

## **PART III. CHILD DEPENDENCY AND GUARDIANSHIP, TERMINATION OF PARENTAL RIGHTS**

### **1. General Provisions, Parties, and Participants**

#### **Rule 301. Application and Interpretation**

**(a) Application.** Rules in Part III govern procedures in dependency, in-home intervention, extended foster care, Title 8 guardianship, and termination of parental rights cases.

**(b) Interpretation.** The court should interpret the rules in Part III in a manner that protects the rights of the parties and the child's best interests and gives paramount consideration to the child's health and safety.

## **Rule 302. Definitions**

- (a) **“Parent”** as used in Part III 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.
- (b) **“Party”** means a child, parent, guardian, DCS, any petitioner, and any person, Indian tribe, or entity that the court has allowed to intervene.
- (c) **“Participant”** includes any person permitted by the court or authorized by law to participate in the proceedings. Participants must be notified of all applicable proceedings as required by law or court order. A participant is not a party.
- (d) **Definitions under ICWA.**
- (1) **“Parent”** means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.
  - (2) **“Indian Child”** means any unmarried person under the age of 18 who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of the Indian tribe. *See* 25 C.F.R. § 23.2. If there is reason to know that the child is an Indian child, the court must treat the child as an Indian child unless and until it is determined on the record that the child does not meet the definition of an Indian child pursuant to 25 C.F.R. § 23.107.
  - (3) **“Indian Child’s Tribe”** means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.
  - (4) **“Indian Custodian”** means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, or to whom temporary physical care, custody, and control has been transferred by the parent of the child.
  - (5) **“Indian Tribe”** means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. § 1602(c).

(6) ***“Extended Family Member”*** means a person as defined by law or custom of the Indian child’s tribe, or, in the absence of such law or custom, a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt or uncle, sister or brother, sister-in-law or brother-in-law, niece or nephew, first or second cousin, or step-parent.

### **Rule 303. Assignment and Appointment of an Attorney; Advisory Attorney**

#### **(a) Assignment of an Attorney.**

- (1) **Assignment.** The court must assign an attorney in a dependency proceeding to persons who are entitled to representation by law, including ICWA.
- (2) **Duration.** The assigned attorney must provide representation from notice of the assignment until the court formally appoints or otherwise relieves the assigned attorney.
- (3) **Limitation.** The assigned attorney is not attorney of record for purposes of accepting service of process for a parent who has never appeared in the proceeding unless the parent, after communication with the assigned attorney, authorizes the attorney in writing to accept service or the attorney avows on the record that the parent expressly authorized the attorney to accept service..

**(b) Appointment of an Attorney for a Parent or Guardian.** The court must appoint an attorney for an indigent person in a dependency proceeding who is entitled to an attorney under A.R.S. § 8-221. In determining whether a person is indigent, the court may order the person to provide proof of financial resources by completing and filing the court's financial questionnaire. The court also may question the person under oath concerning their financial resources. If the court determines the person is not indigent, the court may order the person to pay a reasonable portion of the cost of an attorney, or it may deny the request to appoint an attorney.

**(c) Appointment of an Attorney for a Child.** The child's attorney provides legal representation for a child. Children in dependency and termination cases are presumed indigent and are entitled to a court-appointed attorney. The appointment of a child's attorney should be made as soon as practicable to ensure effective representation of the child and, in any event, before the first court hearing. The child's attorney owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child as is due an adult client. The child's attorney is not a GAL.

**(d) Manner of Appointment.** The court must enter an order assigning, appointing, or denying a person an attorney or GAL.

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

**Rule 304. Appearance, Substitution, and Withdrawal; Responsibilities of Parties**

**(a) Applicability.** As used in this rule, the term “attorney” includes a GAL.

**(b) Attorney’s Duties.**

(1) **Appearance.** An attorney may appear as attorney of record by filing a notice of appearance, a petition, or a motion to intervene. An attorney may also enter an initial appearance by appearing personally or telephonically and advising the court that the attorney is representing a party. An attorney may not file a document in any action or act on behalf of a party without appearing first as attorney of record.

(2) **Representation.** After an attorney has appeared of record in any action, the attorney will be responsible for all matters involving the action until:

(A) another attorney is substituted as attorney of record for a party;

(B) the action is dismissed and the time for filing notice of appeal has expired;

(C) the court enters an order terminating representation and, if applicable, any time for filing a notice of appeal has expired; or

(D) if an attorney represented the party on appeal, the issuance of an appellate mandate.

**(c) Withdrawal.** An attorney of record may withdraw only by court order. The attorney’s written or oral motion must state the reasons for withdrawal. A written motion must list the future hearing dates and must be accompanied by a proposed order. The attorney remains the person’s attorney of record until the court grants the motion to withdraw.

(1) **Client Consent.** A written motion that contains the client’s written consent may be presented to the court ex parte and must be accompanied by a proposed order. The withdrawing attorney must promptly provide the signed order to the other parties’ attorneys. If an oral motion is presented on the record and the client is present and consents to a withdrawal, the court may rule on the motion at that time.

(2) **No Client Consent.** If the attorney does not move to withdraw under subpart (c)(1), the attorney must move to withdraw in writing and serve the client with the motion. The attorney also must provide a copy of the motion to the other parties’ attorneys. The attorney must provide the court with the reasons for the withdrawal and the client’s last known address, email address, and telephone number. The motion must include the attorney’s certification that the client has

been notified in writing of the status of the case including dates and times of any court hearings or trial settings and advised to comply with any existing court orders or face the possibility of sanctions. If a client cannot be located, the attorney may move to withdraw orally on the record or in writing. The court must endorse the client's last known address on the minute entry.

- (3) **Attorney or GAL for a Child.** Subparts (c)(1) and (c)(2) do not apply to an attorney or GAL for a child. An attorney or GAL representing a child may withdraw or substitute only by court order.
- (4) **Limited Purpose.** An attorney who appears for a limited purpose must file a notice of withdrawal upon completion of the limited purpose.

**(d) Attorney Substitution.**

- (1) **Generally.** Except as provided in subpart (d)(2), an attorney may substitute as attorney of record in a pending action only by court order. The attorney must file a motion that contains the client's written consent and a proposed order. The motion and proposed order may be presented to the court ex parte. The substituting attorney must promptly provide the signed order to the other parties' attorneys.
- (2) **Within the Same Firm or Office.** If a pending case is transferred within the same law firm or governmental office, the court must be notified of the new attorney of record, including any changes in the physical or email address. An order of substitution is not required.

**(e) Withdrawal or Substitution of Counsel When Matter Set for Trial.** The court may not permit an attorney to withdraw or substitute after a matter has been set for trial, unless the court finds ethical grounds or good cause for the withdrawal. If applicable, the motion must provide:

- (1) **From a New or Substituting Attorney:** the name and address of the attorney and a signed statement from that attorney acknowledging the trial date and avowing that the attorney will be prepared for trial; or
- (2) **From a Self-Represented Party:** when a client wishes to self-represent and the attorney is withdrawing, the client must put in writing or state on the record that the client has been advised of the trial date and has made suitable arrangements for self-representation and will be prepared for trial.

**(f) Duty of Attorney After Withdrawal or Substitution.** No later than 7 days after withdrawal or substitution, other than a substitution from within the same firm or office, the former attorney must transfer the file and provide the client's most current

contact information and all disclosure to the new lawyer or to the client, if self-represented. The attorney must preserve the file if the client's whereabouts are unknown.

**(g) Responsibility to the Court.**

- (1) *Attorneys and Self-Represented Litigants.*** Each attorney of record, GAL, and self-represented litigant must remain informed of the status of, and the deadlines in, pending actions in which that attorney or self-represented litigant has appeared.
- (2) *Attorneys.*** An attorney who changes an office address, email address, or telephone number must notify the clerk in each of the counties in which that attorney has pending actions of the attorney's current office and email address and telephone number, and must file a notice in each case in which the attorney has appeared containing that information.
- (3) *Self-Represented Litigants.*** Self-represented litigants must file a notice containing their mailing address, telephone number, and any email address, and provide copies of the notice to the other parties' attorneys. It is the responsibility of a self-represented litigant to file an updated notice of any change in contact information no later than 7 days after the change, and to promptly provide a copy of the updated notice to the parties' attorneys.

