed adding an identical subpart to Rules 332, 334, 341, 342, 343, 345, 346, 350, and 351; the subpart would require the court to make a finding that identifies the adult who has special education decision-making authority for a child, as required by the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400, et seq.), and as referenced by A.R.S. § 8-514.08. The Task Force agreed with the proposal but preferred to add the provision to a single rule rather than to nine separate rules. The Task Force's proposed language would be located in Rule 310(c). In conjunction with this addition, the title of the Rule 310 would be modified as follows: "child's rights; special education." New section (c) provides:

(c) Special Education. In a dependency, Title 8 guardianship, or termination of parental rights action, DCS must promptly 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.

II. Consideration of other rule petitions. The Task Force considered several pending rule petitions at its August 6 meeting, including three emergency rule petitions filed by the Administrative Office of the Courts (“AOC”) in June 2021. Each of the four petitions discussed below prompted a change to the restyled Juvenile Rules. The Court subsequently adopted each of these four petitions at its August 24, 2021 Rules Agenda.

Service by publication. The State Bar of Arizona filed petition number R-20-0021. The petition proposed amendments to Civil Rules 4.1 and 4.2 that would require the filing of a motion requesting judicial authorization to serve case-initiating documents by publication. Restyled Juvenile Rule 329 incorporates the provisions of Civil Rules 4.1 and 4.2 by reference. The Arizona Attorney General filed a comment in R-20-0021 contending that the State Bar’s proposed amendments would be impractical in juvenile dependency proceedings.

The Task Force agreed that it would be appropriate to have a publication provision that accounted for the unique requirements of dependency proceedings. Restyled Rule 329 concerns “service of the dependency petition, temporary orders, and notice of hearing.” Rule 329(b) now says in part, “For dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows: ... [subparts 1, 2, and 3].” The Task Force proposes adding a subpart 4 that would provide:

Service by Publication. A serving party is not required to file a motion for leave to serve by publication prior to initiating such service. At or before the publication hearing, the serving party must provide the court with an affidavit establishing reasonably diligent efforts to identify and locate the person being served and that service by publication was the best means of service practicable under the circumstances.

There is a slight difference in the phrasing of the second sentence of this proposed subpart and the corresponding sentence in the rules proposed by R-21-0021, but the Task Force did not believe it was a substantive difference and the two provisions are substantially identical.

Emancipation. The AOC filed R-21-0037 to address SB 1332 (Laws 2021, Chapter 144); the AOC’s petition proposed amendments to two current emancipation rules, Rules 94 and 102. The Task Force had previously considered an earlier version of SB 1332 and drafted the restyled emancipation rules accordingly. The Task Force

recently reviewed the chaptered version of SB 1332 and made an additional change. The legislation allows a ward of the court to file an emancipation petition. Rule 503(c) concerns the notice of an emancipation petition. In subparts (1) and (2), the Task Force added that a notice of the hearing and a copy of the petition must also be provided to “the appropriate state agency if the petitioner is a ward of the state.”

Adoptions. The AOC’s petition number R-21-0037 concerns current Rule 83 (“documentation required to adopt”) and implemented changes required by SB 1831 (Laws 2021, Chapter 384). SB 1831 also required revisions to the corresponding restyled Rule 415 (“documentation required to adopt”), section (a) (“before the hearing”), subpart 8, as follows:

8. any birth parent’s notarized statement as described in A.R.S. § 8-106; a contact preference form as described in A.R.S. § 36-340; and a notarized statements from any birth parent granting or denying permission for the child being adopted to obtain identifying information about the child and from the consenting parent upon the child reaching 18 years of age, and granting or denying permission to be informed of the death of the child, as provided by A.R.S. §§ 8-107, 8-129, and 8-130; ...

Appointment of an attorney and a GAL. The AOC’s rule petition number R-21-0038 included changes to several current rules resulting from the enactment of SB 1391 (laws 2021, Chapter 228). A.R.S. § 8-221(A) as amended by SB 1391 requires the court to appoint an attorney for a child “in all” delinquency proceedings. The Task Force believe that this language is overbroad and that it could be mistakenly construed to require the appointment of counsel on a juvenile’s traffic citation. After a discussion of options, the Task Force requested the AOC’s legislative affairs officer to propose the following alternative phrasing in § 8-221(A) at the next legislative session: “... in all proceedings that allege a criminal offense under state law.” -. Except as otherwise noted in this reply, the Task Force made no changes to the Part III rules on appointment of an attorney or a GAL.

