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SUPREME COURT OF ARIZONA

PETITION TO AMEND THE RULES OF PROCEDURE FOR THE JUVENILE COURT, AND TO AMEND CIVIL RULE 81.1[*]	) Supreme Court No. R-20-0044)) PETITIONER'S REPLY)))

Task Force members have continued to work diligently on this massive project. In the short ten-week interval between the close of the public comment period and the filing of this reply, workgroups met four times, the Editorial Group also met four times, and the Task Force met twice. There also was ongoing work on the restyled rules before and after these meetings. Put simply, hundreds of additional member hours laid the foundation for this reply.

This reply has three parts. The first part responds to comments submitted on the Court Rules Forum and discusses changes to the rules resulting from those comments. The second part notes other rules petitions that were filed during the

[*] The caption of the April 28, 2021 petition referred to Civil Rule 81. It should have referred to Rule 81.1. The caption of this Reply cites the correct rule reference.

2021 rules cycle and explains how those petitions affected further changes to the restyled rules. The third part discusses changes to the restyled rules that the Task Force made on its own initiative to improve the grammar, syntax, and organization of the restyled rules. Some of these changes also add new content, and these are substantive changes.

I. Reply to Public Comments. The Task Force considered the following Rules Forum comments on the Task Force's rule petition number R-20-0044.

Comment from Rebecca Masterson. Ms. Masterson made three suggestions. The first, suggesting an earlier effective date of Rules 303 through 306, was resolved by an emergency rule petition (R-21-0038) discussed in Part II of this reply. Second, Ms. Masterson suggested adding to Rule 306(f)(2) a requirement that attorneys and GALs must communicate with "other attorneys." The Task Force acknowledges practical issues that arise when other individuals who are involved in a dependency proceeding, such as relatives or foster parents, are represented by counsel. Similar issues might arise even when those individuals have no attorney. Regardless, the issues are addressed by the current ethical rules. Ms. Masterson's third suggestion was to allow a child to have advisory counsel at the pre-petition stage. The Task Force agreed and added the words "or child" to Rule 303(e) ("advisory attorney") as follows: "If authorized by a county, an attorney may be assigned to provide legal advice to a parent, ~~or~~ guardian, or child before a petition is filed."

Comment from Judge Samuel Thumma. Judge Thumma commented on several rules. His comment noted his prior submission of an informal pre-petition comment and acknowledged that some of his current comments might have been previously considered by the Task Force. The rules below are in the order they were referenced in his comment.

Rules 205 and 208. These restyled rules provide for arrest warrants, but, like the current rules (see, e.g., Rules 12(D) and 26(D)), they do not mention probable cause to issue the warrants. Judge Thumma suggested adding a probable cause requirement to these restyled rules. The Task Force was uncertain what that probable cause requirement would refer to – for example, probable cause that the juvenile committed an offense, or that the juvenile failed to appear, or that the failure to appear was willful? After further discussion, the Task Force added introductory language in Rule 205 ("notice to appear; service; failure to appear"), section (c) ("failure to appear"), which says, "The court may issue a warrant under this rule only if the court has found probable cause to believe that the juvenile has committed an offense alleged in the petition." This requirement would apply not only to an arrest warrant, but also to the provisional warrant discussed in the next paragraph. The Task Force further agreed that a warrant for an individual's actual arrest should consistently be referred to as an "arrest warrant" and it added "arrest" before "warrant" where it was appropriate to do so.

Judge Thumma's comment also concerned the term "provisional warrant." Rule 205(c)(1) ("provisional warrant') already contains a description of the warrant, and expressly adds that that warrant "may also be known as a discretionary warrant, a temporary detention warrant, or by other names." The Task Force saw no need to standardize the name for such warrants. Although Maricopa and Pima counties already use variations of a provisional warrant, members had differing views of how the rule should work in practice. Discussion surrounded whether the warrant authorized only a temporary detention of a juvenile in the field while the officer initiates a phone call to obtain a new court date for the juvenile, which information is then communicated to the juvenile and the temporary detention would terminate. Other members believed that a provisional warrant would authorize an officer to transport the juvenile to the detention center to obtain a court date and, in some situations, a detention hearing could follow.

Task Force members agree that the current wording of the rule, which authorizes officers "to temporarily detain a juvenile for the limited purpose of obtaining a future court date," was sufficiently flexible to convey the boundaries and intended use of a provisional warrant. Stakeholders, however, will still need to make individualized determinations based on the circumstances to implement the intent of the provisional warrant, which is to assure the juvenile's next court appearance without the necessity of the court issuing, and an officer serving, a warrant for the

juvenile's arrest. Members further agreed to delete the first phrase of draft subpart (c)(1) (i.e., "whenever it appears that the juvenile cannot be found, or the juvenile's address cannot be ascertained after reasonable efforts to do so") because this phrase unnecessarily limited the provisional warrant's application.

Rule 208(e). This section concerns a juvenile's competence, which was added to the version of the rules submitted with this rule petition as a result of Judge Thumma's prefiling comment. The Task Force declined to make further changes to this provision.