**Rule 305. Appointment of a GAL**

In addition to the appointment of an attorney, the court may appoint a GAL to protect the best interests of a minor or an individual who may be incompetent or in need of protection, or as the court otherwise directs. A GAL appointed under this rule must be an attorney. When the court appoints a GAL, the court must clearly define the purpose and scope of the appointment, the GAL's role in contested proceedings, including disclosure and discovery proceedings, and the court's expectation of the GAL's role in the case. The court must order the parties to disclose all relevant information to the GAL. A GAL is not bound by the expressed preferences of the minor, the individual who is incompetent, or the protected person.

## **Rule 306. Duties of Child's Attorney or a Child's GAL**

**(a) Explain the Role.** An attorney or GAL appointed for a child must explain to the child and the child's caregivers the attorney or GAL's role and the ethical obligations associated with the attorney or GAL's role. A GAL must explain that the GAL has no attorney-client privilege with the child.

**(1) Attorney.**

**(A) Relationship.** The child's attorney must maintain a normal attorney-client relationship with the child in accordance with the rules of professional conduct when the child is capable of directing the representation by expressing the child's objectives.

**(B) Diminished Capacity.** The child's attorney must determine whether the child has the capacity to make adequately considered decisions pursuant to E.R. 1.14. In making the determination, the attorney should consult the child and may consult other individuals or entities to determine the child's ability to direct the representation. When a child has diminished capacity, the child's attorney must make a good faith effort to determine the child's needs and wishes. The attorney must, as far as reasonably possible, maintain a normal attorney-client relationship with the child.

**(C) Substituted Judgment.** During any period in which a normal attorney-client relationship is not reasonably possible to maintain, the child's attorney must make a substituted judgment. The attorney must advise the court of the determination of capacity that requires substituted judgment and any subsequent change in that determination. A substituted judgment includes determining what the child would decide if the child was capable of making an adequately considered decision and representing the child in accordance with that determination. The attorney should take direction from the child as the child develops the capacity to direct the attorney.

**(2) GAL.** The child's GAL must assist the court in determining what is in the child's best interests and is not bound by the child's expressed preferences.

**(b) Provide Information About Court Proceedings.** An attorney and GAL must keep the child informed, in an age and developmentally appropriate manner, of the nature of each court proceeding, the child's right to attend hearings and speak with the judge, any benefits or consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights regarding the dependency proceeding, and must explain the outcome of each hearing to the child.

- (c) Participate in the Proceeding.** When appropriate, an attorney and GAL must participate in discovery, file pleadings, and subpoena witnesses. An attorney and GAL must develop a position for each hearing. The duties of an attorney and GAL include identifying appropriate family and professional resources for the child. The attorney and GAL must inquire of the child regarding potential placements and communicate this information to DCS and the court as appropriate.
- (d) Meet with the Child.** The attorney and GAL must meet in person with the child before the preliminary protective hearing, or if that is not possible, no later than 14 days after the preliminary protective hearing. Thereafter, the attorney and GAL must have meaningful in-person communication with the child before every substantive hearing. Substantive hearings include all preliminary protective hearings, all review hearings, permanency hearings, any hearings involving placement, visitation or services, or any hearing to adjudicate dependency, guardianship, or termination. Upon a showing of extraordinary circumstances, a judge may modify the requirements of this section for a particular substantive hearing. At each substantive hearing the attorney and the GAL must inform the court of the child's position concerning pending issues and the GAL must inform the court of what is in the child's best interests. If the child is not present, the attorney or GAL must provide an explanation for the child's absence.
- (e) Observe Placements.** In all cases, if practicable and appropriate, an attorney and GAL should observe the child's residential environment and the child's interaction with the caregiver.
- (f) Confer with Others.** To meet the obligation of informed representation, an attorney and GAL must maintain appropriate contact and communications with caregivers, child safety investigators and workers, service providers, childcare providers, CASAs, relatives, and any other significant persons in the child's life.
- (g) Attend Meetings.** 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.
- (h) Use Support Staff.** Except for the initial meeting with the child, an attorney and GAL may use appropriately trained support staff to assist in the performance of the duties listed in this rule, unless the law requires otherwise. Support staff performing these duties must adhere to this rule.
- (i) Possess General Knowledge.** An attorney and GAL must have knowledge of the child welfare agencies, governmental programs, and community-based service providers and organizations serving children (e.g., behavioral health, developmental

disability, health care, education, financial assistance, counseling support, family preservation, reunification, permanency services, and juvenile justice). An attorney and GAL must be knowledgeable about how to access these services and advocate for appropriate services for the child.

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

In developing the standards on which this rule is based, the Court considered best practices within Arizona and well-accepted standards developed by nationally recognized organizations. In particular, the standards for representation outlined in the American Bar Association's Standards for Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, the National Association for Counsel for Children's Revised Version of the ABA Standards, and the Resource Guidelines published by the National Council for Juvenile and Family Court Judges were instructive in developing the standards for Arizona. In addition to adhering to this rule, Arizona attorneys and GALs should be familiar with and consult these national standards and references to ensure the highest standard of practice in this important area of the law.

### **Rule 307. Duties of a Parent's Attorney**

- (a) Communicate with the Parent.** The parent's attorney must communicate with the parent before the preliminary protective hearing or as soon thereafter as possible. The attorney must communicate with the parent before every hearing. The attorney must establish procedures for regular communications with the parent and must timely respond to the parent's communications.
- (b) Explain the Role.** The attorney must explain to the parent the attorney's role and the ethical obligations associated with that role.
- (c) Provide Information and Explain Requirements.** The attorney must review the allegations of the dependency petition and explain to the parent the nature of the proceedings including terminology, timelines, courtroom protocol, the parent's legal rights in the dependency action, various parties and participants associated with the action, ways that the parent can affect case outcomes, consequences of the parent not attending hearings, and possible consequences of being placed on the DCS Central Registry. The attorney must also explain the court's orders and the case plan.
- (d) Participate in the Proceeding.** The attorney must, as appropriate, participate in discovery, file pleadings, motions, and other documents, subpoena witnesses, provide the parent with disclosure and court documents, and develop the parent's position for each hearing. The attorney must advocate for appropriate services for the parent and explain to the parent the procedural and substantive status of the case. The attorney must notify the court when an interpreter is needed. Except for the preliminary protective hearing, if a parent is incarcerated, the attorney must ensure that the proper notice or motion is filed to enable the parent to participate in the hearing.
- (e) Possess General Knowledge.** The attorney must be familiar with the child and public welfare systems, community-based organizations serving parents, and how to obtain services. Examples of such services are behavioral health, substance abuse treatment, domestic violence services, developmental disability, health care, education, financial assistance, counseling support, family preservation, reunification, and permanency services.
- (f) Maintain the Confidentiality of the Child's Placement.** The child's placement address and contact information is confidential. If that information is inadvertently provided to the parent's attorney, the parent's attorney has a duty to maintain that confidentiality and not disseminate the information to the parents or any other person.

**Rule 308. Duties of a Parent's GAL**

- (a) Confer with the Client.** The GAL must meet with the client and clearly explain the GAL's role and the absence of the attorney-client privilege between the GAL and the client.
- (b) Investigate the Case.** The GAL must review all relevant information regarding the client and investigate the issues in the case. If appropriate, the GAL must contact the client's service providers or others who might have information that would assist the GAL. The GAL may assist in determining appropriate services for the client.
- (c) Attend Hearings.** The GAL must attend all hearings, meet with the client before each substantive hearing, and report to the court on what is in the client's best interests. With the court's permission, the GAL may call and cross-examine witnesses. The GAL's position must not be substituted for the client's position as advocated by the client's attorney.

