

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-09-0027
PETITION TO AMEND RULE 41, RULE)
47, RULE 47.1, RULE 50, RULE 52,)
RULE 58, AND RULE 68, RULES OF)
JUVENILE COURT)
_____)

ORDER

A petition having been filed proposing to amend Rules 41, 47, 47.1, 50, 52, 58, and 68, Rules of Procedure for the Juvenile Court, on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, upon consideration,

IT IS ORDERED that Rules 41, 47, 47.1, 50, 52, 58, and 68, Rules of Procedure for the Juvenile Court, be amended on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, in accordance with the attachment hereto, effective September 30, 2009.

IT IS FURTHER ORDERED that this matter shall be opened for comment in accordance with Rule 28(G)(2), Rules of the Supreme Court, until May 20, 2010.

DATED this _____ day of September, 2009.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
David K Byers

ATTACHMENT*

Rule 41. Attendance at hearings

A. Except as otherwise provided pursuant to statute or court rule, court proceedings relating to dependent children, permanent guardianships and termination of parental rights are open to the public. A court proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality is open to the public, subject to the requirements of (E) of this rule and A.R.S. §8-807(F)(2).

B. A child in foster care has the right to attend the child's court hearing and speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall determine that the child has been informed of and understands this right.

BC. [No Change]

CD. [No Change]

DE. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall ask the parties if there are any reasons the proceeding should be closed. For good cause shown, the court may order any proceeding to be closed to the public. In considering whether to close the proceeding to the public, the court shall consider:

1. Whether doing so is in the child's best interests.
2. Whether an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.
3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.
4. Whether all parties have agreed to allow the proceeding to be open.
5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.
6. Whether an open proceeding could cause specific material harm to a criminal investigation.

EF. [No Change]

FG. [No Change]

GH. If a proceeding has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public. In ruling on this request, the court

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

shall reconsider the factors prescribed in Section ~~D~~ E of this rule. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may request a transcript be made of any previously closed proceeding. The person who requested the transcript shall pay the cost of the transcript. In ruling on this request, the court shall consider the factors prescribed in Section E of this rule. If the court grants a request for a transcript of any closed proceeding, the court shall redact from a transcript any information that:

1. Is essential to protect the privacy, well-being or safety interests prescribed in Section E of this rule.
2. Protects the identity and safety of a person who reports child abuse or neglect and to protect any other person if the court believes that disclosure of the CPS information would be likely to endanger the life or safety of any person.
3. The court has received that is confidential by law. The court shall maintain the confidentiality of the information as prescribed in the applicable law.

III. [No Change]

Rule 47. Release of Information

A. All records pertaining to dependency, guardianship and termination of parental rights shall be maintained as confidential and shall be withheld from public inspection except upon order of the court or as otherwise provided by law.

B. Any person may request to inspect court records in a case involving child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court shall consider:

1. Whether doing so is in the child's best interests.
2. Whether inspection of records would endanger the child's physical or emotional well-being or the safety of another person.
3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.
4. Whether all parties have agreed to allow the inspection.
5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.
6. Whether inspection of records could cause specific material harm to a criminal investigation.

C. If the court grants the request for inspection of court records, the court shall redact any information subject to the requirements of A.R.S. § 8-525(B) and (6) and A.R.S. § 8-807(F)(2).

Rule 47.1. Mandatory Judicial Determinations

If a child has been removed from the child's home by the state authority, the court shall make protecting the child from abuse or neglect the first priority. The court shall make the following determinations within the time periods set forth and shall state on the record a factual basis for each determination:

A. [No Change]

B. At the preliminary protective hearing and the initial dependency hearing, whether the department is attempting ~~made attempts~~ to identify and assess placement of the child with the child's grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

C. At the periodic review hearing, the court shall determine:

1. Whether the department has identified and assessed placement of the child with a relative or person who has a significant relationship with the child.
2. Whether the parent or guardian provided the court the names, type of relationship and all available information necessary to locate persons related to the child or who have a significant relationship with the child or informed the court that there is insufficient information available to locate a relative or person with a significant relationship with the child.
3. Whether the parent or guardian informed the department immediately if the parent or guardian became aware of new information related to the existence or location of a relative or person with a significant relationship with the child.

~~C.~~**D.** [No Change]

~~D.~~**E.** [No Change]

~~E.~~**F.** [No Change]

~~F.~~**G.** [No Change]

Rule 50. Preliminary protective hearing

A. Purpose. [No Change]

B. Procedure. [No Change]

C. Findings and orders. [No Change to 1-6]

7. Order the parent or guardian to provide the court the names, type of relationship and all available information necessary to locate persons related to the child or who have a significant relationship with the child unless the parent or guardian informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child. The court shall further order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of new information related to the existence or location of a relative or person with a significant relationship to the child.

78. [No Change]

Rule 52. Initial dependency hearing

A. Purpose. [No Change]

B. Time limits. [No Change]

C. Procedure. [No Change]

D. Findings and orders [No Change to 1-9]

10. Order the parent or guardian to provide the court the names, type of relationship and all available information necessary to locate persons related to the child or who have a significant relationship with the child unless the parent or guardian informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child. The court shall order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of new information related to the existence or location of a relative or person with a significant relationship with the child.

4011. [No Change]

E. Continuance. [No Change]

Rule 58. Review Hearing

A. Purpose. [No Change]

B. Notice.

1. Right to participate. At a proceeding to review the disposition orders of the court, the court shall provide the following persons notices of the review and the right to participate in the proceeding and any further proceedings:

- a. The authorized agency charged with the child's care and custody.
- b. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for ~~thirty~~ ten days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.
- c. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than ~~thirty~~ ten days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.
- d. [No Change]
- e. [No Change]
- f. [No Change]
- g. [No Change]
- h. [No Change]
- i. [No Change]
- j. [No Change]

2. Sibling information exchange program. [No Change]

C. Reports. [No Change]

D. Contested Issues. [No Change]

E. Procedure. [No Change]

F. Findings and Orders. [No Change]

Rules of Procedure for the Juvenile Court

Part IV. Adoption

2. General Adoption Provisions

Rule 68. Definitions

A. Definitions.

1. Parent. [No Change]

2. Parties. [No Change]

3. Investigative Report. The investigative report shall include the following;

a. A home study;

b. The application for certification to adopt ~~which~~ shall be accompanied by a valid fingerprint clearances card of the prospective adoptive parent(s) and a valid fingerprint clearance card for each other adult member of the household, as required by law. The prospective parent and each other adult member of the household must certify on forms that are provided for in A.R.S. § 8-105(D) and that are notarized whether that person is awaiting trial or has ever been convicted of any criminal offenses listed in A.R.S. § 41-1758.07, subsections B and C, in this state or similar offenses in another state or jurisdiction. or an affidavit that the applicant and each adult living in the applicant's home have been fingerprinted and shall indicate the date the fingerprints were submitted for processing. The application shall identify ~~all adults living in the applicant's home~~ all adult members of the applicant's household who are subject to fingerprinting. The application shall further advise whether the applicant currently has temporary custody of the child and the expiration date of the custody order; and

c. [No Change]

B. [No Change]

1. Parent. [No Change]

2. Indian Child. [No Change]

3. Indian Child's Tribe. [No Change]

4. Indian Custodian. [No Change]

5. Indian Tribe. [No Change]

6. Extended Family Member. [No Change]

7. Preadoptive or Foster Care Placement Preferences. [No Change]

8. Adoptive Placement Preferences. [No Change]