Rule 204. Rule 204(b) contains "time limits for filing" a delinquency petition. Judge Thumma suggested deleting the limits in the absence of a citation to applicable authority, or if the limits are retained, providing a remedy of dismissal with prejudice. After discussion, the Task Force declined both suggestions. Prosecutors occasionally exceed the specified limits, but trial courts reportedly have been receptive to the prosecutors' cause for doing so. Moreover, dismissal with prejudice would be a severe remedy. When a juvenile raises an objection regarding a time limit, the Task Force believes that a trial judge should be able to fashion an appropriate remedy, including but not limited to dismissal with or without prejudice.

Rule 303. The Task Force discussed Judge Thumma's comment concerning this rule in conjunction with a related informal comment. Rule 303(a)(3) precludes an assigned attorney from accepting service of a petition on behalf of a parent who

failed to personally appear. The informal comment noted that a parent who has been located before the initial court hearing might occasionally be unable to appear at the hearing because of a work schedule, a medical issue, incarceration, or another difficulty. The proposed Task Force amendment to Rule 303(a)(3) would permit the parent in such circumstances to authorize the attorney to accept service of a dependency petition. The authorization must be in writing, or the attorney must avow on the record that the parent expressly authorized counsel to accept service. The proposed amendment includes the phrase "never appeared in the proceeding," as Judge Thumma suggested.

The Task Force also proposes a companion amendment to Rule 329(a), which concerns service of the dependency petition, by adding a new subpart providing that service of the petition is complete "when the assigned attorney accepts service on behalf of the parent under Rule 303(a)(3)."

Rule 102. Judge Thumma observed that the use of "trial" and "adjudication" in different places throughout the rules suggested that the words had different meanings. They do not, but after considering Judge Thumma's comment, the Task Force added a new clarifying definition in Rule 102 ("definitions"), section (z), which says, "'Trial" as used in these rules means an adjudication hearing." Current section (z), which contains a definition of "UCCJEA," was re-designated as section (aa).

Rule 318 and other rules. Judge Thumma noted that various rules refer to "judgment," e.g., judgment of acquittal (Rule 221), summary judgment (Rule 318), and judgment as a matter of law (Rule 319). He noted that there is no definition of "judgment" in the restyled rules and queried whether it had the same meaning as a final order, which is specifically described in Rule 601. The Task Force declined to define "judgment," as used in these rules, because the word is used in the context of a court process rather than to denote appealable orders. The terms that contain the word "judgment" are also part of widely recognized legal parlance.

Rules 414 and 417. Judge Thumma asked why a Rule 414 action ("petition to revoke consent") would be initiated by a petition, whereas a Rule 417 action ("setting aside an adoption") would be initiated by motion. The Task Force believes that "petition" was properly used in Rule 414 because it might initiate a new case, whereas "motion" would be appropriate in Rule 417 because it would be filed in an existing case. Prompted by Judge Thumma's comment, however, and after further discussion, the Task Force agreed to make clarifying revisions to the first sentence of Rule 414(a) ("petition to revoke consent") as follows: "A person seeking to revoke the~~ir~~ person's own consent to the adoption of a child before entry of a final order of adoption must file a petition stating the basis for the relief sought."

Rules 603 and 604. Judge Thumma's comment notes the divergent use of 10, 12, and 15-day deadlines in Rule 603, while Rule 604 uses 5, 7, and 13-day

deadlines. The Task Force is well aware of these divergences. After considering well-established deadlines in the current rules, however, and the application of rules for additional time for service by postal mail, the Task Force concluded that the respective deadlines in these two rules were reasonable and appropriate and designed to avoid confusion, and it made no changes.

Comment from Judges Thumma and McMurdie. This comment focuses on Rule 601(b)(2)(E), which provides that final orders (i.e., appealable orders) include "an order entered in a dependency removing a child who has been adjudicated dependent from a parent's physical custody." A prefiling comment from Judge Thumma regarding this provision resulted in the addition of a "comment to the 2022 amendment" concerning subpart (b)(2)(E). Nonetheless, the subsequent comment from Judges Thumma and McMurdie cited case law and practical reasons, such as delayed case resolution, why such orders should not be appealable; their comment requested that the Court not adopt this provision. The Editorial Group and the full Task Force considered the comment. Those discussions resulted in a revised and more explanatory "comment to the 2022 amendment."

The Task Force recognizes that appellate courts "have not spoken with a single voice" on this issue. Nonetheless, removing a child from a parent's custody has a substantial impact upon the parent's rights and is appropriately characterized as a final appealable order under case law. With regard to the length of time required

to process an appeal noted in the judges' comment, the revised "comment to the 2022 amendment" expressly provides that nothing in the rule prevents a party from either requesting accelerated appellate review or filing a special action if the remedy on appeal is not equally plain, speedy, and adequate. As a practical matter, the Task Force does not anticipate a significant number of appeals under subpart (b)(2)(E).