### **Rule 309. Education Requirements for Court-Appointed Attorneys and GALs**

- (a) **Scope.** This rule applies to an attorney or GAL appointed by the court in a proceeding under Part III of these rules, and who is or will be subject to the requirements of Rule 306, 307, or 308.
- (b) **Generally.** An attorney and GAL must be familiar with and stay current on substantive juvenile law, procedural rules, court decisions, regulations, and changes and developments in relevant federal and state laws – including laws concerning education and advocacy for children in schools.
- (c) **Initial Training.** An attorney or GAL must complete:
- (1) an introductory 6 hours of court-approved training before the first appointment, unless the presiding juvenile court judge in the county in which the attorney or GAL is practicing determines otherwise for good cause, and
  - (2) an additional 2 hours within the first year of practice in juvenile court.
- (d) **Later Training.** Each year, an attorney or GAL must complete at least 8 hours of continuing education on the relevant state and federal juvenile laws described in section (b). This continuing education may include topics such as ICWA, child welfare policy, child and adolescent development (including infant/toddler mental health), bonding and attachment, behavioral health services, effects of parental incarceration, educational opportunities and challenges, parent and child immigration issues, the need for timely permanency, the impact of out-of-home placements, the traumatic effects of domestic violence, substance abuse and addiction, mental illness and treatment options, psychological evaluations and how to read them, the effects of trauma and trauma-informed practices, issues surrounding families involved in the dependency process, cultural awareness, issues in the child welfare system related to race, ethnicity, disability, sexual orientation, gender identity and expression, disproportionate involvement, implicit bias, and other topics and issues concerning abused or neglected children.
- (e) **Affidavit of Completion.**
- (1) **Initial Training.** An attorney or GAL must provide to the presiding juvenile court judge an affidavit of completion of the initial 6-hour, court-approved training requirement before appointment as an attorney or GAL, unless the juvenile court presiding judge in which the appointment is made waives this requirement.
  - (2) **Later Training.** Concurrently with the annual affidavit of compliance required by Supreme Court Rule 45, an attorney or GAL must provide an affidavit of

completion to the presiding juvenile court judge of the later training required by section (d). An initial and a later affidavit of completion must contain a list of courses, including the dates and number of hours for each course, and the name of the training provider.

**Rule 310. Child's Rights; Special Education**

- (a) Initial Hearing.** A child who is the subject of a dependency, Title 8 guardianship, or termination of parental rights action has the right to attend court hearings and to speak to the judge. At the first hearing, the court must determine that the child was informed of and understands these rights.
- (b) Later Hearings.** At every hearing thereafter, if the child is not present, the court must inquire whether the child requested to attend the hearing.
- (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.

### **Rule 311. Participants' Rights**

- (a) **Right to Notice.** If DCS is a party, it must provide notice of the date, time, and location of all hearings that will be held concerning the child to:
- (1) the child's current out-of-home placement;
  - (2) any pre-adoptive placement or any relative identified as a possible placement for a child who is in out-of-home care and under the responsibility of DCS;
  - (3) for any periodic review hearings under A.R.S. § 8-847, any placements where the child has resided for more than 10 days during the past 6 months; and
  - (4) a participant Indian tribe that has not intervened or is not endorsed on the court's minute entries. *See* 25 C.F.R. § 23.111.
- (b) **Right to be Heard.** Participants have a right to be heard regarding the child at any hearing.
- (c) **Status.** Although participants have the right to notice and the right to be heard, they do not have the status of parties.
- (d) **Duties.** Participants with whom a child is placed by DCS have a continuing duty to provide DCS with a current and correct mailing address, including any address protected by court order.
- (e) **Review Hearings.** This rule does not limit the notice requirements of A.R.S. § 8-847(B) regarding periodic review hearings.
- (f) **Limiting a Participant.** The court may limit the presence of a participant to the time the participant is heard or testifies, if:
- (1) it is in the best interests of the child, or
  - (2) it is necessary to protect the parties' privacy interests and will not be detrimental to the child.

## 2. General Provisions on Proceedings and Procedures

### Rule 312. Public Attendance at Hearings

#### (a) Definitions.

- (1) “*Public*” includes anyone who is not a party, an attorney, or a CASA.
- (2) “*Personal identifiable information*” includes a person’s name, address, date of birth, social security number, tribal enrollment number, telephone numbers, driver’s license number, places of employment, school or military affiliation, or any other distinguishing characteristic that tends to identify a specific party, participant, or person involved in the case.

(b) **Open Hearings.** Under A.R.S. § 8-525, court hearings concerning dependent children, permanent guardianships of children, and termination of parental rights are open to the public, except as required by A.R.S. § 8-537.

(c) **Request for Closed Hearings and Considerations.** At the first hearing in any dependency, permanent guardianship, or termination of parental rights hearing, the court must ask the parties if there are any reasons the hearing should be closed. If the court finds there is good cause to order the hearing closed, the court must enter written findings that include the following factors:

- (1) whether doing so is in the child’s best interests;
- (2) whether an open hearing would endanger the child’s physical or emotional well-being or the safety of any other person;
- (3) the privacy rights of the child, the child’s siblings, parents, guardians, caregivers, and any other person whose privacy rights the court determines need protection;
- (4) whether all the parties have agreed that the hearing should be open;
- (5) the wishes of a child at least 12 years of age who is a party to the hearing; and
- (6) whether an open hearing could cause specific material harm to a criminal investigation.

#### (d) Subsequent Proceedings.

- (1) For good cause, the court may order any subsequent open hearing closed to the public after consideration of the factors above.
- (2) If the court has closed a hearing, a person may request the court to reopen a specific hearing to the public. The court must consider the factors above.

- (e) Request for a Transcript.** If the court has closed a hearing relating to child abuse, abandonment, or neglect that has resulted in a fatality or near fatality, any person may request a transcript of the previously closed hearing pursuant to A.R.S. § 8-525(G). The person who requests the transcript must pay the cost of the transcript. If the court grants a request for a transcript of a closed hearing, the court must redact from the transcript any information that:
- (1)** is essential to protect the privacy, well-being, or safety interests described in section (c);
  - (2)** protects the identity and safety of a person who reports child abuse or neglect, and to protect any other person, if the court believes that disclosure of the DCS information would likely endanger the person's safety; and
  - (3)** is confidential by law, which the court must maintain according to applicable law.
- (f) Admonition at Public Hearings.** At the beginning of a hearing that is open to the public, the court must admonish all public attendees as follows: "You are prohibited from disclosing outside this hearing personal identifiable information about the child, the child's siblings, parents, guardians, caregivers, and others mentioned in the hearing. You are advised that by remaining in the courtroom or by remaining present by telephone or video conference after this admonition, you have submitted yourself to the power of the court for purposes of this order. Failure to follow this order is contempt of court for which you could be fined or given time in jail."
- (g) Limitations for Order and Decorum.** The court may impose reasonable restrictions on the public's attendance to maintain order and decorum in the courtroom.

### **Rule 313. Release of Information**

**(a) Records Confidential Generally.** All records of proceedings under Rule 327 and of dependency, guardianship under A.R.S. §§ 8-871 through 8-874, termination of parental rights, and other related proceedings are confidential and must be withheld from public inspection unless authorized by law, rule, or court order.

**(1) Access without Court Order.** A parent, petitioner, or when named as a party, a court-appointed legal guardian or DCS, may inspect and copy case records while that individual remains a party to the case. On appeal, a party may inspect and copy records created prior to the ruling upon which the appeal is taken. The following other individuals and entities are authorized to inspect and copy case records without review by the court:

- (A)** a current party's attorney of record and current GAL;
- (B)** Arizona judicial officers, clerks, administrators, professional, or other staff employed by or working under supervision of the court, including staff of the Administrative Office of the Courts, Dependent Children's Services Division, or the local foster care review boards as needed to carry out their assigned duties;
- (C)** CASAs pursuant to A.R.S. § 8-522(F);
- (D)** a designated member or staff of the Arizona Commission on Judicial Conduct performing duties under the Commission's rules;
- (E)** a court-appointed legal guardian not a party to the case who requests a certified copy of the guardian's appointment order during the term of the guardian's appointment; and
- (F)** a designee of ADJC as needed to carry out the designee's assigned duties for any individual who is subject to a commitment order.

