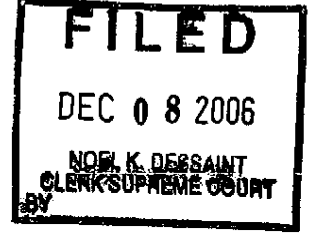


IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-06-0019



ORDER AMENDING
RULES 43, 52, 64, 65, 66.1, AND FORMS,
RULES OF PROCEDURE FOR THE JUVENILE COURT

This matter having been opened for comment ending on December 8, 2006, and no comments having been received,

IT IS ORDERED that Rules 43, 52, 64, 65, 66.1, and Forms IV-VII, 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 as of January 1, 2007.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 8th day of December, 2006.

For the Court:


RUTH V. MCGREGOR
Chief Justice

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

RULES OF PROCEDURE FOR THE JUVENILE COURT

* * *

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

A.-B. [No change in text.]

C. Notice of hearing [S]. In addition to 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 petition. The notice shall state that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in an adjudication of dependency, ~~the waiver of a right to trial to a jury and~~ the termination of parental rights or the establishment of a permanent guardianship based upon the record and evidence presented. The notice of hearing shall also advise of the right to make a request, or motion prior to any hearing that the hearing be open to the public.

D.-E. [No change in text.]

* * *

Rule 52. Initial dependency hearing.

A.-B. [No change in text.]

C. Procedure. At the initial hearing the court shall:

1.-3. [No change in text.]

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

a.-c. [No change in text.]

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

~~e. The right to request trial to a jury in a proceeding to terminate parental rights; and~~

f. e. The right to request prior to the hearing that any hearing be open to the public.

5.-6. [No change in text.]

D.-E. [No change in text.]

* * *

Rule 64. Motion, Petition, Notice of Hearing and Service of Process and Orders.

A.-B. [No change in text.]

C. Notice of Hearing. A notice of hearing shall accompany the motion or petition for termination of parental rights and shall advise the parent, guardian or Indian custodian of the location, date and time of the initial termination 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 at the initial hearing, pretrial conference, status conference or termination adjudication hearing, without good cause, may result in a finding that the parent, guardian or Indian custodian has waived legal rights, ~~including the right to trial to a jury,~~ and is deemed to have admitted the allegations in the motion or petition for termination. The notice shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in the termination of parental rights based upon the record and evidence presented.

D.-E. [No change in text.]

Rule 65. Initial Termination Hearing.

A. Purpose. At the initial termination hearing, the court shall determine whether service has been completed and whether the parent, guardian or Indian custodian admits, denies or does not contest the allegations contained in the motion or petition for termination of parental rights, ~~and in the case of a denial, whether a trial to a jury has been requested.~~

B. Time Limits. If a motion for termination of parental rights is filed, the initial hearing shall be held within thirty (30) days of the permanency hearing. If a petition for termination is filed, the hearing shall be held no sooner than ten (10) days following the completion of service. ~~In order to receive a trial to a jury at the adjudication hearing, a written request, signed personally by the parent or by counsel of record, must be filed prior to or at the initial hearing or, if counsel is appointed at the initial termination hearing, within twenty days of appointment of counsel for the initial termination hearing. If the written request for jury trial is signed by counsel of record, the counsel must avow that the request for jury trial has been made by the parent.~~

C. Procedure. At the initial hearing the court shall:

1.-4. [No change in text.]

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

a.-b. [No change in text.]

c. The right to trial by the court ~~or to a jury if properly requested~~ on the termination motion or petition; and

d. [No change in text.]

6. Determine whether the parent, guardian or Indian custodian admits, denies or does not contest the allegations contained in the motion or petition to terminate parental rights ~~and, in the case of a denial, whether a jury trial has been properly requested.~~

a.c. [No change in text.]

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.-2. [No change in text.]

3. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to appear at the pretrial conference, status conference or termination adjudication hearing, without good cause shown, may result in a finding that parent, guardian or Indian custodian has waived legal rights ~~including the right to trial to a jury~~, and is deemed to have admitted the allegations in the motion or petition for termination. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in the termination of parental rights 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;

4.-5. [No change in text.]