Comment from Dawn Williams, Arizona Attorney General's Office, on behalf of DCS. Ms. Williams' comment concerned Rules 104, 218, 313, 324, 329, 333, 334, 335, and 601. The Task Force previously had lengthy discussions of the issues raised by her comment on (a) Rule 104 regarding caseworker reports and the use of "may" and "must;" (b) Rule 218 and the release of a juvenile to DCS when a detention hearing is not timely held; (c) the deadlines for DCS to provide notice of a child's change of placement under Rule 324; and (d) affording a parent a temporary custody hearing under Rules 333 and 334. In addition, her issue regarding publication under Rule 329 is discussed in Part II of this reply, and the appealability of an order under Rule 601(b)(2)(E) was discussed immediately above.

Ms. Williams' comment also addressed Rule 313. Rule 313(a)(2)(C) presently allows "a designee of DCS when DCS is not a party in the case" to request a court order allowing access "upon a showing that inspection is required to carry out DCS[']s responsibilities." The comment from Ms. Williams asked that Rule 313 include a new alternative provision allowing DCS to have access to confidential

information, without a court order, when DCS is not a party to the case but has been ordered to conduct an investigation. Several members preferred that a judge review DCS requests for access to records on a case-by-case basis, as required by current Rule 47(A)(2)(c) and the restyled rule, because the information is sensitive and should not be presumptively available. One member had no such concerns because DCS access would presumably further the welfare of a child. Members generally agreed that the restyled version of the rule already included the functionality DCS requested, and they made no changes to Rule 313. It is also noteworthy that the corresponding current rule, Rule 47, was the subject of review only a few years ago by a blue-ribbon Supreme Court workgroup that considered a range of stakeholder viewpoints; that group did not incorporate in Rule 47 the provision Ms. Williams now requests.

Ms. Williams' comment also requested that Rule 335 on QRTPs mirror the language of interim Rule 52.1 on QRTPs that the Court approved at its August Rules Agenda. The final version of Rule 335 submitted with this reply does so.

Comment from Professor Paul Bennett. Professor Bennett's comment concerned (a) the opportunity of parents and children to participate in Child and Family Team ("CFT") meetings and (b) the admissibility of DCS caseworker reports and the admission of a parent's controverting report.

Professor Bennett had previously submitted a substantial portion of his comment before the petition was filed, and his informal comment was included in the Task Force's discussion of Rule 342 ("motion for return of the child") at the April 12 meeting, which occurred before the Task Force filed its rule petition. (Please see the rule-by-rule minutes posted on the Task Force webpage, at pages 121 to 123, for that discussion.) Subsequent information provided during a Task Force discussion of this comment suggested that CFT meetings are facilitated by a behavioral health agency, rather than DCS, and frequently focus on behavioral health issues and treatment plans. Anecdotal reports of attorney experiences vary. Some attorneys do attend CFT meetings. Some attorneys are not given notice of CFT meetings, and others chose not to attend. Some attorneys are reluctant to have their clients attend in counsel's absence. Because these meetings may deal with crisis situations, they are sometimes set on short notice, which poses challenges for the attendance of attorneys representing every party.

In large measure because CFT meetings are out-of-court and do not involve a court procedure, the Task Force was reticent to have further rule-based specifications. See, however, proposed Rule 306 ("duties of child's attorney or a child's GAL"), section (g) ("attend meetings"), which provides, "To the extent possible, a child's attorney and GAL should attend or provide input at a DCS staffing, Foster Care Review Board review, and Child and Family Team meeting."

The Task Force also discussed Professor Bennett's comment concerning caseworker reports. Does a DCS report admitted at an initial hearing remain admitted for all subsequent hearings? The Task Force believes the report would need to be readmitted at those later hearings, although this is perhaps more a subject for judicial education than for a court rule. Also, if the court "must" review and "may" admit a DCS report under Rule 104(d) ("admissibility of child safety worker's report"), must a court similarly treat a report submitted by a party other than DCS? One member observed that private party reports are often argumentative and include unfounded assertions. Other members noted that parties do in fact submit such reports, which should receive similar treatment and be considered by the court on the same basis as any other proffered evidence. But the Task Force decided against any change to Rule 104.

The Task Force concluded its discussion of Professor Bennett's comment without making rule revisions.

Comment from Amanda Glass. Ms. Glass proposed adding an identical subpart to Rules 332, 334, 341, 342, 343, 345, 346, 350, and 351; the subpart would require the court to make a finding that identifies the adult who has special education decision-making authority for a child, as required by the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400, et seq.), and as referenced by A.R.S. § 8-514.08. The Task Force agreed with the proposal but preferred to add the provision to a

single rule rather than to nine separate rules. The Task Force's proposed language would be located in Rule 310(c). In conjunction with this addition, the title of the Rule 310 would be modified as follows: "child's rights; special education." New section (c) provides:

> **(c) Special Education.** In a dependency, Title 8 guardianship, or termination of parental rights action, DCS must promptly notify the court concerning the child's entitlement to special education services, related services, or an initial evaluation, under A.R.S. §§ 15-761 through 15-774. The court must enter a signed order designating a person, other than a DCS child safety worker, who has special education decision-making authority as to the child, as provided in A.R.S. § 8-514.08.