**(2) Access by court order.** The following individuals and entities must obtain a court order before inspecting the case record:

- (A)** an individual who was the subject of a dependency, a guardianship under A.R.S. §§ 8-871 through 8-874, or a termination of parental rights action as a minor;
- (B)** an individual who is not qualified under subpart (a)(1) or whose parental rights were terminated or who was dismissed from the case;

- (C) a designee of DCS when DCS is not a party in the case upon a showing that inspection is required to carry out DCS responsibilities;
- (D) a foster parent to inspect and copy records other than records a foster parent is authorized to inspect under A.R.S. § 8-514(D)(5);
- (E) a participant as defined under Rule 302(c); and
- (F) any other individual or entity not otherwise authorized by this rule to inspect records.

**(b) Inspection of Court Records.** Any person may file a request with the court to inspect court records in a case involving child abuse, abandonment, or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court must consider:

- (1) whether doing so is in the child's best interests;
- (2) whether inspection of the records would endanger the child's physical or emotional well-being or the safety of any other person;
- (3) the privacy rights of the child, the child's siblings, parents, guardians, caregivers, and any other person whose privacy rights the court determines need protection;
- (4) whether all the parties have agreed to allow the inspection;
- (5) the wishes of a child at least 12 years of age who is a party to the proceeding; and
- (6) whether inspection of the records could cause specific material harm to a criminal investigation.

**(c) Redaction.** If the court grants the request for inspection of court records, the court must redact any information subject to the requirements of A.R.S. § 8-525(B)(1) through (6) and A.R.S. § 8-807.01(A)(1).

### **Rule 314. Change of Venue**

**(a) Generally.** On its own motion, a party's motion, or by joint motion of all the parties, the court may transfer the venue of a dependency, termination, or Title 8 guardianship proceeding to a different county.

**(b) Factors.** The court must consider the following factors before ordering a change of venue:

- (1) whether it would serve the convenience of the parties and witnesses;
- (2) whether it would preserve the orderly administration of the case;
- (3) the position of the parties; and
- (4) any other factor that promotes the interests of justice.

**(c) Procedure in the Sending County.**

- (1) The court in the sending county must set a hearing before ordering a change of venue. The parties must attend the hearing.
- (2) Before the hearing, the court in the sending county must contact the court in the receiving county and obtain a date, time, and location for the first court proceeding in the receiving county. Both counties must informally confirm that the first court proceeding in the receiving county is conditioned on the sending court ordering a change of venue.
- (3) If, at a hearing, the sending court orders a change of venue, it must on the record advise the parents of the next court date and time, the courthouse location in the receiving county, and the consequences of failing to appear for the next court date. The courtroom clerk must ensure that the date and time of the next hearing, as well as the courthouse address, are included in the sending court's minute entry, and must provide a copy of the minute entry to the presiding juvenile judge in the receiving county.
- (4) No later than 10 days after entry of an order changing venue, the court clerk in the sending county must forward a certified copy of the legal file, together with a transmittal letter, to the court clerk in the receiving county. Upon receipt, the transmittal letter must be signed by court clerk in the receiving county and returned to the court clerk in the sending county.
- (5) If the sending court denies a change of venue, it must within 10 days request the court in the receiving county to vacate the conditional hearing date.

**(d) Procedure in the Receiving County.**

- (1) Upon receipt of an order changing venue, the receiving county must assign the matter a new case number.
- (2) Upon receipt of the order and when necessary, the court in the receiving county must appoint new counsel. New counsel must appear in the new case number as counsel of record pursuant to Rule 304. The receiving court must endorse the parties' former counsel on its order or minute entry appointing new counsel.
- (3) If the receiving court appoints new counsel, counsel in the sending county must withdraw as provided in Rule 304. Counsel in the sending county must share all files, other communications, and client contact information with new counsel in the receiving county no later than 14 days after receipt of the notice of appointment of new counsel. This sharing of information does not waive the attorney-client privilege or confidentiality claims.

**(e) Request Pending Hearing.** If an initial, adjudication, or publication hearing is pending in the sending county when a party moves to transfer venue, the court may:

- (1) deny the motion to transfer venue without prejudice;
- (2) defer action on the request pending a conclusion of the initial, adjudication, or publication hearing; or
- (3) grant the motion effective on a specified date after the initial, adjudication, or publication hearing.

## **Rule 315. Disclosure and Discovery**

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

- (1) ***Duty to Disclose.*** A party must disclose to other parties all relevant information that is not privileged. A party must allow other parties to inspect materials, with or without copying regardless of whether those materials are in physical, paper, or electronic form.
- (2) ***Manner of Disclosure.*** A party should disclose information in the least burdensome and most cost-effective manner.
- (3) ***Limits on Secondary Dissemination.*** A person who receives disclosure must maintain the confidentiality of the information received and must not further disclose the information unless disclosure is authorized by A.R.S. § 8-807 or court order.

**(b) Time Limits for Disclosure for Preliminary Protective Hearings.** The parties must disclose all documents in their possession that are subject to disclosure no later than 24 hours before the preliminary protective hearing. If disclosure is untimely, the court may continue the hearing.

**(c) Ongoing Disclosure Requirement.** Unless the court orders otherwise, any relevant document thereafter received by or prepared by a party must be disclosed no later than 10 days after its receipt or preparation. If a party receives or prepares a document fewer than 10 days before a hearing, the party must disclose it as soon as practicable before the hearing.

### **(d) Pretrial Disclosure Statements in Contested Dependency, Title 8 Guardianship, and Termination Adjudication Hearings.**

- (1) Unless the court orders otherwise, the parties must file pretrial disclosure statements containing the following information no later than 30 days prior to the contested adjudication:
  - (A) the uncontested facts deemed material;
  - (B) the contested issues of fact and law that may be material or applicable;
  - (C) a statement of other issues of fact or law that the party believes to be material;
  - (D) a list of the witnesses the party intends to call at trial, including the names, addresses, email addresses, and telephone numbers of the witnesses and a description of the substance of the witness's expected testimony. Absent good cause, a party may not call a witness at trial who was not disclosed in

accordance with this rule. A disclosure statement must note if a witness's testimony will be offered in the form of a deposition; and

- (E) a list and copies of all exhibits the party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection stating the specific grounds for each objection no later than 10 days after receiving the list of exhibits. A party waives specific objections or grounds not identified in the notice of objection unless the court allows otherwise. A party may not use exhibits at trial other than those disclosed in accordance with this rule, except for good cause.
- (2) Unless the court orders otherwise, parties may supplement their list of witnesses and exhibits for the adjudication hearing no later than 10 days before the hearing.
- (e) **Methods of Discovery.** The parties may agree to utilize the discovery methods in Civil Rules 26 through 37. Absent such agreement, a party may utilize those discovery methods only after the court grants a party's motion stating why these methods are necessary. Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances under Rule 338(b).
- (f) **Disclosure in Contested Hearings Other than Adjudications.** If information is intended for use in a contested hearing other than a dependency, guardianship, or termination adjudication, parties must disclose the information as follows:
  - (1) if the contested hearing requires a report prepared by DCS, all parties must disclose relevant information by the date the report is due according to the statute or rule; or
  - (2) if the contested hearing does not require a report prepared by DCS, the parties must disclose all relevant information no later than 10 days prior to the hearing or as ordered by the court.
- (g) **Sanctions.** Upon a party's motion or on its own, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include granting a continuance, precluding evidence, or entering any order the court deems appropriate. Any sanction should accord with the intent of these rules as set forth in Rule 301 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

## **Rule 316. Motions**

- (a) Form.** Motions must be in writing, unless otherwise authorized by the court, and state the basis for the relief sought. The filing party must state the other parties' positions on the issues raised by the motion, or if their positions are not known, must inform the court of the efforts made to reach the other parties.
- (b) Filing.** A motion must be filed with the clerk. A copy of the motion must be provided to the assigned judge at the time of filing. If a judge has not yet been assigned to the matter, a copy of the motion must be provided to the presiding juvenile judge or that judge's designee. The filing party must serve all other parties with a copy of the motion pursuant to Rule 106.
- (c) Response.** A response to a motion must be filed no later than 5 days after service. No reply may be filed unless authorized by the court. The court may at any time and for cause, with or without motion or notice, enlarge or reduce time frames if the request is made before the expiration of the originally prescribed period or as that period was extended by prior order.
- (d) Court Ruling.** Except as these rules or statutes provide otherwise, if no party objects or the time for a response has expired, the court may rule on the motion with or without a hearing.

