

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

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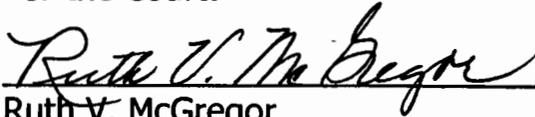
Supreme Court No. R-05-0019

ORDER AMENDING RULES 37 (C)(2), 42.1, 47.2, 48(A), 48(D), 50(C), 52(D), 53(D), 54(C), 55(E), 56(E), 59(E), 60(E), 62(D), 63(F), 65(D), 66(B), 66(G), AND 89(B), RULES OF PROCEDURE FOR THE JUVENILE COURT, AND ADDING FORMS IV, V, AND VI

IT IS ORDERED amending the captioned Rules of Procedure for the Juvenile Court, and adding Forms IV, V, and VI, as shown on the attachment hereto,\* effective on July 1, 2006.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 20th day of January, 2006.

For the Court:

  
\_\_\_\_\_  
Ruth V. McGregor  
Chief Justice

\* Changes or additions to text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

## RULES OF PROCEDURE FOR THE JUVENILE COURT

### **Rule 37. Definitions**

**(C)(2). Indian Child.** The term Indian child means any unmarried person under the age of eighteen (18) and who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe. The findings and elevated burden of proof required by the Indian Child Welfare Act shall not apply until the court finds that the child is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe.

### **Rule 47.2. Minute Entries**

An unsigned minute entry that contains findings or orders of the court shall constitute an order of the court except as may be provided by the rules and requirements of appellate procedure.

### **Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process.**

**A. Petition.** A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child. A petition on behalf of a dependent child shall be generally in the form and contain the information required by law. The action shall be captioned, "In the Matter of \_\_\_\_\_ a person under the age of 18 years," may be based upon information and belief and shall state whether the child is an Indian child as defined by the Indian Child Welfare Act. The petitioner shall indicate a request

for in-home intervention by including the words "In-home intervention requested" in parentheses below the words "Dependency Petition."

**D. Service of petition.** The petitioner shall serve a copy of the petition, notice of hearing and temporary orders upon those persons as required by law. The petitioner shall provide any parent, guardian or Indian custodian appearing at the preliminary protective hearing with a copy of the petition, notice of hearing and temporary orders which shall constitute service, as provided by law. Otherwise, the petition, notice of hearing and temporary orders shall be served in the manner provided for in Rules 4.1 or 4.2, Arizona Rules of Civil Procedure ~~except that:~~ Except for service of process that occurs at the preliminary protective hearing or the execution of an acceptance of service and waiver, service of process shall be completed no less than five (5) days prior to the court hearing. In dependency proceedings:

[No further change]

**Rule 50. Preliminary protective hearing.**

**C. Findings and orders.** All findings and orders, including any agreements reached by the parties, shall be in ~~writing and signed by the court, in the form of an order or minute entry,~~ the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:

[No further change]

**Rule 52. Initial dependency hearing.**

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

[No further change]

**Rule 53. Settlement Conference.**

**D. Findings and Orders.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or contained in a minute entry. At the conclusion of the settlement conference, the court may:

[No further change]

**Rule 54. Pretrial conference.**

**C. Findings and Orders.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or contained in a minute entry. At the conclusion of the pretrial conference, the court may:

[No further change]

**Rule 55. Dependency Adjudication Hearing**

**E. Findings and Orders.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or contained in a

minute entry. As to each parent, guardian or Indian custodian, based upon the record and evidence presented, the court shall:

[No further change]

**Rule 56. Disposition Hearing.**

**E. Findings and Orders.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or contained in a minute entry. The court shall determine the appropriate case plan and shall:

[No further change]

**Rule 58. Review Hearing**

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

[No further change]

**Rule 59. Return of the Child**

**E. Findings and Orders.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or contained in a minute entry. The court shall:

[No further change]

**Rule 60. Permanency hearing.**

**E. Findings and Orders.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or contained in a minute entry. The court shall make findings based upon the evidence presented and shall:

[No further change]

**Rule 62. Initial Guardianship Hearing**

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

[No further change]

**Rule 63. Guardianship Adjudication Hearing**

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

[No further change]

**Rule 65. Initial Termination Hearing.**

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

[No further change]

**Rule 66. Termination Adjudication Hearing.**

**G. Findings and Orders by the court.** All findings and orders shall be in ~~writing and signed by the court, in the form of a minute entry or order.~~ the form of a signed order or set forth in a signed minute entry. At the conclusion of the hearing the court shall:

[No further change]

**Rule 89. Time Within Which an Appeal May Be Taken and Notice Thereof; Preparation of Transcript and Record on Appeal**

(B) The notice of appeal or notice of cross-appeal shall specify the party taking the appeal or cross-appeal, designate the final order or part thereof appealed from, and in the case of appeal by a non-governmental party, state whether the party was proceeding with appointed counsel in the juvenile court when the final order was filed. When the appellant is represented by counsel, the notice of appeal or cross- appeal shall contain the following statement: “By signing and filing this notice of appeal, undersigned counsel avows that [he/she] communicated with the client after entry of the judgment being appealed, discussed the merits of the appeal and obtained authorization from the client to file this notice of appeal.” If counsel for a party files a notice of appeal or cross-appeal that does not contain the required statement, the clerk of the superior court shall forthwith refer the notice of appeal or cross-appeal to the judge assigned to the case in the juvenile court. Upon receiving the referral, the assigned judge shall promptly issue an order striking the notice of appeal or cross-appeal and directing the clerk of the superior court not to process it under rules 89 and 90 of these Rules.

**Form IV. Notice to Parent in Dependency Action (Effective until January 1, 2007)**

**(To be given to parent at each dependency hearing prior to adjudication and noted on the record)**

You are a party in a dependency case. If the court determines that your child is dependent, then this Court will make decisions about the care and custody of your child until you demonstrate that you are able to do so.

If you cannot be re-united with your child within legal time-frames, your parental rights may be terminated and your child may be adopted, or a permanent guardian may be appointed for your child.

As a parent or Indian custodian in a dependency case, your legal rights include:

1. The right to counsel, including court appointed counsel if you are indigent;
2. The right to cross-examine witnesses who are called to testify against you;
3. The right to trial by the court on the allegations in the dependency petition; and
4. The right to use the process of the court to compel the attendance of witnesses.

As part of this case, there will be several court hearings. You are required to appear for all court hearings. If you cannot attend a court hearing, you must prove to the court that you did not appear for good cause. If you fail to appear without good cause for the Pre-trial Conference, Settlement Conference or Dependency Adjudication, the court may determine that you have waived your legal rights, admitted the allegations of dependency in the petition and may rule that your child is dependent based on the record and evidence

presented. If this action results in the filing of a termination of parental rights proceeding you have the right to request a trial to a jury.

You must also actively participate in reunification services if they are offered to you. If you do not participate in reunification services, your parental rights may be terminated or a permanent guardian may be appointed for your child.

It will be presumed that you understand the contents of this notice unless you tell the court at today's hearing that you do not understand this notice.

Next hearing type: \_\_\_\_\_,

Date: \_\_\_\_\_, Time: \_\_\_\_\_,

Judicial Officer: \_\_\_\_\_,

Address of court facility: \_\_\_\_\_

**Form V. Notice to Parent in Termination Action (Effective until January 1, 2007)**

**(To be given to parent at permanency hearing if termination is ordered and each subsequent hearing until termination adjudication and noted on the record)**

If you cannot be re-united with your child within legal time frames, your parental rights may be terminated and your child may be adopted, or a permanent guardian may be appointed for your child.

As a parent or Indian custodian, your legal rights include:

1. The right to counsel, including court appointed counsel if you are indigent;
2. The right to cross-examine witnesses who are called to testify against you;
3. The right to trial by the court or to a jury on the allegations in the termination motion/petition; and
4. The right to use the process of the court to compel the attendance of witnesses.