II. Consideration of other petitions. The Task Force considered several pending rule petitions at its August 6 meeting, including three emergency rule petitions filed by the Administrative Office of the Courts ("AOC") in June 2021. Each of the four petitions discussed below prompted a change to the restyled Juvenile Rules. The Court subsequently adopted each of these four petitions at its August 24, 2021 Rules Agenda.

Service by publication. The State Bar of Arizona filed petition number R-20-0021. The petition proposed amendments to Civil Rules 4.1 and 4.2 that would require the filing of a motion requesting judicial authorization to serve case-initiating documents by publication. Restyled Juvenile Rule 329 incorporates the provisions of Civil Rules 4.1 and 4.2 by reference. The Arizona Attorney General filed a

comment on R-20-0021 contending that the State Bar's proposed amendments would be impractical in juvenile dependency proceedings.

The Task Force agreed that rather than cross-referencing the Civil Rules on this subject, it would be more appropriate to have a publication provision in the Juvenile Rules that accounted for the special requirements of dependency proceedings. Restyled Rule 329 concerns "service of the dependency petition, temporary orders, and notice of hearing." Rule 329(b) now says in part, "For dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows: … [subparts 1, 2, and 3]." The Task Force proposes adding a subpart 4 that would provide:

> ***Service by Publication.*** A serving party is not required to file a motion for leave to serve by publication prior to initiating such service. At or before the publication hearing, the serving party must provide the court with an affidavit establishing reasonably diligent efforts to identify and locate the person being served and that service by publication was the best means of service practicable under the circumstances.

There is a slight difference in the phrasing of the second sentence of this proposed subpart and the corresponding sentence in the rules proposed by R-21-0021, but the Task Force did not believe it made a substantive difference and believes the two provisions are substantially identical.

Emancipation. The AOC filed R-21-0037 to address SB 1332 (Laws 2021, Chapter 144); the AOC's petition proposed amendments to two current

emancipation rules, Rules 94 and 102. The Task Force had previously considered an earlier version of SB 1332 and drafted the restyled emancipation rules accordingly. The Task Force recently reviewed the chaptered version of SB 1332 and made an additional change. The legislation allows a ward of the court to file an emancipation petition. Rule 503(c) concerns the notice of an emancipation petition. In Rule 503(c), subparts (1) and (2), the Task Force added that a notice of the hearing and a copy of the petition must also be provided to "the appropriate state agency if the petitioner is a ward of the state."

Adoptions. The AOC's petition number R-21-0037 concerns current Rule 83 ("documentation required to adopt") and implemented changes required by SB 1831 (Laws 2021, Chapter 384). SB 1831 also required revisions to the corresponding restyled Rule 415 ("documentation required to adopt"), section (a) ("before the hearing"), subpart 8, as follows:

> 8. any birth parent's notarized statement as described in A.R.S. § 8-106; a contact preference form as described in A.R.S. § 36-340; and a notarized statements from any birth parent granting or denying ~~permission for the child being adopted to obtain identifying information about the child and from the consenting parent upon the child reaching 18 years of age, and granting or denying~~ permission to be informed of the death of the child~~, as provided by A.R.S. §§ 8-107, 8-129, and 8-130~~; …

Appointment of an attorney and a GAL. The AOC's rule petition number R-21-0038 included changes to several current rules regarding the appointment of an attorney and GAL in juvenile court proceedings. The AOC's changes were the result

of the enactment of SB 1391 (Laws 2021, Chapter 228). The Task Force's revisions to its restyled rules on this subject are detailed in the next part of this reply.

III. <u>Rules changes on the Task Force's Initiative.</u> Rule changes proposed by the Task Force are generally of two types.

The first type of changes addressed "nits," a slang term meaning "small flaws." There were, unfortunately, scores of nits in the version of the rules filed in April. The Task Force corrected nits involving spelling and punctuation errors, formatting irregularities, and extraneous or omitted words. Other nits were addressed with a word modification; for examples, "upon" became "on," and "education stability" became "educational stability." The universe of nits also involved word changes that enhanced phrasing without changing meaning. The Task Force revisions of those nits, for example, changed passive voice to active voice; added a clarifying word or words; substituted a more appropriate word or phrase; and reordered the sequence of words in a phrase or a sentence. There are too many nits to mention each, but by addressing them, the Task Force has improved the accuracy, clarity, and readability of the restyled rules.

The Task Force made other changes that were more substantive. Those changes are detailed below and are provided Part by Part, beginning with Part I. This reply notes thereafter the Task Force's request for amendments to Title 8 of the Arizona Revised Statutes, which it has separately conveyed to the Administrative

Office of the Court's legislative affairs group. A representative of that group discussed those requests with the Task Force at its August 6, 2021 meeting.

Part I. General Provisions

Rule 104 ("applicability of the Arizona Rules of Evidence, etc."). The word "adoption" was added to section (c) ("admissibility of a child's statement or conduct"), i.e., "In all adoption, dependency, termination, and Title 8 guardianship proceedings, evidence of a child's out-of-court statement … is admissible [etc.]."