## **Rule 317. Altering or Amending a Final Order**

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

- (1) ***Meaning of Final Order.*** The meaning of “final order” is provided in Rule 601(b).
- (2) ***Grounds for Altering or Amending a Final Order.*** The court may alter or amend a final order on the ground that the court did not enter sufficient findings of fact or legal conclusions as required by law, or for a clerical mistake or a mistake arising from oversight or omission. The court may do so on its own initiative no later than 12 days after the entry of a final order and with notice to the parties, or on a party’s motion as provided below.

### **(b) Time for File a Motion; Response.**

- (1) ***Motion.*** A party’s motion under this rule must be filed no later than 12 days after the entry of a final order. The juvenile court may excuse an untimely motion or extend this deadline for up to 6 months on a showing of extraordinary circumstances.
- (2) ***Response.*** No later than 10 days after a party files a motion under this rule, the court must either summarily deny the motion or set a deadline not exceeding 10 days for any non-moving party to file a response. The court may limit the scope of a response to specified issues. The court may not grant the motion without providing the non-moving party an opportunity to file a response.
- (3) ***Contents of Response.*** The response must address any issues raised in the motion, unless limited by the court. The response should also address any issues that might arise if the motion is granted.
- (4) ***Reply.*** A reply may not be filed unless authorized by the court.

**(c) Court Action.** The court may deny the motion, or it may vacate a final order and enter a new or amended order.

**(d) Successive Motions.** A party may not file a motion to alter or amend an order granting or denying a party’s motion under this rule.

### **(e) Effect on Appeal Time.**

- (1) ***Appeal Time Extended.*** If a party files a motion under this rule no later than 12 days after the date of the final order, or the court enters an altered or amended order on its own initiative within that period, the time for filing the notice for appeal is extended as provided in Rule 603(a)(3).

(2) *Appeal Time Not Extended.* If the court extends the 12-day deadline or excuses the untimely filing of a motion under subpart (b)(1), the time for filing a notice of appeal is not extended.

**Rule 318. Motions to Continue, for Summary Judgment, or to Set Aside a Final Order**

- (a) **Motion to Continue.** A motion to continue must be made in good faith and must state good cause for the continuance. The party requesting the continuance must advise the court of any impending or expired time limits.
- (b) **Motion for Summary Judgment.** A motion for summary judgment must conform to the requirements in Civil Rule 56, except that if the motion would dispose of an issue set for a scheduled adjudication, the motion must be filed no fewer than 45 days before the adjudication hearing. An opposing party must file a response no later than 20 days after the filing of the motion. The court may modify the time for filing the motion and response. A reply may not be filed unless authorized by the court.
- (c) **Motion to Set Aside a Final Order; Effect on Appeal Time.** A motion to set aside a final order must conform to the requirements of Civil Rule 60(b) through (d), except that the motion must be filed within a reasonable time but no later than 6 months after entry of the final order unless the moving party alleges grounds under Rule 60(b)(1), (2), or (3), in which case the motion must be filed no later than 3 months after entry of the final order. A motion filed under this rule no later than 12 days after the entry of a final order extends the time for filing a notice of appeal as provided in Rule 603(a)(3).

## **Rule 319. Motion for Judgment as a Matter of Law**

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

- (1) A party other than the petitioner may make a motion for judgment as a matter of law as to some or all of the grounds or allegations in a petition or motion at the conclusion of the petitioner's presentation of evidence. For purposes of this rule, "petitioner" is the party who initiated a dependency, permanent guardianship, or termination action, either by petition or motion.
- (2) A party making a motion under this rule must identify the specific ground or allegation the party is challenging and the legal and factual basis for the motion.
- (3) When considering a motion under this rule, the court must view the evidence and all reasonable inferences in the light most favorable to the petitioner.
- (4) The court may grant a motion under this rule only if the facts presented in support of the petition have so little probative value that no judge could reasonably find for the petitioner.
- (5) The court must rule promptly on the motion. The parties are not required to present further evidence until the court decides the motion.

**(b) Required Inquiry.** Before granting a motion under this rule, the court must inquire if any party other than the petitioner wishes to present evidence in support of the grounds or allegations in the petitioner's motion or petition, and if so, the court must allow the party to present evidence.

**(c) Dependency Adjudication.** The court must grant the motion if it finds that the petitioner has not provided sufficient evidence to establish that the child is a dependent child pursuant to A.R.S. § 8-201(15)(a).

**(d) Termination Adjudication.** The court must determine whether to grant a motion under this rule based on the sufficiency of the evidence for each ground or allegation challenged by the motion.

- (1) **Grounds.** The court must dismiss each ground for which there is insufficient evidence. It must proceed with the adjudication on any remaining ground.
- (2) **Best-Interests.** If the court finds sufficient evidence on any of the remaining grounds, it must grant the motion if it determines that the petitioner has failed to provide sufficient evidence to establish that the termination would be in the child's best interests.

- (e) Guardianship Adjudication.** The court must grant a motion under this rule if the court finds that there is not sufficient evidence to prove the ground for permanent guardianship.
- (f) ICWA.** If ICWA applies in any of the adjudications described in sections (c), (d), or (e), any party may move for a judgment under this rule on whether the petitioner has provided sufficient evidence as required by 25 U.S.C. § 1912 and 25 C.F.R. Part 23.
- (g) Findings.** If the court grants a motion under this rule in whole or in part, the court must make written findings in a signed minute entry or order that support granting the motion.

**Rule 320. Placement Preferences**

- (a) **Generally.** A child should be placed in the least restrictive placement available, consistent with the best interests of the child. *See* A.R.S. § 8-514.
- (b) **Placement Preferences.** Subject to section (a), placement preferences, in descending order, are as follows:
- (1) with a parent;
  - (2) with a grandparent;
  - (3) in kinship care with another member of the child's extended family, including a person who has a significant relationship with the child. A foster parent or kinship caregiver with whom a child under 3 years of age has resided for at least 9 months is presumed to be a person who has a significant relationship with the child;
  - (4) in licensed family foster care;
  - (5) in therapeutic foster care;
  - (6) in a group home; or
  - (7) in a residential treatment facility.
- (c) **Child with Developmental Disabilities.** In determining the child's placement, consideration should be given to the child's developmental disabilities. *See* A.R.S. § 8-514.01.
- (d) **Indian Child.** Rule 321 governs placement preferences for an Indian child.

## **Rule 321. ICWA Placement Preferences**

**(a) Placement Preferences.** This rule applies in determining placement of an Indian child, including in any dependency, foster care, guardianship, pre-adoption, or adoption proceeding. If a tribe has established preferences, those preferences apply. *See* ICWA § 1915 and 25 C.F.R. §§ 23.131 through 23.132. Otherwise, placement preferences for an Indian child, in descending order, are as follows:

- (1) with a member of the child's extended family;
- (2) in a licensed family foster home approved by or specified by the child's tribe;
- (3) in an Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (4) in an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 U.S.C. Chapter 21.

