

## **PART I. GENERAL PROVISIONS**

### **Rule 101. Scope and Construction**

- (a) **Scope.** These rules apply in all juvenile court proceedings, including delinquency, incorrigibility, diversion, dependency, emancipation, in-home intervention, extended foster care, Title 8 guardianship, termination of parental rights, and adoption.
- (b) **Construction.** Parties should use these rules, and courts should construe and enforce them, in a manner that ensures a simple and fair resolution of juvenile proceedings, reduces unnecessary delay and expense, protects individual rights, and preserves the public welfare.

## **Rule 102. Definitions**

A term defined in the singular includes the plural, and a term defined in the plural includes the singular.

- (a) **“ADJC”** means the Arizona Department of Juvenile Corrections.
- (b) **“ARCAP”** means the Arizona Rules of Civil Appellate Procedure.
- (c) **“A.R.S.”** means the Arizona Revised Statutes.
- (d) **“Authorized transcriber”** means a certified reporter or a transcriber employed by or under contract with an Arizona court.
- (e) **“Child safety worker”** means a person who has been selected by and trained under the requirements prescribed by DCS, and who assists in carrying out the provisions of A.R.S. Title 8.
- (f) **“Civil Rule”** means a rule in the Arizona Rules of Civil Procedure.
- (g) **“Clerk”** means the superior court clerk unless specified otherwise. The Supreme Court clerk and the Court of Appeals clerk are referred to by those titles, or if the context warrants, as the “appellate clerk.”
- (h) **“Court day”** is a day other than a weekend or holiday when the court is open for business.
- (i) **“Criminal Rule”** means a rule in the Arizona Rules of Criminal Procedure.
- (j) **“DCS”** means the Arizona Department of Child Safety.
- (k) **“Family Law Rule”** means a rule in the Arizona Rules of Family Law Procedure.
- (l) **“FFPSA”** means the Family First Prevention Services Act of 2018 as codified in the Bipartisan Budget Packet/Continuing Resolution (Public Law 115-123). The FFPSA amended several federal statutes, including 42 U.S.C. §§ 622, 625, 629, 670-677, and 679.
- (m) **“Guardian Ad Litem” (“GAL”)** means an attorney appointed by the court to protect the best interests of a party or as otherwise directed by the court.
- (n) **“ICPC”** means the Interstate Compact on the Placement of Children under A.R.S. §§ 8-548 through 8-548.06.
- (o) **“ICWA”** means the Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963, and Part 23 of Title 25 of the Code of Federal Regulations (“Regulations”), including any amendments to those provisions, or if required by the context of a Juvenile Rule, either the Act or the Regulations.

- (p) **“Judicial officer”** includes a judge, a judge pro tempore, and a commissioner.
- (q) **“Juvenile”** means a person under the age of 18 years and may be referred to in these rules as a “child,” “youth,” or “minor.” For purposes of these rules, “juvenile” also includes a person within the juvenile court’s jurisdiction under A.R.S. § 8-202.
- (r) **“Juvenile court”** means a division or department of the superior court designated to preside over juvenile court proceedings as described in Rule 101(a).
- (s) **“Minute entry”** is defined by Supreme Court Rule 125. An unsigned minute entry may constitute an order of the court. However, to be appealable, an order must be signed as required by Rule 601.
- (t) **“Out-of-home placement”** means the placing of a child in the custody of an individual or agency other than the child’s parent or legal guardian and includes placement in temporary custody pursuant to A.R.S. § 8-821, voluntary placement pursuant to A.R.S. § 8-806, or placement due to a dependency action.
- (u) **“Parent”** means the child’s biological, adoptive, or legal mother or father whose rights have not been terminated. “Parent” does not include a person whose paternity has not been established pursuant to A.R.S. § 25-812 or § 25-814.
- (v) **“Presiding judge”** means the presiding judge of the juvenile court or the judge’s designee, unless these rules specify otherwise.
- (w) **“Probation officer”** as used in these rules means a juvenile probation officer.
- (x) **“State”** means the State of Arizona.
- (y) **“Supreme Court Rule”** means a rule in the Rules of the Supreme Court of Arizona.
- (z) **“Trial,”** as used in these rules, means an adjudication hearing.
- (aa) **“UCCJEA”** means the Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 through 25-1067, which defines a “[c]hild custody proceeding” under the Act to include “a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.” A.R.S. § 25-1002(4).