Rule 105 ("form of filed documents"). Two new sections have been added. A new section (f) ("signature") reproduces Civil Rule 11(a). The restyled rules previously had no requirement for a signature on a court filing. New section (f), like the Civil Rule, includes a subpart concerning signatures on electronically filed documents. The Task Force also added a new section (h) ("unsworn documents under penalty of perjury"), which is the same as Civil Rule 80(c). It omitted the last sentence of Civil Rule 80(c), however, which says, "This rule does not apply to a deposition, oath of office, or an oath required to be taken before a specified official other than a notary public." The Task Force believed this sentence had little or no practical application in juvenile proceedings.

Rule 107 ("computing and extending time"). The rule as initially proposed referred readers to Rule 212 for computing time in a delinquency proceeding and to Civil Rule 6 for computing time in all other matters. Rule 212, in turn, referred

readers to Criminal Rule 1.3. The proposed juvenile rules on computing time for responding to motions in Part II and Part III cases, however, confounded the referenced provisions in other rules sets, particularly those provisions that provide additional time after service by mail or by electronic methods.

To prevent possible confusion, the Task Force struck the content of proposed Rule 107 and substituted new content. Newly proposed Rule 107, section (a) ("general time computation") and section (b) ("entry") derive from Criminal Rule 1.3(a) and (c). To ensure that juvenile cases proceed expeditiously, Rule 107(a)(5) ("additional time after service") does not allow additional time when a document is served electronically. Five extra days are added under this new provision only when service is made by U.S. mail. But if a time period is less than seven days, the proposed time computation excludes intermediate Saturdays, Sundays, and holidays, thereby providing extra time for a response. Newly proposed section (b) ("extending time") derives from Civil Rule 6(b)(1). Unlike its Civil Rule counterpart, however, proposed Rule 107(b) contains no exceptions.

Rule 111 ("Indian Child Welfare Act"). Restyled section (c) ("excluded proceedings"), subpart (1) ("delinquency and incorrigibility") provides, "ICWA does not apply in delinquency or incorrigibility proceedings when there is an out-of-home placement." This provision could be interpreted to mean that ICWA *would* apply in delinquency and incorrigibility proceedings when there is an out of home

placement. This is incorrect as a matter of law. ICWA does not apply to delinquency proceedings. Under the definitions in an Indian Child Welfare statute, 25 U.S.C. § 1903, a child custody proceeding "shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime." ICWA does apply, however, to incorrigibility proceedings (referred to in the regulations as status offenses) if they result in an out of home placement. See 25 C.F.R. § 23.103(a), which provides that ICWA applies to a "proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, pre-adoptive, or adoptive placement, or termination of parental rights." The Task Force has therefore rewritten Rule 111(c)(2) to say, "ICWA does not apply to delinquency proceedings. ICWA does not apply to an incorrigibility proceeding unless it results in an out-of-home placement."

Rule 112 ("court appointed special advocate [CASA]"). In addition to the existing reference to A.R.S. § 8-523, Rule 112 now also refers to A.R.S. § 8-522's CASA immunity language. The Task Force included this immunity language, which is not found in current Rule 3, but which mirrors A.R.S. § 8-522(H), to reassure volunteer CASAs and assist in recruiting and retaining them.

Part II. Delinquency

Rule 203 ("content of a petition") and Rule 204 ("filing a petition"). For clarification, the word "delinquency" was added before the word "petition" in the titles and section (a) of these two rules.

Rule 205 ("notice to appear; service; failure to appear"). Issues concerning Rule 205, and resolution of those issues, are discussed in Part I of this reply.

Rule 206 ("appointment of an attorney for a juvenile"). Section (b) ("appointment of an attorney") has been modified following further discussion and another review of A.R.S. §§ 8-202 and 8-323. Members observed that current county practices for court appointment of counsel in incorrigibility and traffic cases differ. So do their practices concerning whether the superior court retains jurisdiction of a case or transfers jurisdiction to a limited jurisdiction court, and where the charging document is initially filed. The discussion concluded with modifications to Rule 201 ("scope of the delinquency rules") and Rule 206 as follows:

> In Rule 201, members limited the application of these rules to delinquency proceedings in the juvenile court, as shown by this deletion in section (a): "**Application.** These rules apply to delinquency proceedings in the juvenile court ~~and in limited jurisdiction courts~~."
>
> In Rule 206(a) ("right to an attorney"), members added the words "or citation" to clarify that a juvenile has a right to be represented by an attorney "in all delinquency and incorrigibility proceedings initiated by petition or citation as provided by law."

In Rule 206(b) ("appointment of an attorney"), members struck the first sentence and substituted a new sentence: "~~Upon the filing of a petition or citation, the court must appoint an attorney for the juvenile if the court finds that the juvenile is indigent.~~ The juvenile court must appoint counsel for the juvenile if the court finds that the juvenile is indigent."