**(b) Deviation from ICWA Placement Preferences.** Under 25 C.F.R. §§ 23.131 and 23.132, the determination to depart from the placement preferences in ICWA § 1915 must be made in the following manner:

- (1) ***Statement of Good Cause.*** In any foster care, guardianship, pre-adoptive, or adoptive placement, if any party asserts that there is good cause not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties and the court.
- (2) ***Burden of Proof.*** The party seeking departure from the placement preferences bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences.
- (3) ***Court's Determination.*** A court's determination of good cause to depart from the placement preferences must be in a signed minute entry or order and should be based on one or more of the following:
  - (A) the request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
  - (B) the request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
  - (C) the presence of a sibling attachment that can be maintained only through a particular placement;

- (D) the extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or
  - (E) the unavailability of a suitable placement, if the court determines that a diligent search was conducted to find suitable placements meeting the preference criteria, but none was located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides, or with which the Indian child's parent or extended family members maintain social and cultural ties.
- (4) ***Socioeconomic Status.*** A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
- (5) ***Time in a Non-Preferred Placement.*** A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement if that placement was made in violation of ICWA.

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

The Regulations provide that good cause to deviate from placement preferences should be based on one of the five factors, but leave open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences for some other reason. Although the rule provides this flexibility, courts should avail themselves of it only in extraordinary circumstances, as Congress intended the good cause exception to be “narrow and limited in scope.” 81 Fed. Reg. §§ 38778, 38839 (June 14, 2016).

## **Rule 322. Transfer to a Tribal Court**

**(a) Generally.** At any stage of an involuntary or voluntary foster care or a termination of parental rights proceeding, as defined in 25 C.F.R. § 23.2, a parent, the Indian custodian, or the Indian child's tribe may request the court to transfer jurisdiction of the case to the child's tribe. *See* ICWA § 1911 (b) and 23 C.F.R. §§ 23.115 through 23.119.

### **(b) Procedure.**

**(1) *Request to Transfer.*** The requesting party or tribe may file a motion to transfer or may make the motion orally on the record.

**(2) *Notice to Tribe.*** A parent or Indian custodian who requests transfer of the proceeding must notify the tribal court promptly in writing of the transfer request.

**(A)** A copy of the requesting party's notice to the tribal court must be filed with the superior court.

**(B)** The notice must ask the tribal court to determine whether the tribal court will accept or decline the transfer.

**(3) *Response to the Request.*** The superior court must provide each party and the tribe with an opportunity to respond to a request for transfer.

**(A) *Response from a Party.*** If the request for transfer was in writing, a party's response to the request must be filed pursuant to Rule 316(c) and served on the other parties and the tribe as provided in Rule 106. A party may respond to an oral request to transfer orally in open court. If a party objects to the request for transfer, the party's response must state the basis of the objection and any good cause why the court should deny the request.

**(B) *Response from the Tribe.*** Regardless of whether the tribe is a party, a response from the tribe may be in writing or provided orally. If the court receives a written response from the tribe that has not been filed, the court must file it with the clerk. The court may consider the tribe's failure to respond as a declination of the request to transfer.

### **(c) Considerations.**

**(1)** The court must grant the request to transfer unless one or more of the following criteria are met:

**(A)** either parent objects to the transfer;

(B) the tribal court declines the transfer; or

(C) there is good cause to deny the transfer.

(2) A party who alleges good cause to deny the transfer must demonstrate by clear and convincing evidence the facts that constitute good cause. In determining whether good cause exists, the court must not consider:

(A) whether the foster care or termination of parental rights proceeding is at an advanced stage and a parent, Indian custodian, or tribe did not receive notice of the proceeding until an advanced stage;

(B) whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(C) whether the transfer could affect the placement of the child;

(D) the Indian child's cultural connections with the tribe or reservation; or

(E) socioeconomic conditions or any negative perception of tribal or BIA social services or judicial systems.

(d) **Findings.** The court must find in a signed minute entry or order:

(1) the date the requesting party sent written notification of the request to the tribe required by subpart (b)(2);

(2) whether the tribe responded, whether the tribe's response was in writing, and whether the tribe agreed to or declined the request;

(3) whether either parent objects to the transfer; and

(4) if good cause to deny the transfer was alleged, whether facts constituting good cause were established by clear and convincing evidence and the specific facts that constitute good cause.

(e) **Orders.** The court's order granting or denying a request to transfer must be in a signed minute entry or order. If the court grants the request to transfer jurisdiction, the court must order:

(1) the court clerk to expeditiously transfer the file and admitted exhibits to the tribal court;

(2) the petitioner to expeditiously transfer any reports or records in the petitioner's possession that were not admitted into evidence or previously disclosed to an intervening tribe;

- (3) transfer of custody of the child to the tribe;
  - (4) the clerk to dismiss the proceeding and to notify the Foster Care Review Board of the dismissal;
  - (5) that appointed counsel and any appointed GAL is relieved of responsibility; and
  - (6) the entry of other orders as appropriate.
- (f) **Court Oversight of the Transfer.** The superior court should communicate with the tribal court to ensure that transfer of the child’s custody, the file, admitted exhibits, and documentation is accomplished in a manner that minimizes the disruption of services to the family.

### COMMENT TO 2022 AMENDMENT

Parties may request transfer of pre-adoptive or adoptive placement proceedings but the standards for addressing such motions are not dictated by ICWA or the Regulations. Tribes possess inherent jurisdiction over domestic relations, including the welfare of child citizens of the tribe, even beyond that authority confirmed in ICWA. Thus, it may be appropriate to transfer pre-adoptive and adoptive proceedings involving children residing outside of a reservation to tribal jurisdiction in particular circumstances. The case may be transferred to the tribal court, but that request is not governed by ICWA or the regulations. *See Gila River Indian Community v. DCS*, 242 Ariz. 277 (2017).

Superior courts should communicate with tribes to establish procedures governing requests to transfer. These include identifying the tribal office for receipt of written notice of a request and clarifying the tribe’s preferred method for communicating its position on the request. In addition, the superior court and tribe should agree on procedures to ensure that the tribe promptly receives copies of all records in the child’s case file after a request for transfer is granted.

**Rule 323. Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings**

- (a) **Transfer to Juvenile Division.** If pending family law and dependency proceedings concern the same parties, the judge presiding over the juvenile case makes decisions concerning the children.
- (1) *Notice.* The parties must notify the family division of a pending dependency proceeding.
  - (2) *Effect of Transfer.* If the proceedings are transferred, the juvenile division will hear custodial issues until the dependency is dismissed or the juvenile division defers jurisdiction to the family division.
- (b) **Referral to Family Division.** If the juvenile division determines that a change of legal decision-making or parenting time is appropriate, it may decide those issues or refer the matter to the family division for further proceedings.
- (c) **Support Orders.** During any dependency or guardianship proceeding in the juvenile division, the juvenile division may establish, suspend, modify, or terminate a child support order. Except in Title IV-D cases, the juvenile division also may make appropriate orders regarding any past due support or child support arrears and may direct that an income withholding order be quashed or modified. Any order regarding child support must be filed in both the family division and the juvenile division.
- (d) **Applicability of Family Law Statutes and Rules.** In deciding issues of legal decision-making, parenting time, and support, the court must apply A.R.S. Title 25 and the Family Law Rules.

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

- (a) Notice to Child's Attorney and GAL.** DCS must notify the child's attorney and an appointed GAL of any change in the child's placement. The notice must include the child's new placement address, the type of placement, and contact information, which must be kept confidential.
- (b) Notice to Parent's Attorney.** DCS must notify the parent's attorney of any change in the child's placement and the type of placement. The notice must not include the child's new placement address or contact information. If the parent's attorney receives the new placement address or contact information, the attorney must keep the information confidential, not disseminate the information to the parent or any other person, and promptly notify counsel for DCS of the erroneous receipt.
- (c) Time and Manner of Notice.** DCS must provide notice as soon as practicable before the child is relocated. If DCS is not able to provide advance notice of the child's relocation because relocation was necessary to protect the child, it must do so as soon thereafter as possible and no later than 24 hours after the change of placement, excluding weekends and holidays. DCS may provide the notice orally or electronically, including by email.