#### **COMMENT TO 2022 AMENDMENT**

This rule does not provide a comprehensive set of definitions. Other terms are defined throughout these rules, including Rules 202, 302, 402, and 501, as well as by statute, including A.R.S. §§ 8-101 & -136 (adoption), 8-141 (adoption subsidies), 8-161 (nonrecurring adoption expenses), 8-171 (interstate adoption assistance compacts), 8-201

(juvenile court), 8-246 (juvenile), 8-248 (private service provider), 8-261 (family counseling services), 8-271, -272 & -273 (children's mental health services), 8-291 (juvenile competency), 8-305 (detention center), 8-309 (unlawful use of an electronic communication device by a minor), 8-341, -341.01, -342, -345, -349, -350 & -350.01 (disposition and commitment), 8-351 (juvenile intensive probation), 8-382, -384, -413, -418 & -422 (victims' rights), 8-455, -456, -461, & -466 (DCS), 8-501, -502, -509.01, -512.01, -514.06 & -528 (child welfare and placement), 8-531 & -543 (termination of parental-child relationship), 8-550.01 (child abuse prevention fund), 8-801, -804, -807, -807.01, -811, -814 & -816 (dependent children), 8-821, -822, -827, -830 & -831 (removal of child), and 8-1152 (early childhood development and health programs).

**Rule 103. Priority of Proceedings; Conducting Proceedings; Applicability of Other Rules of Procedure**

- (a) **Priority.** Juvenile court proceedings have priority over other proceedings, except as otherwise provided by law.
- (b) **Informality.** Juvenile court proceedings must be conducted as informally as the requirements of due process and fairness allow.
- (c) **Order of Trial.** A trial under these rules proceeds like the trial of an action by the court sitting without a jury, except that in a delinquency or an incorrigibility proceeding, the juvenile may not be compelled to be a witness.
- (d) **Applicability of Other Rules of Procedure.** The Civil, Civil Appellate, Criminal, Family Law, Probate, Protective Order, and Supreme Court Rules are applicable only as specifically set forth or incorporated by reference in these rules.

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

- (a) **Contested Adjudication Hearings.** The Arizona Rules of Evidence apply in contested adjudication hearings in delinquency, dependency, termination, and Title 8 guardianship proceedings, except as otherwise provided by law or by agreement of all parties and the court.
- (b) **Other Proceedings.** Except as otherwise provided by law or by agreement of all parties and the court, in any proceeding not covered by section (a), any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the court determines the evidence lacks reliability or will cause unfair prejudice or confusion, or waste time.
- (c) **Admissibility of a Child's Statement or Conduct.** In all adoption, dependency, termination, and Title 8 guardianship proceedings, evidence of a child's out-of-court statement or nonverbal conduct regarding acts of abuse or neglect perpetrated on the child is admissible if the time, content, and circumstances of the statement or conduct provide sufficient indicia of its reliability.

### **(d) Admissibility of Reports.**

- (1) **"Child Safety Worker's Report"** means a narrative report, as appropriate to the hearing, containing the following information:
- (A) the reasons the child was removed from the custody of the parent, guardian, or Indian custodian;
  - (B) the services provided to prevent removal;
  - (C) the case plan goal and the services provided to achieve the goal;
  - (D) the steps taken by the parent, guardian, or Indian custodian to comply with the case plan;
  - (E) the child's current placement and, in the case of an Indian child, whether the placement falls within the preferences as set forth in ICWA or whether good cause exists to deviate from ICWA's preferences;
  - (F) the services provided to meet the child's needs;
  - (G) the efforts made to ensure the educational stability of a child, including but not limited to the appropriateness of the child's current school placement, school attendance, services to help achieve the child's education potential, special education services (when indicated), and grade level progress or progress toward graduation;

- (H) the recommended dispositional orders;
- (I) the recommended changes to the case plan goal, services, or placement; and
- (J) the recommended permanent plan.

The report may include any appendices or reports prepared by a person other than the child safety worker. The term report does not include a social study prepared under A.R.S. § 8-536 or pursuant to a court order in a termination proceeding, or the report required by A.R.S. § 8-872(E) and Rule 344(f).