Because "a juvenile is deemed indigent" under Rule 206(c) ("meaning of indigent"), the effect of these changes is to require court appointment of counsel for a juvenile in every juvenile court delinquency or incorrigibility proceeding. The appointment of counsel in limited jurisdiction courts would be determined by statutes or by agreements between a juvenile court and a limited jurisdiction court under A.R.S. § 8-323. Members observed that the modifications to Rules 201 and 206 are consistent with the title of this rules set: "Rules of Procedure for the Juvenile Court." Accordingly, a limited jurisdiction court might still apply the civil traffic rules to a traffic citation against a juvenile in that court. See further A.R.S. § 8-202(E).

Rule 210 ("disclosure"). The title of subpart (b)(3) was changed from "disclosure by the juvenile" to "material and information" to avoid having the same title as Rule 210(b) ("disclosure by the juvenile") and to have a title that parallels the corresponding subpart title in section (a) ("disclosure by the State.")

Rule 212 ("computation of time in a delinquency case"). The reference to Criminal Rule 1.3 has been replaced by a reference to Rule 107.

Rule 216 ("motions"). In section (d) ("motion to continue"), a sentence referring to victims' rights has been modified to align with the language of A.R.S. § 8-421, as follows: "In deciding the motion, the court must consider the victim's views and the victim's right to a ~~prompt~~ speedy disposition and a prompt and final ~~resolution~~ conclusion of the case."

Rule 218 ("detention and probable cause hearing"). The word "parent" was substituted for the word "party" in subpart (b)(2). In section (g) ("taking of DNA"), the Task Force modified the subpart titles; the titles now are "(1) In custody: refusal to provide sample," and "(2) "out of custody: refusal to provide sample; revocation of release." Section (h) ("release to county jail") provides that "the filing of a criminal complaint is the date of arrest for purposes of Criminal Rules 4 and 8.2." The words "and 8.2" were removed because Rule 8.2 does not refer to a date of arrest. See the discussion of Rule 227, infra.

Rule 219 (advisory hearing"). The title and content of section (c), subpart (2), which concerns victims' rights, was modified for clarity and accuracy, as follows: "~~*Allow a Victim to be Heard*~~ *Address Victims' Rights*. The court must determine whether the victim's rights have been complied with ~~of the offense~~ and whether the victim has requested ~~to be present and~~ to be heard." In subpart (c)(3) ("enter the juvenile's admission or denial"), the word "agreement" has been added

after the word "plea" in two places, i.e., the provision now refers to a "plea agreement" rather than a "plea."

Rule 221 ("adjudication hearing"). The title of section (c), subpart (4) has been changed from "reversal of judgment" to "reversal by an appellate court." The Task Force modified the content of this subpart to clarify when the trial court must hold an adjudication hearing if ordered to do so by an appellate court. The Editorial Group proposed alternative versions of this subpart. The Task Force preferred the simpler alternative, which provides, "If an appellate court reverses a final order and orders an adjudication hearing, the juvenile court must hold the hearing no later than 30 days after the appellate court has issued its mandate." Because an appellate court might issue its mandate weeks or even months after entering the order, this new provision shortened the 60-day time that is specified in current Rule 29(B)(3).

Rule 225 ("intercounty transfers"). The first sentence of section (a) ("transfer of disposition hearing"), subpart (1), provides, "The court may order the transfer of a disposition hearing to the county of the juvenile's residence if the parties agree, the victim has an opportunity to be heard and agrees to the transfer, and the juvenile waives time pending the disposition hearing." The Task Force acknowledges that the victim has a right to be heard on the transfer of a disposition hearing, but it was concerned that the phrase "and agrees to the transfer" appears to provide the victim with unilateral authority to veto the transfer, even if the parties and the judicial

officer agree that a transfer is appropriate. After obtaining input from the chair of the Committee on Victims in the Courts and the AOC's senior legislative consultant, members deleted the subject phrase.

Rule 227 ("post transfer"). Petitioner received an informal comment noting that although section (b) ("time limits") of this restyled rule refers to Criminal Rule 8.2 to determine time limits for trying a juvenile in the criminal division after a transfer, the rule omitted a starting point for that determination. This was an oversight. Petitioner therefore proposes to add the following sentence to Rule 227(b), which is adapted from current Juvenile Rule 35(B): "The date of the transfer decision is deemed to be the date of arraignment for determining time limits under Criminal Rule 8.2."

Part III. Child Dependency and Guardianship, Termination of Parental Rights

Rule 302 ("definitions"). In section (a), which is a definition of "parent," the Task Force considered adding, "a third party who has legal decision-making authority under A.R.S. § 25-409." That third party, however, would not be a "parent" for purposes of a Part III termination proceeding, and the Task Force decided not to add this provision. After further discussion, the Task Force modified section (a) as follows:

> **(a) "Parent"** as used in Part III ~~in addition to~~ includes those defined as such in Rule 102 and, except in termination proceedings, also includes a guardian appointed by the court under Title 8 or Title 14 and an Indian custodian.