## **Rule 325. Mandatory Judicial Determinations**

- (a) **Priority.** The court's first priority after a child is removed from the child's home is protecting the child from abuse or neglect.
- (b) **Generally.** As required by this rule, the court must make the following mandatory determinations in writing within the designated times and must state in a written order or minute entry a factual basis for each determination.
- (c) **The Court's First Order.**
- (1) In the court's first order that authorizes the removal of a child from the home in a dependency proceeding, which may be a temporary order that is entered on the filing of a dependency petition, the court must determine in writing whether having the child continue to reside in the home would be contrary to the welfare of the child. The court must include a factual basis for its determination.
  - (2) After the child is removed from the home, the court must determine in writing if reasonable efforts were made to prevent the child's removal or if it was reasonable to make no efforts to prevent the child's removal. The court's reasonable efforts determination must also include a factual basis. If the court does not make this finding in its first order, the court must make the finding no later than 60 days after the removal.
- (d) **At the Preliminary Protective Hearing and Initial Dependency Hearing.** At the preliminary protective hearing and the initial dependency hearing, the court must determine whether DCS is attempting to identify and assess:
- (1) placement of the child with the child's grandparent or other member of the child's extended family, including a person who has a significant relationship with the child, and
  - (2) placement of the child with the child's siblings, if such placement is possible and is in the child's best interests.
- (e) **Periodic Review Hearings.** At periodic review hearings required by A.R.S. § 8-847, the court must determine whether:
- (1) DCS has identified and assessed placement of the child with a relative or person who has a significant relationship with the child;
  - (2) the parent or guardian provided the court with the names, relationships, and all available contact information of persons related to the child, or who have a significant relationship with the child, or the parent or guardian informed the

court that there is insufficient information available for locating a relative or person who has a significant relationship with the child; and

- (3) the parent or guardian immediately informed DCS of new information concerning the existence or location of a relative or person with a significant relationship with the child.

**(f) 60 Days After Removal from the Home.**

- (1) If the court did not previously make the findings required by subpart (c)(2), the court, no later than 60 days after the child's removal from the child's home, must determine if reasonable efforts were made to prevent removal of the child, or if it was reasonable to make no efforts to prevent the child's removal.
- (2) As provided by A.R.S. § 8-829(A)(4), no later than 60 days after the child is removed from the child's home, if the child is not placed with a grandparent, another member of the child's extended family, or a person with a significant relationship with the child, the court must determine why such placement is not in the best interest of the child. The petitioner has the burden of presenting evidence that such placement is not in the child's best interests at the first court hearing thereafter.

**(g) 6 Months After Removal of a Child Less Than 3 Years of Age.** If the child was less than 3 years of age at time of removal, the court must determine, no later than 6 months after the child was removed from the child's home, whether DCS made reasonable efforts to provide reunification services to the parent and whether that parent substantially neglected or willfully refused to participate in those reunification services.

**(h) 12 Months After Removal and Thereafter.** No later than 12 months after the child was removed from the child's home, and at least once every 12 months thereafter, the court must determine if reasonable efforts were made to finalize the existing permanency plan. The court's order must be in writing and contain a factual basis for the court's finding.

**(i) The Permanency Hearing.** At the permanency hearing held pursuant to A.R.S. § 8-862, the court must determine the efforts that were made to place the child with the child's siblings, or to provide the child with frequent visitation or contact with the child's siblings, unless the court determines that placement, visitation, or contact with all or any siblings is not possible or would be contrary to the child's or a sibling's safety or well-being.

**(j) Extended Foster Care Finding.** No later than 120 days after DCS submits a qualified young adult's signed voluntary agreement to participate in an extended foster care program pursuant to A.R.S. § 8-521.02, the juvenile court must determine in writing whether participation is in the qualified young adult's best interest.

## **Rule 326. Required Admonitions and Findings**

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

- (1) During every hearing in a dependency, Title 8 guardianship, or termination case, the court must address the parents who are present and advise them of the consequences of failing to appear and failing to participate in reunification services.
- (2) The requirement in subpart (a)(1) does not apply to a parent whose parental rights have been terminated or in cases in which the court has established a permanent guardianship.

### **(b) Admonition.**

- (1) At a preliminary protective hearing, or at an initial dependency, pretrial conference, initial guardianship, or initial termination hearing, the court must advise the parent who is present that the parent will be deemed to have admitted the allegations in the petition or motion if the parent fails to attend any of the following court hearings without good cause: :

(A) a pretrial conference or an adjudication hearing in a dependency, guardianship, or termination hearing;

(B) a pretrial conference in a guardianship proceeding; or

(C) a status conference in a termination proceeding.

- (2) The court also must advise the parent that if the parent fails to appear at any of these conferences or hearings, the court may adjudicate the case in the parent's absence and, based on the evidence presented, may grant the petition or motion.
- (3) The court must determine at every hearing at which the parent appears that the parent understands the consequences of failing to appear at future court hearings and failing to participate in reunification services.
- (4) The court must provide the parent with Form 1, 2, or 3, as applicable, and request the parent to sign and return the form to the court before the hearing adjourns.
- (5) The court must make findings concerning the matters set forth in subparts (b)(1) through (b)(4) in a signed minute entry or order.

**(c) Failure to Participate in Reunification Services.** At every hearing, the court must advise a parent whose rights have not been terminated that substantially neglecting or willfully refusing to remedy the circumstances that caused the parent's child to be in

an out-of-home placement, including refusing to participate in reunification services, may be grounds for terminating parental rights.

**(d) Failure to Appear.** Before the court may proceed with an adjudication hearing as to a parent who fails to appear without good cause at a hearing or conference specified in subpart (b)(1), the court must first find that the parent:

- (1) was properly served;
- (2) had notice of the hearing; and
- (3) had been admonished regarding the consequences of failing to appear at the hearing or conference, including a warning that the adjudication hearing may go forward in absence of the parent, and that failing to appear may constitute a waiver of the parent's rights and an admission to the allegations contained in the petition or motion.

**(e) Adjudication.** If the requirements of section (d) are satisfied, the court may proceed with the adjudication as provided by Rules 338, 346, or 351, as applicable.

**(f) Minute Entries.**

- (1) The court's minute entries for the hearings described in this rule must contain findings that any parent who was present received the admonition, and that the parent understands it.
- (2) Before the conclusion of the preliminary protective hearing, initial dependency, initial guardianship, or initial termination hearing, the court must provide the parent with a written form of the admonition that contains the date, time, and location of the next court hearing and the court's telephone number.
- (3) Before the conclusion of hearings other than those described in subpart (b)(1), the court may provide the parent with a written form of the admonition that contains the date, time, and location of the next court hearing or conference and the court's telephone number.
- (4) The court's finding pursuant to section (d) must be in a signed minute entry or order.

### 3. Dependency Proceedings

#### Rule 327. Court Authorized Removal

(a) **Generally.** A child safety worker, a child welfare investigator, or a peace officer (collectively referred to in this rule as “the applicant”) may submit an application under oath requesting court authorization for DCS to take temporary custody of a child. The court must then determine whether to authorize DCS to take temporary custody of the child. *See* A.R.S. § 8-821.

(b) **Burden of Proof.** The applicant must state specific facts showing that probable cause exists to believe:

- (1) court authorization for DCS to take temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect, and
- (2) it would be contrary to the child’s welfare if the child remained in the home.

If the applicant has reason to know the child is an Indian child, the applicant must also state facts that support a finding that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child, as required by 25 C.F.R. § 23.113(b)(1). The applicant also must provide the information in the application and in a dependency petition required by 25 C.F.R. § 23.113(d).

(c) **Procedure.**

- (1) **Application.** An applicant may request the court to authorize DCS to take temporary custody of a child by submitting the application to a judicial officer designated by the Maricopa County superior court presiding judge to receive and respond to applications under this rule. The application must state:
  - (A) the applicant’s professional qualifications;
  - (B) the particular reasons that each child is presently or imminently in danger of abuse or neglect;
  - (C) a detailed account of facts and circumstances that require authorization of temporary custody;
  - (D) efforts made to determine the availability of less restrictive voluntary options, including care by a parent or relative, that effectively removes or controls the danger; and
  - (E) the identity and description of each child for whom temporary custody authorization is sought.