Rule 66. Termination Adjudication Hearing.

A. Purpose. The court shall conduct an adjudicatory hearing in which the court ~~or the jury, if one is properly requested,~~ determines whether the moving party or petitioner has met the burden of proving grounds upon which to terminate parental rights and whether termination is in the best interests of the child.

B.-C. [No change in text.]

D. Procedure. The presentation of evidence at the termination adjudication hearing shall be as informal as the requirements of due process and fairness permit and shall generally proceed in a manner similar to the trial of a civil action before the court without a jury.

1. Admission/No contest. The parent, guardian or Indian custodian may waive the right to trial, ~~including the right to trial to a jury~~, on the allegations contained in the motion or petition for termination of parental rights by admitting or not contesting the allegations. An admission or plea of no contest may be oral or in writing. In accepting an admission or plea of no contest, the court shall:

a.-d. [No change in text.]

2. Failure to Appear. If the court finds the parent, guardian or Indian custodian failed to appear at the termination adjudication hearing without good cause shown, had notice of the hearing, was properly served pursuant to Rule 64 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, ~~including the right to a trial to a jury,~~ and an admission to the allegation contained in the motion or petition for termination, the court may terminate parental rights based upon the record and evidence presented if the moving party or petitioner has proven grounds upon which to terminate parental rights. The court shall enter its findings and orders pursuant to subsection (E) of this rule.

E. [No change in text.]

~~F. Jury trial. When a trial to a jury has been timely requested, the court shall conduct the hearing as provided in Rule 66.1. The jury shall be instructed to render a general verdict as to whether or not parental rights are terminated. A proper verdict form will be presented based on the ground or grounds for termination stated in the petition and whether termination is in the best interest of the child.~~

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

1. [No change in text.]

2. If the moving party or petitioner has met its burden of proof, ~~as determined by the finder of fact,~~ the court shall:

~~a. If the court is the finder of fact,~~ Make specific findings of fact in support of the termination of parental rights and grant the motion or petition for termination;

~~b. If a jury is the finder of fact, enter the verdict of the jury;~~

~~e. b.~~ Appoint a guardian for the child or appoint a guardian for the child and vest legal custody in another person or authorized agency;

~~d. c.~~ Enter orders for financial support of the child;

~~e. d.~~ Set or reaffirm the dependency review hearing; and

~~f. e.~~ 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.

3. Deny the termination motion or petition if ~~If the finder of fact determined that the moving party or petitioner did not meet its burden of proof, enter the verdict if applicable,~~

deny the termination motion or petition, and order the parties to submit a revised case plan prior to the dependency review hearing.

Rule 66.1. Jury Trials

~~A. Right. As provided by law, following a timely request, a parent shall have the right to a trial to a jury in a hearing to terminate parental rights.~~

~~B. Request. The request for a trial to a jury shall be signed personally by the parent or by counsel of record, filed and served on the petitioner prior to the initial termination hearing provided by Rule 65 of these rules or, if counsel is appointed at the initial termination hearing, within twenty days of appointment of counsel. If the written request for jury trial is signed by counsel of record, the counsel must avow that the request for jury trial has been made by the parent. Failure to file and serve the request in a timely manner constitutes a waiver of the right to a trial to a jury. Failure to appear at the initial termination hearing or the termination adjudication hearing shall be deemed a rescission of any request for a trial to a jury.~~

~~C. Selection. Jurors shall be impaneled as provided in Rule 47 of the Rules of Civil Procedure.~~

~~D. Procedure. The court shall conduct the trial to the jury as provided in Rules 39(a) through 39 (i), 39(o), 39 (p), 47(g), 48 and 51 of the Rules of Civil Procedure.~~

~~E. Verdict. The jury shall return its verdict as provided in Rule 49 of the Rules of Civil Procedure, as applicable.~~

~~F. Judgment. The court shall render judgment as provided in Rule 66(g)(2)(b) of these rules and Rules 50 of the Rules of Civil Procedure.~~

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 IV. Counsel's Certification of Diligent Search

[No change in body of rule]

Form VII V. Sample Notice of Appeal

[No change in body of rule]