

1 Rebecca S. Masterson (020687)  
2 Timothy D. Keller (019844)  
3 GENERATION JUSTICE  
4 3900 E. Camelback Rd., Suite 300  
5 Phoenix, AZ 85018  
6 602-710-1135  
7 [rebecca@genjustice.org](mailto:rebecca@genjustice.org)

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

10 In The Matter Of PETITION TO AMEND  
11 THE RULES OF PROCEDURE FOR THE  
12 JUVENILE COURT

Supreme Court No. R-20-0044

**COMMENT TO PETITION TO  
ABROGATE CURRENT RULES OF  
PROCEDURE FOR THE JUVENILE  
COURT**

13  
14 **Statement of Interest**

15 Generation Justice (Gen Justice) is an Arizona-based nonprofit dedicated to  
16 improving the nation’s child protection system through policy reform and impact litigation.  
17 In the most recent legislative session, Gen Justice and allies championed SB1391, a bill  
18 providing every Arizona foster child with attorney representation. In addition to reform  
19 efforts, Gen Justice has a legal arm through its Children’s Law Clinic and represents  
20 children, caregivers, and parents in Arizona dependency proceedings. For these reasons,  
21 Gen Justice is offering these comments to proposed rules 303 through 306, which relate to  
22 children’s attorneys.  
23

24 Pursuant to Rule 28(D), Rules of the Supreme Court, Gen Justice respectfully submits  
25 these comments to the Petition to Abrogate Current Rules of Procedure for the Juvenile Court  
26 (Petition) for the Court’s consideration.  
27

28 ///

1                   **Comment 1: The Adoption of Juvenile Court Rules Relating to Children’s**  
2                   **Attorneys (Proposed Rules 303-306) Should be Expedited to January 1, 2022.**

3                   SB1391 passed the Arizona legislature unanimously, and come September 29, 2021, an  
4 attorney will be appointed to represent every child in an Arizona dependency action. This also  
5 means that come September 29, sections of current juvenile court rules will not align with state  
6 law. Current juvenile court rules are based on guardian ad litem appointments for children while  
7 the new law requires attorney representation. The proposed rules are in accordance with the new  
8 law and timely consideration and adoption is therefore imperative.  
9

10                  The Petition is scheduled to be considered at the December 2021 Rules Agenda, with a  
11 proposed effective date for any adopted rules of July 1, 2022.<sup>1</sup> The intent of the six-month  
12 delay between the Rules Agenda and the July effective date was to allow time to educate  
13 judicial officers, clerks and others on the modified rules.<sup>2</sup> Problematically, this timeframe  
14 leaves nine full months with court rules in place that do not reflect or support current law.  
15

16                  Our understanding is that training and education has, in large part, been scheduled and  
17 undertaken and can be completed by the end of the year. Therefore, to align court rules with  
18 state law, we suggest that proposed juvenile court rules 303 through 306 go into effect on  
19 January 1, 2022.  
20

21                   **Comment 2: The Requirement to Confer with Others in Proposed Rule 306 Should**  
22                   **Include Caregiver and Relative Attorneys.**

23                  Proposed Rule 306(2)(f) requires attorneys and GALs to “meet the obligation of  
24 informed representation by maintaining appropriate contact and communications” with all  
25

26  
27  
28 <sup>1</sup> Order Granting Task Force’s Request to Exceed Page Limit, et al., p.2 (5/3/2021).

<sup>2</sup> Task Force on the Rules of Procedure for the Juvenile Court’s Second Motion to Permit Additional Time for Filing a Rule Petition, p.3 (March 18, 2021).

1 crucial people in the child’s life, including caregivers, child safety investigators, childcare  
2 providers, among several others. We suggest adding “other attorneys” to this list. Frequently,  
3 attorneys in Arizona dependency matters will refuse to speak with counsel for relatives or foster  
4 parent caregivers out of a misguided attempt to comply with confidentiality laws. Attorneys,  
5 bound by the rules of professional responsibility, are already required to keep information  
6 confidential.  
7

8 Adding the following proposed language (shown in bold) would clarify that the lawyer-  
9 to-lawyer communication, standard in virtually every other area of law, is also appropriate in  
10 juvenile court:  
11

12 **f. Confer with Others.** To meet the obligation of informed representation, an attorney  
13 and GAL must maintain appropriate contact and communications with caregivers, child  
14 safety investigators and workers, service providers, childcare providers, CASAs,  
15 relatives, **other counsel**, and any other significant persons in the child’s life.

16 **Comment 3: Proposed Rule 303(e) Should Include Advisory Attorneys for**  
17 **Children.**

18 Rule 303(e) of the proposed juvenile court rules, titled “Assignment and Appointment of  
19 an Attorney; Advisory Attorney,” allows the appointment of an advisory attorney to parents or  
20 guardians before a dependency petition is filed. Our suggested comment (in bold) is to also  
21 permit an advisory attorney to be assigned to a child:

22 **Advisory Attorney.** If authorized by a county, an attorney may  
23 be assigned to provide legal advice to a parent or guardian **or**  
24 **child** before a petition is filed.

25 This suggestion is supported by Executive Order 13930, which allows states to use federal  
26 funding to pay for legal representation “for parents and children, including pre-petition  
27  
28

1 representation...”<sup>3</sup> When authorized, pre-petition counsel should be available to both parents  
2 and children.

3  
4  
5 RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of July, 2021.

6 **GENERATION JUSTICE**

7 /s/ Rebecca S. Masterson

8 Rebecca S. Masterson

9 Chief Counsel

10 GENERATION JUSTICE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

<sup>3</sup> [Executive Order No. 13930](#), 85 F.R. 38141 (2020) (emphasis added).