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IN THE ARIZONA SUPREME COURT

In the Matter of PETITION TO AMEND
THE RULES OF PROCEDURE FOR
THE JUVENILE COURT, AND TO
AMEND CIVIL RULE 81

R-20-0044

APPENDIX TO DCS'S
COMMENT ON PETITION

The Department of Child Safety (DCS or the Department), by and through undersigned counsel, submits the following Appendix containing its proposed amendments to the proposed new Juvenile Rules. Additions are represented by ALL CAPS, deletions by ~~strikethrough~~.

DATED this 22nd day of July, 2021.

/s/ Dawn R. Williams
Dawn R. Williams
Assistant Attorney General

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Rule 104. Applicability of the Arizona Rules of Evidence, Admissibility of Evidence and Reports

(a)–(c) [no change]

(d) Admissibility of Reports.

(1) [no change]

(2) ***Admissibility of Child Safety Worker’s Report.*** In any dependency, Title 8 guardianship, or termination hearing, the court must review a child safety worker’s report and ~~may~~ **MUST** admit the report into evidence if the worker or workers who prepared or approved the report are available for cross-examination and the report was disclosed to the parties no later than:

(A) one day before a Rule 333 review of temporary custody hearing; or

(B) 15 days before any other hearing at which the report may be introduced.

(3) [no change]

(4) ***Report Ordered Under Rule 344(f).*** In a Title 8 guardianship adjudication hearing, in addition to reports admitted into evidence under this section, the court must review the investigative report prepared under Rule 344(f) and ~~may~~ **MUST** admit it into evidence.

(5) [no change]

(6) [no change]

(7) ***Other Reports.*** The court ~~may~~ **MUST** admit any other report that is court ordered or required by law, if the report has been timely disclosed and the author of the report is available for cross-examination.

(8) –(10) [no change]

COMMENT TO 2022 AMENDMENT

This new rule consolidates the standards for admission of evidence in juvenile proceedings into one rule. There is no intent to change any result in any ruling on evidence admissibility.

Rule 218. Detention and Probable Cause Hearing

(a)–(b) [no change]

(c) Length of Detention.

(1) [no change]

(2) *After a Petition or Criminal Complaint is Filed.* No later than 24 hours after the filing of a petition or criminal complaint, a juvenile must be brought before the court for a detention hearing under section (d). If a detention hearing is not held within 24 hours after the filing of the petition or criminal complaint, the juvenile must be released from the detention facility to a parent or other responsible person. If no parent or other responsible person can be located to assume physical custody, ~~the court must release the juvenile to~~ DCS JUVENILE PROBATION OR THE COURT MAY CONTACT THE DCS CHILD ABUSE HOTLINE TO FACILITATE THE RELEASE OF THE CHILD TO A PARENT OR OTHER RESPONSIBLE PERSON.

(d)–(i) [no change]

Rule 313. Release of Information

(a) [no change]

(1) [no change]

(A)–(F) [no change]

(G) DCS, WHEN NOT A PARTY TO THE CASE BUT ORDERED TO CONDUCT AN INVESTIGATION IN THE CASE.

(2) [no change]

(b) [no change]

Redaction. [no change]

Rule 324. Providing Notice of a Change in a Child’s Placement

(a)–(b) [no change]

(c) **Time and Manner of Notice.** DCS must provide notice as soon as practicable before the child is relocated. If DCS is not able to provide advance notice of the child’s relocation ~~because relocation was necessary to protect the child,~~ it must do so as soon thereafter as possible and no later than 24 72 hours after the change of placement, excluding weekends and holidays. DCS may provide the notice verbally or electronically, including by email.

Rule 329. Service of the Dependency Petition, Temporary Orders, and Notice of Hearing

(a)–(b) [no change]

(c) **Service within Arizona.** If a parent is not served pursuant to section (a), service of process on a parent within Arizona must be completed pursuant to Civil Rule 4.1(d). When warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g), (k), or (l), AS MODIFIED BY SECTION (j) OF THIS RULE.

(d)[no change]

(e) **Service Outside Arizona.** Service outside the state must be completed pursuant to Civil Rule 4.2 SECTIONS (a), (c), (f), (i), or (j) AS MODIFIED BY SECTION (j) OF THIS RULE.