- (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 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) ***Evaluation Report.*** In any dependency, Title 8 guardianship, or termination hearing, an evaluation report of any psychological, psychiatric, medical, neurological, psycho-educational, psycho-sexual, substance abuse, or similar evaluation concerning any party or participant, or any person with whom a child is or may be residing, is admissible into evidence if the report has been disclosed to the parties under Rule 315(a)(1) and the author of the report is available for cross-examination.
- (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 admit it into evidence.
- (5) ***Social Study.*** In a termination adjudication hearing, a social study prepared pursuant to Rule 351, A.R.S. § 8-236, or by court order is admissible as evidence unless a party has filed a notice of objection as required by Rule 315(d)(1)(E). If the court sustains any objections, the court may:
  - (A) admit the social study into evidence after redacting those portions to which objections were sustained and
  - (B) allow the petitioner a reasonable opportunity to call additional witnesses to testify regarding the redacted portions of the social study.

- (6) ***Disposition Report.*** The disposition report in a delinquency proceeding is governed by Rule 222.
- (7) ***Other Reports.*** The court may 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) ***Admission of Reports.*** If the court relies in whole or in part on a report under this section, the report must be admitted into evidence to ensure that the report is part of the appellate record.
- (9) ***Reports Offered but Not Admitted.*** A report under this section that is offered but not admitted into evidence must be marked for identification to ensure that the report is part of the appellate record if the report has been designated in a supplemental designation by a party to the appeal pursuant to Rule 604.
- (10) ***Available for Cross-Examination.*** For purposes of this section, a person is available for cross-examination if the person appears in court, is available for a virtual appearance under Rule 110, or is subject to the court's subpoena power, unless the person is subpoenaed and is unable or unwilling to comply with the subpoena.

#### **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 105. Form of Filed Documents**

**(a) Filing with the Court Defined.** The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may, in open court, submit a document directly to a judge, who must promptly transmit it to the clerk for filing and notify the clerk of the date of its receipt.

### **(b) Effective Date of Filing.**

- (1)** Except for documents submitted directly to a judge under Rule 105(a), a document is deemed filed on the date the clerk receives and accepts it.
- (2)** If a document is submitted directly to a judge under Rule 105(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.
- (3)** If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the notification from the court's electronic filing portal or as is displayed within the portal, unless the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation of the reasons for the rejection.
- (4)** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.
- (5)** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date the incarcerated party delivered it to the prison authorities to deposit in the mail.

**(c) Caption.** Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:

- (1)** to the left of the center of the page starting at line 1:
  - (A)** the filing attorney's or self-represented person's name, address, telephone number, and email address; and
  - (B)** if an attorney, the attorney's State Bar of Arizona identification number, any State Bar of Arizona law firm identification number, and the identification of the party being represented by the attorney;

- (2) centered on or below line 6 of the page, the title of the court;
- (3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;
- (4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;
- (5) immediately below the case number, a brief description of the nature of the document; and
- (6) below the document description, the judge to whom the case is assigned (if known).

**(d) Document Format.** Unless the court orders otherwise, all filed documents – other than a document submitted as an exhibit or attachment to a filing – must be prepared as follows:

- (1) ***Text and Background.*** The text of every document must be black on plain white background. All documents filed must be single-sided.
- (2) ***Type Size and Font.*** Notwithstanding any local rule, every typed document must use at least a 13-point type size. The court prefers sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.
- (3) ***Page Size.*** Each page of a document must be 8 ½ by 11 inches.
  - (A) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.
  - (B) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.
  - (C) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.
- (4) ***Margins and Page Numbers.*** Margins must be set as follows: a margin at the top of the first page and each subsequent page of not less than 1½ inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than ½ inch; and a margin at the bottom of each page of not less than ½ inch. Except for the first page, the bottom margin must include a page number.

- (5) ***Handwritten Documents.*** Handwritten documents are discouraged, but if a document is handwritten, the text must be legible.
- (6) ***Line Spacing.*** Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.
- (7) ***Headings and Emphasis.*** Headings must be underlined or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.
- (8) ***Citations.*** Case names and citations signals must be in italics or underlined.
- (9) ***Originals.*** Parties must file original documents, except for attachments.
- (10) ***Court Forms.*** Printed court forms may be single-spaced, but those requiring a judicial officer's signature must provide ample space for the signature. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication or imaging.