You are required to appear for all court hearings. If you cannot attend a court hearing, you must prove to the court that you did not appear for good cause. If you fail to appear without good cause for the Termination Pre-trial Conference, Termination Settlement Conference or Termination Adjudication, the court may determine that you have waived your legal rights including the right to trial to a jury, admitted the grounds alleged in the motion/petition for termination and may terminate your parental rights to your child based on the record and evidence presented.

It will be presumed that you understand the contents of this notice unless you tell the court at today's hearing that you do not understand this notice.

Next hearing type: \_\_\_\_\_.

Date: \_\_\_\_\_, Time: \_\_\_\_\_.

Judicial Officer: \_\_\_\_\_.

Address of court facility: \_\_\_\_\_.

**Form VI. Counsel's Certification of Diligent Search**

**(May be filed with the Juvenile Court when, after a diligent search, counsel cannot locate a client and does not pursue an appeal.)**

1. I, \_\_\_\_\_, am counsel for [insert party's name] in the above captioned case.

2. On \_\_\_\_\_, the juvenile court filed a signed minute entry/signed formal order that [briefly describe order]. Since that date, I have made unsuccessful but diligent efforts to contact [insert party's name] for the purpose of:

\_\_\_\_\_ a) discussing the merits of an appeal.

\_\_\_\_\_ b) retaining his/her signature on the Notice of Appeal.

3. I have made the following efforts.

\_\_\_\_\_ a. Sent a letter with proper postage affixed to the last known address of my client and:

\_\_\_\_\_ b. Ascertained through the Main Post Office in \_\_\_\_\_ that my client has not filed a forwarding address.

\_\_\_\_\_ c. Telephoned my client with no response.

\_\_\_\_\_ d. Checked with the \_\_\_\_\_ telephone company, and there is no new telephone listing on file for my client.

e. Undertaken the following additional inquiry into the whereabouts of my client:

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4. I am unable to determine the whereabouts of my client.

I hereby certify that the above stated facts are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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Signature.

Name, address, telephone.

Counsel for

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**Form VII. Sample Notice of Appeal**

Notice is hereby given that \_\_\_\_\_, as counsel for  
\_\_\_\_\_ hereby appeals from the final Order of this Court signed  
by the Honorable \_\_\_\_\_ filed stamped month day year.

(CHECK ONE AND INSERT PARTIES' NAMES AND RELEVANT  
STATUTORY SECTIONS)

terminating the parent-child relationship between \_\_\_\_\_ (parent's first name and  
initial of last name) and \_\_\_\_\_ (child/ren's first name and initial of last name)  
pursuant to A.R.S. § 8-533(B) \_\_\_\_\_.

dismissing or denying a motion or petition seeking to terminate the parent-child  
relationship between \_\_\_\_\_ (parent's first name and initial of last name) and  
\_\_\_\_\_ (child/ren's first name and initial of last name) pursuant to A.R.S. § 8-  
533(B) \_\_\_\_\_.

adjudicating \_\_\_\_\_ (child/ren's first name and initial of last name)  
dependent as to \_\_\_\_\_ (parent's first name and initial of last name).

dismissing or denying a dependency petition seeking to adjudicate  
\_\_\_\_\_ (child/ren's first name and initial of last name) dependent as to  
\_\_\_\_\_ (parent's first name and initial of last name).

The [mother/father/child, first name and initial of last name] \_\_\_\_\_,  
was proceeding with appointed counsel in the Juvenile Court, specifically [the Office

of the Public Defender/Legal Defender/Legal Advocate] when the final order that is  
the subject of this appeal was filed.

By signing and filing this Notice of Appeal, undersigned counsel avows that  
[he/she] communicated with the client after entry of the judgment being appealed,  
discussed the merits of the appeal and obtained authorization from the client to file  
this Notice of Appeal.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Signature, attorney for Appellant.

Name, address, telephone.