(f) -(i) [no change]

(j) SERVICE BY PUBLICATION UNDER CIVIL RULES 4.1(l) and 4.2(f) IS MODIFIED TO ALLOW THE COURT TO SET A PUBLICATION HEARING ON ITS OWN MOTION OR UPON A PARTY’S REQUEST TO PUBLISH. AT OR BEFORE THE PUBLICATION HEARING THE SERVING PARTY MUST PROVIDE THE COURT WITH DOCUMENTATION ESTABLISHING REASONABLY DILIGENT EFFORTS TO IDENTIFY AND LOCATE THE PERSON SERVED, AND THAT SERVICE BY PUBLICATION WAS THE BEST MEANS OF SERVICE PRACTICABLE UNDER THE CIRCUMSTANCES.

COMMENT TO 2022 AMENDMENT

[no change]

Rule 333. Contested Review of Temporary Custody

(a) Generally. If requested by the parent at the preliminary protective hearing, ~~or at the initial dependency hearing if the parent was not served and did not appear for the preliminary protective hearing,~~ the court must:

(1) (2) [no change]

(b)–(e) [no change]

Rule 334. Initial Dependency Hearing

(a)–(b) [no change]

(c) Procedure. At the initial dependency hearing, the court must:

(1) [no change]

(2) [no change]

(3) ~~conduct a temporary custody hearing pursuant to A.R.S. § 8-825 if requested by a parent pursuant to Rule 333(a);~~

(4) ~~–(7)~~ [no change except to renumber]

(d)–(h) [no change]

Rule 335. Qualified Residential Treatment Program; Judicial Review

(a) [no change]

(b) Definitions.

(1) [no change]

(2) **“Qualified Individual”** means a trained professional or licensed clinician who:

(A) is OBJECTIVE AND qualified to conduct a QRTP assessment;

(B) -(C) [no change]

(3) [no change]

(c) Time to Complete the Assessment and Documentation. [no change]

(1)[no change]

(2)determine whether the needs of the child can be met in kinship care with a grandparent or another member of the child’s extended family, including a person who has a significant relationship with the child, or in a foster home, and if not, which setting from among the settings specified in 42 U.S.C. § 472672(k)(2) would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and

(3)[no change]

(d)QRTP Placement and Approval.

(1)Notice and Disclosure.

(A) DCS must promptly notify the parties of the child’s placement ~~no later than 24 hours, excluding weekends and holidays, after the child is placed~~ in the QRTP in the manner prescribed in Rule 324.

(B) [no change]

(2)Procedure.

(A) [no change]

(B) DCS must file a motion seeking approval of the child’s placement in the QRTP no later than 10 court days after receipt of the QRTP assessment. HOWEVER, AN ASSESSMENT MAY BE COMPLETED WITHIN 30 DAYS BEFORE THE PLACEMENT, AND IN THAT CIRCUMSTANCE, DCS MUST FILE THE MOTION NO LATER THAN 10 DAYS AFTER THE CHILD’S PLACEMENT IN THE

QRTP. IF THE ASSESSMENT WAS COMPLETED MORE THAN 30 DAYS BEFORE THE PLACEMENT, THE ASSESSMENT MUST BE SUPPLEMENTED OR DONE AGAIN, UNLESS THE PARTIES WITH COURT APPROVAL AGREE OTHERWISE. The motion must contain supporting documentation, including the QRTP assessment. ~~If no party objects to placing the child in the QRTP, the court may rule upon the motion based on the supporting documentation without a hearing.~~

(C) IF NO PARTY OBJECTS TO PLACING THE CHILD IN THE QRTP, THE COURT MAY RULE ON THE MOTION BASED ON THE SUPPORTING DOCUMENTATION WITHOUT A HEARING.

[no further changes other than amending lettering]

Rule 601. Right to Appeal

(a) [no change]

(b) **Final Orders.** A final order must be in writing, signed by a judge, and filed with the clerk.

(1) [no change]

(2) In all other juvenile proceedings, final orders include:

(A) –(D) [no change]

(E) ~~an order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody;~~

(F) –(N) [no change other than amending lettering]

~~COMMENT TO 2022 AMENDMENT~~

~~The Court recognizes that subpart (b)(2)(E) may be considered inconsistent with certain case law, see e.g., *Jessiah C. v. Department of Child Safety*, 248 Ariz. 203, 206 ¶ 14 (App. 2020), but has determined that an order encompassed by this subpart should be deemed a final, appealable order.~~