



TO:  
Rule 28 Distribution  
David K Byers

**ATTACHMENT\***

(\*Additions are shown by underlining; deletions are shown by ~~strikethroughs~~.)

**Rules of Procedure for the Juvenile Court**

**Rule 61. Motion, Notice of Hearing, Service of Process and Orders for Permanent Guardianship**

**A. Motion.** If the court determines that the establishment of a permanent guardianship is in the best interests of a dependent child or a child who is the subject of a pending dependency petition by the Department of Child Safety, and all parties agree, the court shall order that a motion for guardianship be filed by the Department of Child Safety or by the child's attorney or guardian ad litem within ten (10) days. The motion shall contain all information required by law.

**B. Notice of Hearing.** A notice of hearing shall accompany the motion for permanent guardianship and shall advise the parent, guardian or Indian custodian of the location, date and time of the initial guardianship hearing. In addition to the information required by law, the notice of hearing shall advise the parent, guardian or Indian custodian that failure to appear without good cause shown may result in a finding that the parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the motion for guardianship. The notice shall advise the parent, guardian or Indian custodian that the hearing may go forward in the absence of the parent, guardian or Indian custodian and may result in the establishment of a permanent guardianship based upon the record and evidence presented. In addition to service of the notice of hearing upon the parties, a copy of the notice of hearing shall also be provided to the following persons:

1. The child's current physical custodian;
2. Any foster parent with whom the child has resided within six (6) months prior to the date of the hearing;
3. The prospective guardian if the guardian is not the current physical custodian; and
4. Any other person the court orders to be provided with the notice of hearing.

**C. Service.** The motion for guardianship and notice of hearing shall be served by the moving party upon the parties and any other person as provided by law, pursuant to Rule 5(c), Ariz. R. Civ. Pro. If the motion alleges or the court has reason to believe the child at issue is an Indian child as defined by the Indian Child Welfare Act, in addition to service of process as required by this rule, notification shall be given to the parent, Indian custodian and child's tribe. Notice shall be provided by registered mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior by registered mail and the Secretary of the Interior shall have fifteen (15) days after

receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

**1. Waiver.** The parent, Indian custodian or the child's tribe may waive the ten (10) day notice requirement for purposes of proceeding with the initial guardianship hearing within the time limit as provided by state law.

**D. Orders.** Upon the filing of a motion for guardianship, the court ~~shall~~ may order the Department of Child Safety, ~~an agency or a person designated as an officer of the court to conduct an investigation~~ if legal custodian of the child, an agency or a person designated as an officer of the court to conduct an investigation and prepare a report for the first report and review hearing, addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship. If the Department is not the legal custodian, the court may order the child's attorney or guardian ad litem to file a report for the report and review hearing. If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required by the Act or whether good cause exists to deviate from the placement preferences. A copy of the report shall be provided to the parties and the court ten (10) days prior to the initial guardianship hearing. The court may enter any other orders, pending the hearing, as the court determines to be in the best interests of the child.

## **Rule 62. Initial Guardianship Hearing**

**A. Purpose.** At the initial guardianship hearing, the court shall determine whether service has been completed, whether notice of the hearing has been provided to those persons identified pursuant to Rule 61(B) and the parent or Indian custodian and the child's tribe and whether the parent, guardian or Indian custodian admits, denies or does not contest the allegations contained in the motion for guardianship.

**B. Time Limits.** If a motion for permanent guardianship is filed, the initial hearing shall be held within thirty (30) days of the permanency hearing.

**C. Procedure.** At the initial hearing the court shall;

1. Inquire if any party has reason to believe that the child at issue is subject to the Indian Child Welfare Act;
2. Appoint counsel pursuant to Rule 38(B), unless counsel had previously been appointed;
3. Appoint counsel for the child if a guardian ad litem has not been appointed;
4. Determine whether service of process has been completed or waived as to each party pursuant to Rule 61 and whether notice of the hearing has been provided to those persons identified in Rule 61(B), in addition to the parent, Indian custodian and the child's tribe;

5. Determine whether the investigation and report IF ordered by the court, has been completed and provided to the parties;

6. Advise the parent, guardian or Indian custodian of their rights as follows:

a. The right to counsel, including court appointed counsel if the parent, guardian or Indian custodian is indigent;

b. The right to cross examine all witnesses who are called to testify against the parent, guardian or Indian custodian;

c. The right to trial by the court on the guardianship motion or petition; and

d. The right to use the process of the court to compel the attendance of witnesses.

7. Determine whether the parent, guardian or Indian custodian admits, denies or does not contest the allegations contained in the motion or petition for guardianship.

**a. Admission/No Contest.** If the parent, guardian or Indian custodian admits or does not contest the allegations, the court shall proceed with the guardianship adjudication hearing and enter findings and orders, pursuant to Rule 63.

**b. Denial.** If a motion for guardianship was filed and the parent, guardian or Indian custodian denies the allegations, the court shall set the matter for trial within ninety (90) days. The court may schedule a settlement conference, a pretrial conference or mediation, if appropriate. If the child has not been adjudicated dependent, and any party objects, the court may schedule a settlement conference or mediation, or strike the motion for guardianship and proceed with the dependency petition.

**c. Failure to Appear.** If the parent, guardian or Indian custodian fails to appear at the initial guardianship hearing without good cause shown, and the court finds the parent, guardian or Indian custodian had notice of the hearing, was properly served pursuant to Rule 61, and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in the absence of the parent, guardian or Indian custodian and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the guardianship motion, the court may proceed with the adjudication of guardianship based upon the record and evidence presented if the moving party has proven grounds upon which to establish a guardianship. The court shall enter its findings and orders pursuant to Rule 63.

8. Determine how a verbatim record of the guardianship adjudication hearing will be made.

**D. Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. Enter findings as to notification and service upon the parties and those persons designated to receive notice and the court's jurisdiction over the subject matter and persons before the court;

2. Set a continued initial guardianship hearing as to any party who was not served and did not appear;

3. The court may schedule a settlement conference, status conference, pretrial conference or mediation as deemed appropriate;
4. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to appear at the guardianship pre-trial conference, settlement conference, or guardianship adjudication hearing, without good cause shown, may result in a finding that the parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the motion for guardianship. The court shall advise the parent, guardian or Indian custodian that the guardianship adjudication hearing may go forward in the absence of the parent, guardian or Indian custodian and may result in the establishment of a permanent guardianship based upon the record and evidence presented. The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings. The court may provide the parent, guardian or Indian custodian with a copy of Form 2, request that the parent, guardian or Indian custodian sign and return a copy of the Form, and note on the record that the Form was provided;
5. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act, including whether placement of the Indian child is in accordance with Section 1915 of the Act or whether there is good cause to deviate from the preferences; and
6. Make findings and enter any other orders as may be appropriate or required by law.

**Rules 63 – 63.2 [no change]**