III. Rule changes on the Task Force’s initiative. Rule changes proposed by the Task Force are generally of two types.

The first type of change addressed “nits,” a slang term meaning “small flaws.” There were, unfortunately, scores of nits in the version of the rules filed in April. The Task Force corrected nits involving spelling and punctuation errors, formatting irregularities, and extraneous or omitted words. Other nits were addressed with a word modification, for examples, “upon” became “on,” and “education stability” became

“educational stability.” The universe of nits also involved word changes that enhanced phrasing without changing meaning. The Task Force revisions of those nits, for example, changed a passive voice to an active voice; added a clarifying word or words; substituted a more appropriate word or phrase; and reordered the sequence of words in a phrase or a sentence. There are too many nits to mention each, but by addressing them, the Task Force has improved the accuracy and readability of the restyled rules.

The Task Force made other changes that cannot be considered nits. Those changes are detailed below. The changes are provided by Part, beginning with Part I. After the final part, this reply notes the Task Force’s request for amendments to Title 8 of the Arizona Revised Statutes.

Part I: General Provisions

Rule 104 (“applicability of the Arizona Rules of Evidence, etc.”). The word “adoption” was added to section (c) (“admissibility of a child’s statement or conduct”), i.e., “In all adoption, dependency, termination, and Title 8 guardianship proceedings, evidence of a child’s out-of-court statement ... is admissible [etc.]”

Rule 105 (“form of filed documents”). Two new sections have been added. A new section (h) (“signature”) reproduces Civil Rule 11(a). The Task Force also added a new section (h) (“unsworn documents under penalty of perjury”), which is the same as Civil Rule 80(c). It omitted the last sentence of Civil Rule 80(c), however, which says, “This rule does not apply to a deposition, oath of office, or an oath required to be taken before a specified official other than a notary public.” The Task Force believed this sentence had little or no practical application in juvenile proceedings.

Rule 107 (“computing and extending time”). The rule as initially proposed referred readers to Rule 212 for computing time in a delinquency proceeding and to Civil Rule 6 for computing time in all other matters. Rule 212, in turn, referred readers to Criminal Rule 1.3. The proposed juvenile rules on computing time for responding to motions in Part II and Part III cases, however, confounded the referenced provisions in other rules sets, particularly those provisions that provide additional time after service by mail or by electronic methods. To foreclose inconsistency and confusion, the Task Force struck the content of proposed Rule 107 and substituted new content. Newly proposed Rule 107, section (a) (“general time computation”) and section (b) (“entry”) derive from Criminal Rule 1.3(a) and (c). Unlike the corresponding civil and criminal rules on time computation, Rule 107(a)(5) (“additional time after service”) does not allow additional time when a document is served electronically. Five extra days are added under this new provision only when service is made by U.S. mail. Newly proposed section (b)

(“extending time”) derives from Civil Rule 6(b)(1). Unlike its Civil Rule counterpart, proposed Rule 107(b) contains no exceptions.

Rule 112 (“court appointed special advocate [CASA]”). In addition to the existing reference to A.R.S. § 8-523, this rule now contains a reference to A.R.S. § 8-522.

Part II: Delinquency

Rule 203 (“content of a petition”). The word “delinquency” was added before the word “petition” in both the title and section (a) of this rule.

Rule 204 (“filing a petition”). Changes to this rule mirror the changes to Rule 203 described above.

Rule 205 (“notice to appear; service; failure to appear”). **Need to add other content**

Rule 206 (“appointment of an attorney for a juvenile”). Section (b) (“appointment of an attorney”) has been modified as follows: “~~Upon~~ On the filing of a petition or a citation in the juvenile court that is not transferred to a limited jurisdiction court ~~alleges a criminal offense under state law~~, the juvenile court must appoint an attorney for the juvenile if the court finds that the juvenile is indigent.” These changes conform the provision to legal requirements and to current practices; every indigent juvenile appearing in juvenile court would receive a court-appointed attorney. The provision defers to limited jurisdiction courts the decision to appoint an attorney for a juvenile in cases before those courts.