Rule 311 ("participants' rights"). Although the Task Force made no changes to Rule 311, this rule was the subject of considerable discussion. Section (a) as proposed would require DCS, if DCS is a party, to provide the required notice of review hearings to specified non-party individuals, such as out-of-home placements, pre-adoptive placements, placements where the child has resided for more than 10 days during the past 6 months, and a participant Indian tribe. Although restyled Rule 311 conforms to current Rule 41(I), both the current and restyled rules might be considered inconsistent with A.R.S. § 8-847(B), which requires the court to provide the described notice. As a practical matter, DCS already provides this notice in Maricopa and Pima counties because it frequently has more accurate contact information for these individuals than the court would have. Proposed Rule 311(e) further provides, "This rule does not limit the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings." Rule 311(e) is similar to the text of current Rule 41(I)(C) [sic].

Rule 312 ("public attendance at hearings"). In section (b) ("open hearings"), the Task Force eliminated the second sentence, which it considered unnecessary. (The second sentence said, "This includes court hearings concerning child abuse, abandonment, or neglect that resulted in a fatality or near fatality subject to the requirements in section (c).")

Rule 316 ("motions"). In light of the revisions to Rule 107, the Task Force eliminated provisions in section (c) ("response") that differentiated the time for filing a response based on the manner of service.

Rule 328 ("petition, temporary orders and findings, etc.") In section (e) ("amended petition"), the Task Force replaced a reference to Civil Rule 5(c) with a reference to Rule 106.

Rule 333 ("contested review of temporary custody"). Section (c) concerns the procedure at the hearing. The Task Force modified subparts (4) and (5) to track the language of the referenced statutes more closely, and to help ensure there was no substantive difference between this rule and the statutory provisions.

Rule 338 ("dependency adjudication hearing"). In section (b) ("time"), subpart (2) ("continuance"), the Task Force added the following sentence: "Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances under this section."

Rule 344 ("motion, notice of hearing, service of process, and order for permanent guardianship"). Section (a) ("motion"), subpart (1) ('generally") allows any party to a dependency proceeding to file a motion for permanent guardianship of a child who has been adjudicated dependent. Subpart (2) ("pre-adjudication motion") permits the motion to be filed before the adjudication, but "only when the dependency petition was filed by DCS." The revised version struck the quoted

phrase, thereby allowing a private party who initiated a dependency proceeding to file a pre-adjudication motion for a permanent guardianship in that case. As of the last Task Force meeting on September 15, 2021, it was still uncertain whether DCS would support or oppose this rule change and a corresponding statutory change noted below.

Rule 345 ("initial guardianship hearing"). The Task Force modified provisions in section (c) ("procedure"). As now phrased, the court must appoint an attorney pursuant to Rule 303(b) (i.e., for the parent), and must appoint an attorney for the child pursuant to Rule 303(c). It may also appoint a GAL for the child "if appropriate." (Compare the previous version, which gave the court discretion to "appoint an attorney or GAL, or both, for the child….")

Rule 350 ("initial termination hearing"). Section (c) ("procedure") was modified similar to the revisions to Rule 345 noted above.

Rule 351 ("termination adjudication hearing"). Section (h) ("findings and orders") now includes a new subpart (3) that requires the court "wherever possible, [to] obtain from a birth parent a notarized statement under A.R.S. § 8-534(B)." See further SB 1831 (Laws 2021, Chapter 384).

Part IV. Adoptions

Rule 407 ("motions"). The Task Force eliminated provisions in section (c) ("response") that were similar to provisions it deleted in Rule 316. The Task Force

also revised section (f) ("motion to set aside") for clarity and consistency to require the filing of the motion "no later than one year after entry of the final order, ~~judgment, or proceeding,~~" but if the motion alleges specified grounds, the motion must be filed "no later than 6 months after entry of the final order."

Rule 409 ("petition for child's custody by a non-certified person"). In section (e) ("findings and orders"), subpart (3), the phrase "order that custody of the child be given to another person" was replaced by "order that the child be placed with another person."

Rule 410 ("petition to adopt"). In section (b) ("setting a hearing on a petition to adopt"), the word "within" was replaced by "no later than" in each of the three subparts, and the words "after the filing of the petition" were added after the number of days in subparts (1) and (2) to alert readers to the triggering action.

Rule 412 ("birth parent living expenses"). Changes to section (b) ('procedure") were similar to the above-noted changes to Rule 410: "within" was replaced by "no later than," and the words "after the filing of the motion" were added after "10 days."

Rule 416 ("hearing to finalize adoption"). In section (b) ("burden of proof"), "petitioner" was changed to "prospective adoptive parent." In section (f) ("dismissal of a dependency action"), "had legal custody" (past tense) was changed to "has legal custody" (present tense).

Part V. Emancipation (No changes to note here.)

Part VI. Appeals

Rule 602 ("general provisions"). Restyled section (g) ("continuing juvenile court jurisdiction") provided that while an appeal is pending, "the juvenile court may proceed within its legal authority on a remaining or new issue …." A revised section (g) no longer includes the words "within its legal authority." The remainder of section (g) specifies that authority.

