

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-05-0008

FILED

OCT 27 2005

NOEL K. DESSAINT
CLERK SUPREME COURT
BY

**CORRECTIVE ORDER
AMENDING
RULE 10, ARIZONA RULES OF FAMILY LAW PROCEDURE**

On October 19, 2005, the Court adopted new Arizona Rules of Family Law Procedure, to be effective January 1, 2006. The Court has been advised of a change in the National Conference of Commissioners on Uniform State Laws 2005 draft of the Representation of Children in Abuse and Neglect and Custody Proceedings Act, which the comment to Rule 10 of the Arizona Rules of Family Law Procedure references. To remain consistent with the final 2005 draft,

IT IS ORDERED that Rule 10, Arizona Rules of Family Law Procedure, as adopted on October 19, 2005, be amended in accordance with the attachment hereto,* effective as of January 1, 2006.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 27th day of October, 2005.

For the Court:



REBECCA WHITE BERCH
Vice Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

ARIZONA RULES OF FAMILY LAW PROCEDURE

Rule 10. Representation of Children; Minors and Incompetent Persons

A. Appointment of Child's Attorney, Best Interests Attorney, and Court-Appointed Advisor

1. The court may appoint one or more of the following:

- a. a best interests attorney;
- b. a child's attorney; or
- c. a court-appointed advisor.

2. The court may appoint an attorney to represent a child in a family law case pursuant to A.R. S. § 25-321 if it finds any of the following:

- a. there is an allegation of abuse or neglect of a child;
- b. the parents are persistently in significant conflict with one another;
- c. there is a history of substance abuse by either parent, or family violence;
- d. there are serious concerns about the mental health or behavior of either parent;
- e. the child is an infant or toddler;
- f. the child has special needs; or
- g. any other reason deemed appropriate by the court.

3. The order of appointment must clearly set forth the terms of the appointment, including the reasons for and duration of the appointment, rights of access as provided under this paragraph and applicable terms of compensation.

B. Qualifications of Child's Attorney or Best Interests Attorney. The court may appoint as a child's attorney or best interests attorney only an individual who is qualified through training or experience in the type of proceeding in which the appointment is made, as determined by the court and according to any standards established by Arizona law or rule.

C. Qualifications of Court-Appointed Advisor. The court may appoint as court-appointed advisor for a child only a qualified individual or a non-profit or governmental organization of qualified individuals. To be qualified, an individual must have received training or have experience in the type of proceeding in which the appointment is made, according to any

standards established by Arizona law or rule. An attorney appointed as court-appointed advisor may take only those actions that may be taken by a court-appointed advisor who is not an attorney.

D. Access to Child and Information Relating to Child.

1. Subject to subdivision 3 and any conditions imposed by the court that are required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding, the court shall issue an order of access at the time of an order of appointment, authorizing the child's attorney, best interests attorney, or court-appointed advisor to have immediate access to the child and any otherwise privileged or confidential information relating to the child.

2. The custodian of any relevant record relating to a child shall provide access to a person authorized by order issued pursuant to this rule to access the records.

3. A child's record that is privileged or confidential under law other than this rule may be released to a person appointed under this rule only in accordance with that law.

E. Participation in Proceeding by Child's Attorney, Best Interests Attorney, And Court-Appointed Advisor.

1. A child's attorney or best interests attorney shall participate in the conduct of the litigation to the same extent as an attorney for any party.

2. A child's attorney, best interests attorney, and court-appointed advisor may not engage in *ex parte* contact with the court except as authorized by law other than this rule.

3. A court-appointed advisor may not take any action that may be taken only by a licensed attorney, including making opening and closing statements, examining witnesses, and engaging in discovery other than as a witness.

4. The court shall ensure that any court-appointed advisor for a child has an opportunity to testify or submit a report setting forth:

a. the court-appointed advisor's recommendations regarding the best interests of the child; and

b. the bases for the court-appointed advisor's recommendations.

5. In a proceeding, a party, including a child's attorney or best interests attorney, may call any court-appointed advisor for the child as a witness for the purpose of cross-examination regarding the advisor's report without the advisor's being listed as a witness by a party.

6. An attorney appointed as child's attorney or best interests attorney may not:

- a. be compelled to produce the attorney's work product developed during the appointment;
- b. be required to disclose the source of information obtained as a result of the appointment;
- c. submit a report into evidence; or
- d. testify in court.

7. Subdivision 6 does not alter the duty of an attorney to report child abuse or neglect under applicable law.

F. Fees and Expenses in Custody Proceeding. The court may allocate fees and expenses between the parties in accordance with all applicable Arizona law and rules.

G. Appointments from Juvenile Dependency Rosters. The court shall not appoint a best interests attorney, a child's attorney, or a court-appointed advisor from a state or county-funded juvenile dependency roster unless the court finds that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

H. Minors and Incompetent Persons. Whenever a minor or incompetent person has a representative appointed by the court or authorized by Title 14, *Arizona Revised Statutes*, the representative may act on behalf of the minor or incompetent person to the extent allowed under Arizona law or the court's order of appointment. The court shall not appoint a guardian to act on behalf of the minor or incompetent, except as provided by Title 14, *Arizona Revised Statutes*.

COMMITTEE COMMENT

The American Bar Association Standards of Practice for Lawyers Representing Children in Custody Cases, adopted August 2003, provides guidance to the court, counsel, and litigants about the appointment of attorneys for children. The Standards include suggestions about when and how an attorney should be appointed, and in which capacity, and detail what the attorney's responsibilities are to the court and the client.

A court-appointed advisor shall not function as an attorney but shall independently investigate the case and make recommendations to the court. The National Conference of Commissioners on Uniform State Laws 2005 draft of the Representation of Children in Abuse and Neglect and Custody Proceedings Act provides guidance to the court, court-appointed advisors and litigants about the appointment of court-appointed advisors, as well as their role and responsibilities.

Paragraph G of this rule is based on Rule 17(g), *Arizona Rules of Civil Procedure*.