**(e) Electronically Filed Documents.**

**(1) *Format.***

- (A) ***File Type.*** A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, .docx format, or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified such as .odt, .docx, or other format permitted by Administrative Order, and must not be password protected.
- (B) ***Size.*** A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

**(2) *Format of Attachments.***

- (A) ***Generally.*** An exhibit or an attachment to an electronically filed document may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.
- (B) ***Official Records.*** A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

- (C) *Notarized Documents.* A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.
- (D) *Certified Mail, Return Receipt Card.* When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card, or electronic return receipt, are scanned and filed.
- (E) *National Courier Service.* When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

**(3) *Bookmarks and Hyperlinks.***

- (A) *Bookmarks.* A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.
- (B) *Hyperlinks.* A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Materials accessed via hyperlinks are not a part of the official court record. The use of hyperlinks is encouraged.

- (4) *Originals.* An electronically filed document or a scanned copy of a document filed in hard copy constitutes an "original" under Arizona Rule of Evidence 1002.

**(f) *Signature.***

- (1) *Generally.* Every pleading, written motion, and other document filed with the court or served must be signed by at least one attorney of record in the attorney's name--or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.
- (2) *Electronic Filings.* A person may sign an electronically filed document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.
- (3) *Filings made by Multiple Parties.* A person filing a document containing more than one place for a signature--such as a stipulation--may sign on behalf of

another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

**(g) Proposed Orders.**

(1) ***Required Format.*** A proposed order must be prepared as provided in this rule. It must be submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. On the signature page, there must be at least two lines of text above the signature.

(2) ***Service and Filing.*** Any proposed order must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order. The clerk must accept electronically submitted proposed orders; however, these electronically submitted documents must not be included in the publicly displayed court record. A party may file an unsigned proposed order as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

(3) ***Stipulations and Motions; Proposed Forms of Order.***

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry is required.

(B) If a motion is accompanied by a proposed order, no minute entry is required if the order is signed and entered.

**(h) Unsworn Declarations Under Penalty of Perjury.** When these rules require or allow a matter to be supported, evidenced, established, or proved by a sworn written declaration, verification, certificate, statement, oath, or affidavit, the same may be unsworn – and have the same force and effect – if it is:

(1) signed by the person as true under penalty of perjury;

(2) dated; and

(1) in substantially the following form: "I declare [or certify, verify or state] under penalty of perjury that the foregoing is true and correct. Executed on [date]. [Signature]."

## **Rule 106. Serving Documents After Service of Case Initiating Documents**

- (a) Application of This Rule.** After service of the initial petition, charging document, or other case-initiating document that is assigned a new case number, a party who files a document with the court must provide a copy of that document to the other parties in the manner stated in this rule, unless another juvenile rule or court order provides otherwise.
- (b) Methods of Service.** Except for documents that are confidential, including documents deemed confidential under Rule 215 or Supreme Court Rule 123, or documents that are filed under seal, a complete and exact copy of every document that a party files with the court must be provided to every other party or the party's attorney, before or promptly after the document is filed, by one of the following methods.
- (1) *Serving an Attorney.*** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders otherwise or a specific rule requires service on the party.
  - (2) *Methods of Service.*** A document is served on a person under this rule by:
    - (A)** handing it to the person;
    - (B)** mailing it by U.S. mail or other national courier service to the person's last known address, in which event service is completed upon mailing;
    - (C)** delivering it by any other means, including electronic means other than that described in subpart (b)(2)(D), if the recipient consents in writing to that method of service or if the court orders service in that manner, in which event service is complete upon transmission;
    - (D)** transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, or by email, if the recipient is an attorney of record in the action, in which event service is complete upon transmission;  
or
    - (E)** leaving it for the person:
      - (i)** if the person is represented by an attorney, at the attorney's office with a responsible person or other person in charge or, if no one is in charge, in a conspicuous place in the attorney's office; or
      - (ii)** if the person is not represented by an attorney, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

**(c) Noting the Method of Service.** On the last page of a document filed with the court, the party serving a document under this rule must state the date and method used to serve the other parties. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage. A statement of service may be in the following form:

“A copy has been or will be mailed/emailed/hand-delivered [select one]

“on [insert date] to:

“Name of opposing party or attorney

“Physical or email address of opposing party or attorney”

**(d) Documents That Are Not Filed with the Court.** A party must serve copies of the following documents on every other party as required by this rule, but those documents are not filed with the court unless the court orders otherwise:

(1) subpoenas, and

(2) discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, as well as responses to those requests.