Rule 212 (“computation of time in a delinquency case”). The reference to Criminal Rule 1.3 has been superseded by a reference to Rule 107.

Rule 216 (“motions”). In section (d) (“motion to continue”), a sentence referring to victims’ rights has been modified to align with the language of A.R.S. § 8-421, as follows: “In deciding the motion, the court must consider the victim’s views and the victim’s right to a ~~prompt speedy disposition~~ and a prompt and final resolution conclusion of the case. “

Rule 218 (“detention and probable cause hearing”). The word “parent” was substituted for the word “party” in subpart (b)(2). In section (g) (“taking of DNA”). The Task Force modified the subpart titles; the titles now are “(1) In custody: refusal to provide sample,” and “(2) “out of custody: refusal to provide sample; revocation of release.”

Rule 219 (advisory hearing)). The title and content of section (c), subpart (2), which concerns victims' rights, was modified for clarity and accuracy, as follows: "~~Allow a Victim to be Heard~~ Address Victims' Rights. The court must determine whether the victim's rights have been complied with and ~~of the offense~~ whether the victim has requested to be present and to be heard." In subpart (c)(3) "enter the juvenile's admission or denial"), the word "agreement" has been added after the word "plea" in two places, i.e., the provision now refers to a "plea agreement" rather than a "plea."

Rule 221 ("adjudication hearing"). The title of section (c), subpart (4) has been changed from "reversal of judgment" to "reversal by an appellate court." The Task Force made a relatively lengthy modification to the content of this subpart to clarify when the trial court must hold an adjudication hearing when ordered to do so by an appellate court.

Part III: Child Dependency and Guardianship, Termination of Parental Rights

Rule 302 ("definitions"). In section (a), which is a definition of "parent," the Task Force added, "a third party who has legal decision-making authority under A.R.S. § 25-409."

Rule 312 ("public attendance at hearings"). In section (b) ("open hearings"), the Task Force eliminated the second sentence ("This includes court hearings concerning child abuse, abandonment, or neglect that resulted in a fatality or near fatality subject to the requirements in section (c).") **why?**

Rule 316 ("motions"). The Task Force eliminated provisions in section (c) ("response") that differentiated the time for filing a response based on the manner of service.

Rule 328 ("petition, temporary orders and findings, etc.") In section (e) ("amended petition"), the Task Force replaced a reference to Civil Rule 5(c) with a reference to Rule 106.

Rule 333 ("contested review of temporary custody"). Section (c) concerns the procedure at the hearing. The Task Force modified subparts (4) and (5) to more closely track language in the statutes that are referenced in these provisions.

Rule 338 ("dependency adjudication hearing"). In section (b) ("time"), subpart (2) ("continuance"), the Task Force added a sentence that says, "Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances under this section."

Rule 344 (“motion, notice of hearing, service of process, and order for permanent guardianship”). Section (a) (“motion”), subpart (1) (“generally”) allows any party to a dependency proceeding to file a motion for permanent guardianship of a child who has been adjudicated dependent. Subpart (2) (“pre-adjudication motion”) permits the motion to be filed prior to adjudication, but “only when the dependency petition was filed by DCS.” The revised version struck the quoted phrase, thereby allowing a private party who initiated a dependency proceeding to file a pre-adjudication motion for a permanent guardianship in that case.

Rule 345 (“initial guardianship hearing”). The Task Force modified provisions in section (c) (“procedure”). As now phrased, the court must appoint an attorney pursuant to Rule 303(b) (i.e., for the parent), and must appoint an attorney for the child pursuant to Rule 303(c). It may also appoint a GAL for the child, “if appropriate.” (Compare the previous version, which allowed the court to “appoint an attorney or GAL, or both, for the child....”)

Rule 350 (“initial termination hearing”). Section (c) (“procedure”) was modified similar to the revisions to Rule 345 noted above.

Rule 351 (“termination adjudication hearing”). Section (h) (“findings and orders”) now includes a new subpart (3) that requires the court “wherever possible, [to] obtain from a birth parent a notarized statement under A.R.S. § 8-534(B).”

Part IV: Adoptions

Rule 407 (“motions”). The Task Force eliminated provisions in section (c) (“response”) that were similar to provisions it deleted in Rule 316. The Task Force also revised section (f) (“motion to set aside”) to require the filing of the motion “...no later than one year after entry of the final order, judgment, or proceeding ...,” but if the motion alleges specified grounds, the motion must be filed “within no later than 6 months after entry of the final order.”