Rule 606 ("assigning an appellate case number, etc."). In section (a) ("assigning an appellate case number and caption"), titles (respectively "generally" and "motion to stay") have been added to each of the two subparts. Section (c) ("filing and transmitting documents"), subpart (4), originally required the clerk to transmit documents, exhibits, and an index to the appellate court. The revised subpart says, "transmit electronically, if feasible, …," to state a preference for electronic transmission. The Task Force also received an informal comment about the lack of clarity concerning the obligations of a court reporter to prepare transcripts on an appeal under Rule 606(d)(2). In response to the comment, the Task Force reorganized Rule 606(d)(2). Rather than the three subparts contained in the previous restyling, this provision now includes four subparts that state the court reporter's obligations more simply and directly.

Rule 607 ("briefing in the Court of Appeals; etc."). Section (e) ("notice and avowal in lieu of opening brief; pro se brief"), subpart (3), included contradictory provisions concerning the filing of an answering and a reply brief. The internal contradiction was eliminated by deleting the last two sentences of this subpart, which said, "The court may not grant relief without permitting the appellee to file an answering brief. No pro se reply brief may be filed."

Tables. Petitioner included two tables with the April filing. Both tables have been revised. The revised derivation table includes Rule 114 ("forms"), which had been omitted in the April version. The revised table also added the word "delinquency" to the titles of Rules 203 and 204 (respectively "content of a delinquency petition" and "filing a delinquency petition"). As noted above, the title of Rule 310 now includes the words "special education," and the revised table reflects this change ("child's rights; special education"). The revised table of ICWA authorities includes a more explanatory introduction. It also incorporates the ICWA authorities for Rule 319 ("motion for judgment as a matter of law"), which had been inadvertently omitted in the original version.

Forms. Forms 5(a) ("notice of appeal: delinquency"), 5(b) ("notice of appeal: generally"), and 6 ("supplemental designation of the record") were also revised. The changes to Forms 5(a) and 5(b) were primarily stylistic. In Form 5(a), however, the attorney's avowal was modified to be consistent with Rule 603(c); and changes to

Form 5(b) now allow use of the form for a cross-appeal. Revised Form 6 also includes stylistic edits, but notably, a provision that would have permitted a party to designate documents that were not marked as exhibits was deleted because it was inconsistent with Rule 604. Rule 604 allows a party to designate documents that were not admitted, but those documents nonetheless must have been marked as exhibits and offered into evidence.

Legislative Amendments. In conjunction with the restyled juvenile rules, the Task Force has requested the Administrative Office of the Courts to propose the following amendments to Title 8 at the next legislative session. Each of the proposed statutory amendments corresponds to changes within a restyled rule, as shown below.

A.R.S. § 8-237 (corresponds with restyled Rule 104). The statutory amendment would add "guardianship" to the types of proceedings in which statements or non-verbal conduct of a minor regarding acts of abuse or neglect are admissible.

A.R.S. § 8-525 (corresponds with restyled Rule 312). The amendments would add two references to A.R.S. § 8-537 to clarify proceedings that are open to the public.

A.R.S. § 8-815 (corresponds with restyled Rule 111). The proposed amendment would change "reason to believe" to "reason to know." A.R.S. § 8-

815(A) currently directs courts to apply ICWA if there is "reason to believe" a child is an Indian child. However, the 2016 federal regulations, 25 C.F.R. § 23.107, use the term "reason to know," and the restyled rules (e.g., Rules 302, 332, 345, 349) generally use "reason to know."

A.R.S. § 8-871 (corresponds with restyled Rule 344). The amendment, by deleting in subpart (A)(1) of this statute the words "filed by the department," would allow a private party who filed a dependency action to initiate a pre-adjudication guardianship. See further the discussion of Rule 344 in Part III of this reply.

A.R.S. §§ 8-535 and 8-872 (correspond with restyled Rules 344 and 349). These amendments would allow service by certified mail of a notice of a pending guardianship or termination action in a case subject to the Indian Child Welfare Act ("ICWA"), as permitted by 25 C.F.R. § 23.111, in addition to permitting service by registered mail, which the Arizona statutes already allow.

IV. Conclusion. Petitioner requests the Court to abrogate the current set of Juvenile Rules and to adopt instead the tables shown in Appendix A and the restyled rules shown in Appendix B. Petitioner also requests the Court to adopt the proposed amendment to Civil Rule 81.1 that is shown in Appendix E. Petitioner further requests the Court to approve for posting on the Arizona Judicial Branch website the seven forms contained in Appendix D. (The foregoing lettering of the appendices is consistent with the lettering of the appendices to the April petition. Because the

Court in August adopted the prior Appendix C, which concerned Juvenile Rule 52.1, there is no Appendix C to this reply.) Petitioner notes that because of limits on the size of electronic filings, the appendices contain only clean versions of these documents. Mark-up versions are available, if needed.

For the reasons set forth in the petition, Petitioner requests that the rules, tables, and forms have an effective date of July 1, 2022.

RESPECTFULLY SUBMITTED this 30th day of September 2021.

By _/s/ Rebecca White Berch_____
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Chair, Juvenile Rules Task Force

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