## **Rule 107. Computing and Extending Time**

**(a) General Time Computation.** When computing any time period more than 24 hours prescribed by these rules, by court order, or by an applicable statute, the following rules apply:

- (1) *Day of the Event.*** Exclude the day of the act or event from which the designated time period begins to run.
- (2) *Last Day.*** Include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.
- (3) *Time Period Less Than 7 Days.*** If the time period is less than 7 days, exclude intermediate Saturdays, Sundays, and legal holidays from the computation.
- (4) *Next Day.*** The “next day” is determined by counting forward when the period is measured after an event, and backward when measured before an event.
- (5) *Additional Time After Service.*** If a party may or must act within a specified time after service and service is made under Rule 106(b)(2)(B), 5 calendar days are added after the specified time period would otherwise expire under (a)(1)-(4). This provision does not apply to the clerk’s distribution of notices, forms, minute entries, or other court-generated documents.

**(b) Extending Time.** When an act may or must be done within a specified time, the court may, for good cause, extend the time:

- (1)** with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires, or
- (2)** on motion made after the time has expired if the party failed to act because of excusable neglect.

**(c) Entry.** A court order is entered when the clerk files it.

## **Rule 108. Change of Judge**

### **(a) Definitions.** In this rule:

- (1) The term “judge” includes a judge, a commissioner, and a judge pro tempore.
- (2) The term “presiding judge” includes the presiding judge’s designee.

### **(b) For Cause.**

- (1) **Grounds.** A party is entitled to a change of judge for cause on any of the grounds provided in A.R.S. § 12-409(B).
- (2) **Procedure.**
  - (A) No later than 5 days after a party discovers grounds for a change of judge for cause, but before the start of a hearing, the party may file a motion supported by affidavit alleging specific grounds for the change. The party must provide the other parties and the presiding judge with copies of the motion.
  - (B) If the named judge is the presiding judge, the functions of the presiding judge must be performed by a judge designated by the presiding judge.
  - (C) No event occurring before the discovery of grounds constitutes a waiver of the right to a change of judge for cause. A party may preserve for appeal allegations of interest or prejudice that prevent a fair and impartial hearing.
- (3) **Hearing.** Promptly after a party files a motion, the presiding judge may hold a hearing to determine the issues raised in the affidavit or may decide the issues based on the affidavits and memoranda filed by the parties. The presiding judge must decide the issues by a preponderance of the evidence.
- (4) **Assignment.** Depending on the findings of the presiding judge, the presiding judge may assign the action to the original judge or to a new judge.
- (5) **Waiver.** A party waives the right to a change of judge for cause when the party, after learning of grounds for a challenge for cause, allows a contested proceeding to begin or continue before that judge without objection.

### **(c) Without Cause.**

- (1) **Grounds.** Every party has a right to make one request for a change of judge.
- (2) **Procedure.** A party may exercise the right to a change of judge by making a request on the record in open court, or by filing a “Notice of Change of Judge” signed by the party’s attorney, or if self-represented, signed by the party, stating the name of the judge to be changed. A notice of change of judge must be filed

no later than 5 days after notice to the requesting party of the assignment of the case to a judge.

(3) **Waiver.** A party waives the right to a change of judge upon request when the party participates before that judge in any contested proceeding. The waiver applies to all successive petitions or supplemental petitions that were filed regarding the same juvenile or, in the case of a dependency action, the same minor or any other minor known to have at least one parent in common with that minor, and to all proceedings after remand by an appellate court.

(4) **Remand by Appellate Court.**

(A) If the appellate court remands a case that remains assigned to the original judge, the parties do not have a renewed right to a change of judge.

(B) If upon remand the case is assigned a new judge, a party who has not waived a right under subpart (b)(3) or who has not previously filed a notice of change of judge of right may file a notice no later than 10 days after notice to the requesting party of the assignment of the case to a new judge.

(d) **Duty of Judge.** When a party timely files a motion or a notice for a change of judge, the judge named in the motion or notice must proceed no further in the action except to make such temporary orders as may be necessary to prevent harm to the child before the action can be reassigned to another judge.