Rule 409 (“petition for child’s custody by a non-certified person”). In section (e) (“findings and orders”), subpart (3), the phrase “order that custody of the child be given to another person” was replaced by “order that the child be placed with another person.”

Rule 410 (“petition to adopt”). In section (b) (“setting a hearing on a petition to adopt”), the word “within” was replaced by “no later than” in each of the three subparts, and the words “after the filing of the petition” were added after the number of days in subparts (1) and (2).

Rule 412 (“birth parent living expenses”). Changes to section (b) (“procedure”) were similar to the above-noted changes to Rule 410.

Rule 416 (“hearing to finalize adoption”). In section (b) (“burden of proof”), “petitioner” was changed to “prospective adoptive parent.” In section (f) (“dismissal of a dependency action”), “had legal custody” (past tense) was changed to “has legal custody” (present tense).

Part V: Emancipation (No changes to note here.)

Part VI: Appeals

Rule 602 (“general provisions”). The current version of section (g) (“continuing juvenile court jurisdiction”) provided that while an appeal is pending, “the juvenile court may proceed within its legal authority on a remaining or new issue ...” Revised section (g) no longer includes the words “within its legal authority.” The remainder of section (g) specifies that authority.

Rule 606 (“assigning an appellate case number, etc.”). In section (a) (“assigning an appellate case number and caption”), titles (respectively “generally” and “motion to stay”) have been added to each of the two subparts. Section (c) (“filing and transmitting documents”), subpart (4) originally required the clerk to transmit documents, exhibits, and an index to the appellate court. The revised subpart says “transmit electronically, if feasible, ...,” in preference for electronic transmission.

Rule 607 (“briefing in the Court of Appeals; etc.”). Section (e) (“notice and avowal in lieu of opening brief; pro se brief”), subpart (3) included contradictory provisions concerning the filing of an answering and a reply brief. The internal contradiction was eliminated by deleting the last two sentences of this subpart: “The court may not grant relief without permitting the appellee to file an answering brief. No pro se reply brief may be filed.”

Legislative amendments. In conjunction with the restyled juvenile rules, the Task Force has requested the Administrative Office of the Courts to propose the following amendments to Title 8 at the next legislative session. Each of the proposed statutory amendments corresponds to changes within a restyled rule, as shown below.

A.R.S. § 8-221 (corresponds with restyled Rule 206). The proposed amendment would change the requirement for court-appointment of an attorney "in all" delinquency proceedings to instead require the appointment of an attorney "in all proceedings that allege a criminal offense under state law."

A.R.S. § 8-237 (corresponds with restyled Rule 104). The statutory amendment would add "guardianship" to the types of proceedings in which statements or non-verbal conduct of a minor regarding acts of abuse or neglect are admissible.

A.R.S. § 8-525 (corresponds with restyled Rule 312). The amendments would add two references to section 8-537 to clarify proceedings that are open to the public.

A.R.S. § 8-815 (corresponds with restyled Rule 111). The proposed amendment would change "reason to believe" to "reason to know." A.R.S. § 8-815(A) directs courts to apply ICWA if there is "reason to believe" a child is an Indian child. The 2016 federal regulations, 25 C.F.R. § 23.107, uses the term "reason to know," and the restyled rules (e.g., Rules 302, 332, 345, 349) generally use "reason to know."

A.R.S. § 8-847 (corresponds with restyled Rule 311). This amendment would require DCS, if DCS is a party, to provide the required notice of review hearings to individuals identified in that statute.

A.R.S. § 8-871 (corresponds with restyled Rule 344). The amendment, by deleting in subpart (A)(1) of this statute the words "filed by the department," would allow a private party who filed a dependency action to initiate a pre-adjudication guardianship.

A.R.S. §§ 8-535 and 8-872 (correspond with restyled Rules 344 and 349). These amendments would allow service by certified mail of a notice of a pending guardianship or termination action in a case subject to the Indian Child Welfare Act ("ICWA"), as permitted by 25 C.F.R. § 23.111, in addition to permitting service by registered mail, which the Arizona statutes already allow.

IV. Conclusion.