### **Rule 109. Combining Hearings**

- (a) Delinquency Proceedings.** Except for a transfer hearing under Rule 226, the court may conduct at one time any combination of the advisory, adjudication, disposition, or other delinquency hearings.
- (b) Non-Delinquency Proceedings.** The court may combine and conduct at one time any hearings or conferences under Part III of these rules.
- (c) Requirements.** Any combined hearings under sections (a) and (b) must abide by any time limits set by law and any required notice to the parties for each proceeding and must preserve the parties' rights to due process.
- (d) Crossover Youth.** If there are pending delinquency and dependency cases involving the same child, the court may also set a delinquency hearing and a dependency hearing involving that child on the same date and time.

## **Rule 110. Virtual Proceedings; Declared Emergencies**

### **(a) Generally.**

- (1) ***Delinquency Matters.*** This rule and Rules 208 and 209 govern virtual appearances in delinquency proceedings.
- (2) ***In Non-delinquency Matters.*** On the court's initiative or motion by a party, the court may permit virtual testimony, argument, or appearances in any non-delinquency proceeding under these rules. A party's motion must be in writing, unless otherwise authorized by the court.
- (3) ***In All Matters.*** Before granting a motion to appear or testify at or attend a proceeding virtually, the court must consider the due process rights of any objecting party and enter a case-specific due process determination in a signed minute entry or order.

**(b) Meaning of Virtual.** When used in this rule, "virtual" means by telephone, video conferencing, or other audio or visual technology allowing two or more person to communicate.

**(c) Non-Evidentiary Hearing.** The court may allow or direct a party to appear virtually at a non-evidentiary hearing if each person will be audible to every other person participating in the proceeding, including the judicial officer, and to the electronic recording system or court reporter.

### **(d) Request to Testify Virtually; Evidentiary Hearing.**

- (1) ***Presumption.*** Unless section (f) of this rule applies, it is presumed that evidentiary hearings will be conducted in person.
- (2) ***Time.*** A party must file a motion requesting that a party or witness give virtual testimony at an evidentiary hearing and email or deliver the motion to staff of the assigned judicial officer.
  - (A) ***Delinquency Matters.*** A party must file a motion requesting that a party or a witness give virtual testimony at an evidentiary hearing in a delinquency matter no later than 10 days before the hearing, and an opposing party may file a response no later than 5 days after the motion is filed, unless the court orders otherwise.
  - (B) ***Non-delinquency Matters.*** If the evidentiary hearing in a non-delinquency proceeding is scheduled to occur on 21 days' notice or more, the moving party must file a motion at least 14 days before the evidentiary hearing is scheduled to occur. If the hearing is scheduled to occur on 20 days' notice or less, the moving party must file a motion sufficiently in advance of the hearing to

allow the judicial officer to consider it in a timely manner. Responses must be filed as provided by Rule 316 or Rule 407. The court may modify the time requirements in this subpart.

(C) *In All Matters.* The court may rule on the motion with or without a hearing.

(3) ***Responsibility for Arrangements and Expenses.*** The party requesting a virtual appearance must arrange the appearance and pay any related expenses, unless the court orders otherwise.

(e) **Introducing Documents During Virtual Testimony.** To introduce exhibits through a party or witness who testifies virtually:

- (1) the party calling the witness must make a good faith effort to contact the opposing parties to identify and provide previously disclosed exhibits that will be used during the witness's testimony;
- (2) exhibits must be provided in advance to the witness or party through counsel, as applicable, by noon on the court day before the evidentiary hearing is scheduled to occur;
- (3) the party who introduces the exhibits must affirm that they are accurate copies of the exhibits provided to the party or witness who is appearing virtually; must follow the clerk's procedures for submitting exhibits; and must email them to the staff of the assigned judicial officer by noon on the court day before the evidentiary hearing is scheduled to occur; and
- (4) if a party seeks to examine or cross-examine a witness regarding a previously identified exhibit that has not yet been provided to the testifying witness, the court must allow the party a reasonable opportunity to provide an accurate copy of the exhibit to the witness who is appearing virtually, including granting a recess or continuance if necessary.

(f) **Evidentiary Hearings During Declared Emergencies; Presumption.** When the risks associated with a public health or other emergency declared by the Governor cause restriction of physical access to court facilities, evidentiary hearings will presumptively be conducted virtually.

(1) ***Objections: How Made, When Made.***

(A) *How to Object to a Virtual Evidentiary Hearing.* A party objecting to a virtual evidentiary hearing must file the objection and email or deliver it to the staff of the assigned judicial officer.

**(B) *When to Object to a Virtual Evidentiary Hearing.*** If the virtual evidentiary hearing is scheduled to occur on 21 days' notice or more, the objecting party must file an objection at least 14 days before the evidentiary hearing is scheduled to occur. If the hearing is scheduled to occur on 20 days' notice or less, the objecting party must file any objection sufficiently in advance of the hearing to allow the judicial officer to consider it in a timely manner. In delinquency matters, an opposing party may file a response no later than 5 days after the objection is filed. In non-delinquency matters, responses must be filed as provided by Rule 316 or Rule 407. The court may modify the time requirements in this subpart. The court may rule on the objection with or without a hearing.

- (2) *Case-Specific Determinations in Evidentiary Hearings.*** The court may overrule any objection to a virtual evidentiary hearing and deny a request for an in-person hearing only after making a case-specific determination that the objecting party's constitutional rights, including the right to due process, will be satisfied by the virtual evidentiary hearing. To overrule the objection and to demonstrate that due process will be satisfied, the court must specifically find that the virtual evidentiary hearing will not substantially prejudice any party, and that each person will be audible and, if practicable, visible to every other person participating in the hearing, including the judicial officer, and to the electronic recording system or court reporter. This case-specific due process determination may involve providing for certain witnesses to testify virtually, even though the hearing will primarily be in person. The case-specific due process determination must be in a signed minute entry or order and must address the following factors:
- (A)** whether an in-person evidentiary hearing cannot reasonably be held, given the ongoing, declared public health or other emergency;
  - (B)** whether one or more witnesses cannot appear in person at an evidentiary hearing because of an ongoing, declared public health or other emergency;
  - (C)** whether the court can accommodate the objection by providing the objecting party with full access to the evidentiary hearing by video conferencing or other audio and video technology; and
  - (D)** whether the objecting party can effectively and timely communicate confidentially with the party's attorney during the hearing as needed.

## **Rule 111. Indian Child Welfare Act (“ICWA”)**

**(a) Application.** The court must apply ICWA when required by law.

**(b) Inquiry.** At the beginning of any proceeding involving adoption, dependency, termination, or Title 8 guardianship, the court must inquire if any party has reason to know that the child named in the petition is subject to ICWA. This inquiry is not necessary if the court has already determined that ICWA applies.

**(c) Excluded Proceedings.**

**(1) *Delinquency and Incurribility.*** ICWA does not apply to delinquency proceedings. ICWA does not apply to an incurribility proceeding unless it results in an out-of-home placement.

**(2) *Criminal Transfers.*** ICWA does not apply to criminal transfer proceedings involving an Indian child.

**(d) Findings.** If the court determines or has reason to know the child is an Indian child as defined by ICWA and Rule 302, the court must make the findings required under ICWA. The court must then treat the child as an Indian child unless and until the court enters a determination on the record that the child does not meet the definition of an Indian child under ICWA.

**(e) Jurisdiction.** If the court determines or has reason to know the child is an Indian child and the proceeding is for out-of-home placement or termination of parental rights, the court must determine whether to order a transfer of the proceeding to a tribal court as provided by Rule 322.

### **COMMENT TO 2022 AMENDMENT**

These rules acknowledge certain provisions of ICWA and the Regulations. However, not all provisions are identified in these rules, and ICWA and the Regulations should be carefully reviewed in cases in which they apply. In the event of a conflict with these rules, ICWA and the Regulations govern.

Under the Regulations, a court has “reason to know that a child is an Indian child” upon the occurrence of any of the following: (1) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child; (2) any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child; (3) the child who is the subject of the proceeding gives the court reason to know he or she is an Indian child; (4) the court is informed that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a pueblo, reservation,

or in an Alaska Native village; (5) the court is informed that the child is or has been a ward of a tribal court; or (6) the court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe. 25 C.F.R. § 23.107.

The Regulations also address the criteria for ruling on petitions to transfer proceedings to tribal court, including 25 C.F.R. §§ 23.115 through 119. Under ICWA § 1911(b), the court must grant a petition by a parent, Indian custodian, or the child's Tribe to transfer the foster care placement or termination of parental rights proceeding to tribal court, absent objection by either parent or tribal declination of transfer, or when there is good cause to deny transfer. The regulations provide that in determining whether good cause exists, the court must not consider any of the following: (1) whether the foster-care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage; (2) whether there have been prior proceedings involving the child for which no petition to transfer was filed; (3) whether transfer could affect the placement of the child; (4) the Indian child's cultural connections with the Tribe or its reservation; or (5) socioeconomic conditions or any negative perception of Tribal or Bureau of Indian Affairs ("BIA") social services or judicial systems.

**Rule 112. Court-Appointed Special Advocate (“CASA”)**

The court may appoint a CASA under A.R.S. §§ 8-522 and 8-523 to assist and advocate for a child, to assure that all appropriate services are made available to the child, and otherwise to protect the best interests of the child in the action in which the CASA is appointed. The court may appoint a CASA in a dependency, Title 8 guardianship, or termination action. CASAs are not civilly or criminally liable for good faith actions they take in connection with their responsibilities.

## **Rule 113. Intervention**

### **(a) Generally.**

- (1) ***Of Right.*** The court must permit a person to intervene in any proceeding under Part III, Part IV, or Part V of these rules if the person has a right to intervene under ICWA or other law.
- (2) ***Permissive.*** The court may permit a person to intervene in any proceeding under Part III, Part IV, or Part V of these rules after considering the factors in section (b).

**(b) Factors.** The court must determine whether intervention would be in the child's best interests. In making that determination, the court should consider the following factors:

- (1) the nature and extent of the person's interest, and whether the person's interest or position is adequately represented by existing parties;
- (2) whether the person is a child's relative as defined in A.R.S. § 8-501, or is another member of the child's extended family or person who has a significant relationship with a child under A.R.S. § 8-514(B);
- (3) whether the person has requested DCS to be the placement for the child, and if so, the status of the request;
- (4) whether the person seeks to file a motion for change of physical custody to that person;
- (5) the timeliness of the motion;
- (6) whether intervention will unduly prolong or delay the case;
- (7) whether the parties seeking intervention will significantly contribute to full development of the underlying factual issues in the proceeding and to the just and equitable adjudication of the legal questions presented; and
- (8) any other factors the court deems appropriate.

**(c) Scope of Intervention.** The court may grant intervention for a limited purpose, and it may limit the scope and duration of intervention. Unless the court expressly limits intervention, an order granting intervention permits the intervenor to participate on all issues as a party.

**(d) Procedure.**

- (1) ***Requirements of a Motion.*** The person who requests to intervene must file a motion that specifies facts supporting the motion. The person moving to intervene must serve the motion on all parties.
- (2) ***Motion for a Change of Physical Custody.*** If intervention is for purposes of filing a motion for change of physical custody, the intervenor must file and serve the motion no later than 10 days after entry of the order granting the motion to intervene.

## **Rule 114. Forms**

**(a) Generally.** The forms identified in section (b) are recommended and meet the requirements of these rules.

### **(b) List of Recommended Forms.**

- (1) Form 1: Notice to Parent: Dependency Action
- (2) Form 2: Note to Parent: In-home Dependency Action
- (3) Form 3: Notice to Parent: Guardianship Action
- (4) Form 4: Notice to Parent: Termination Action
- (5) Form 5a: Notice of Appeal: Delinquencies
- (6) Form 5b: Notice of Appeal: General
- (7) Form 6: Supplemental Designation of the Record

**(c) Omitted Information.** A court or a party may omit information in a recommended form if the form provides or requests particular information that does not apply in a specific case. A party who omits content in a recommended form or who fails to complete a portion of a recommended form represents to the court and to other parties that the information in that portion does not apply.

**(d) Availability.** Recommended forms are available at superior court self-service centers and on then Arizona Judicial Branch self-service website at <http://www.azcourts.gov/selfservicecenter/juvenile-law/juvenile-law-forms>.

**(e) Modification.** The Supreme Court by administrative order may substantively change, add, or delete a recommended form. The Administrative Director may approve technical changes to a form that increases the form's usability and understandability, corrects an error, or addresses other technical issues.