- (2) **Form.** The application must be in a written format and manner approved by the Supreme Court Administrative Director. If an applicant is unable to submit a written application, the applicant may apply for authorization of temporary custody by a recorded oral statement or by other means acceptable to the court. The recorded oral statement or other means of communication must be submitted under oath and otherwise comply with this rule.
- (3) **Evidence.** Evidence in support of an application may include reliable hearsay, in whole or in part.
- (4) **Consideration.** As soon as possible after receipt of a written application or an oral statement, a designated judicial officer will consider the application *ex parte*. The judicial officer may question the applicant and any witnesses. Any additional information must be submitted in writing or by recorded oral statement.

**(d) Findings and Orders.**

- (1) **Content.** An order granting an application must:
  - (A) identify and describe each child with reasonable particularity;
  - (B) identify the factual basis for authorizing temporary custody of each child;
  - (C) state whether there is probable cause to believe that authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect;
  - (D) state whether remaining in the child's home is contrary to the welfare of the child as required by Rule 325(c); and
  - (E) if there is reason to know that the child an Indian child, find that authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child, as required by 25 C.F.R. § 23.113(b)(1).
- (2) **Form.** If the applicant and judicial officer are not in each other's physical presence, the judicial officer may do one of the following:
  - (A) sign the order authorizing temporary custody using an electronic signature to serve as the original order;
  - (B) sign an electronically transmitted version of the original order which is then deemed to be the original; or
  - (C) orally authorize the applicant to sign the judicial officer's name on the order, after which:

- (i) the judicial officer must record the time and date of issuance of an orally authorized order on the original order, and
  - (ii) the applicant must send a duplicate original order to the judicial officer who issued the order.
- (3) **Notice.** When the Temporary Custody Notice (“TCN”) is provided as required by law, DCS must provide the parent or other custodian a copy of the application and the order authorizing temporary custody, unless DCS determines disclosure would cause harm under A.R.S. §§ 8-471, -807, or other provisions of state or federal law, and DCS provides notice of the order in the TCN.
- (4) ***Duration, Extension, and Expiration.***
  - (A) ***Duration of Order.*** DCS may execute the order for 10 calendar days from the date of issuance or until a material change in the factual basis for the probable cause determination, whichever comes first.
  - (B) ***Inpatient Care Extension of Order.*** If the child who is the subject of the order is receiving inpatient care when the order is sought and there is no material change in the factual basis for the probable cause determination, DCS may execute the order until the later of 10 days from the issuance of the order or the child’s discharge from inpatient care.
  - (C) ***Expiration of Temporary Custody.*** A child must not remain in temporary custody for more than 72 hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in Rules 332 and 333.
- (5) **Filing.** The application and order must be filed if a dependency petition is filed.

**Rule 328. Petition, Temporary Orders and Findings, Notice of Preliminary Protective Hearing, Amended Petition**

**(a) Form and Content of a Petition.**

- (1) **Generally.** A dependency petition invokes the authority of the court to act on behalf of a child who is alleged to be a dependent child.
- (2) **Verification.** A petition must be verified and contain a concise statement of facts to support the conclusion that the child is dependent.
- (3) **Form.** A petition must include the information described in A.R.S. § 8-841(B) and (C).
- (4) **Caption.** The petition must be captioned, “In the Matter of \_\_\_\_\_, a person under the age of 18 years.” A petition seeking in-home intervention must include in the caption the words “In-home intervention requested” in parentheses below the words “Dependency Petition.”

**(b) Temporary Orders and Findings.** If the petition establishes that the best interests of the child require immediate action, the court may enter an order that makes the child a temporary ward of the court and may enter orders that address the physical custody of the child pending the preliminary protective hearing. The court also may enter temporary orders as necessary for the child’s safety and welfare and must make determinations required by Rule 325 and other findings required by law.

**(c) Setting a Preliminary Protective Hearing.** The court must set a preliminary protective hearing no fewer than 5 days or more than 7 days after the child is taken into custody, excluding weekends and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party, or for other good cause, the court may grant one continuance that does not exceed 5 days.

**(d) Notice of the Preliminary Protective Hearing.** In addition to information required by A.R.S. § 8-841(E), a notice of hearing must inform the parent:

- (1) that a failure to appear at the preliminary protective hearing without good cause may result in a finding that the parent has waived the parent’s legal rights and is deemed to have admitted the allegations in the petition;
- (2) that the hearing may proceed in the absence of the parent and may result in an adjudication of dependency, the termination of parental rights, or the establishment of a permanent guardianship; and
- (3) of the right to request that the hearing be closed to the public.

**(e) Amended Petition.** At least 30 days before trial, the petitioner may move for a court order permitting amendments to a petition. The petitioner must show good cause if the request is made fewer than 30 days before trial. Leave to amend must be freely given when justice requires. The motion must include the proposed amended petition. An amended petition must be served under Rule 106.

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

- (a) **Service or Acceptance of Service.** Service is complete when the dependency petition, temporary orders, and a notice of the dependency hearing:
- (1) are provided to a parent at the preliminary protective conference or at the preliminary protective hearing;
  - (2) when the parent signs an acceptance of service; or
  - (3) when the assigned attorney accepts service on behalf of the parent under Rule 303(a)(3).
- (b) **Other Methods of Service.** If a parent is not served pursuant to section (a), the petitioner must serve copies of the dependency petition, temporary orders, and a notice of the dependency hearing on the parent as soon as possible after the petition is filed but no fewer than 5 days before the initial dependency hearing or the continued initial dependency hearing, or 10 days before the hearing when a parent is served by publication. Service must be made in the manner provided by Civil Rules 4(f), 4.1, or 4.2 or as otherwise provided by this rule. For dependency proceedings, Civil Rules 4(f), 4.1, and 4.2 are modified as follows:
- (1) **No Summons.** References to service of summons are inapplicable because no summons is issued.
  - (2) **Petitioner and Respondent.** References to “plaintiff” mean the petitioner. References to “defendant” or “respondent” mean the parent.
  - (3) **No Written Response.** No responsive pleading to the petition is required. However, a party served must appear at the time and place indicated on the notice of the dependency hearing and temporary orders served with the petition.
  - (4) **Service by Publication.** A serving party is not required to file a motion for leave to serve by publication before 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.
- (c) **Service within Arizona.** If a parent is not served pursuant to section (a), service of process on a parent within Arizona must be completed pursuant to Civil Rule 4.1(d). When warranted by the circumstances, service may also be completed under Civil Rule 4.1 sections (g), (k), or (l).

**(d) Service within Arizona but Outside the County.** When the petitioner knows the address of a parent who resides outside the county where the petition is pending, the petitioner may serve the parent by mailing a copy of the petition, notice of hearing, and temporary order through the post office or a national courier service, with a return receipt. When the post office or national courier service has returned the signed receipt, the petitioner must file with the clerk an affidavit stating:

- (1) the circumstances warranting the use of service by mail;
- (2) that copies of the petition, notice of hearing and temporary orders were mailed to the person being served;
- (3) that the copies were in fact received by the person to be served as evidenced by the receipt, a copy of which must be attached to the affidavit; and
- (4) the date of receipt by the party being served and the date the receipt was received by the sender.

The affidavit is prima facie evidence of personal service of the petition, notice of hearing, and temporary orders, and service is deemed complete from the date of receipt by the party being served, provided that such completion is no fewer than 5 days before the hearing and that the affidavit required by this section has been filed prior to or at the time of the hearing.

**(e) Service Outside Arizona.** Service outside the state must be completed pursuant to Civil Rule 4.2(a), (c), (f), (i), or (j).

**(f) Service on an Incarcerated Person.** A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service, with the return or confirmation of service completed by an official of the jail, prison, or correctional facility. The signature of an official of the jail, prison, or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. In addition, the petitioner must send copies of the documents being served to the inmate, and to the inmate's assigned dependency attorney, by first class mail.

**(g) Serving a Conservator for a Minor.** If a conservator has been appointed for the child, the conservator must be served pursuant to Civil Rule 4.1.

**(h) Service under ICWA.**

- (1) If the petition alleges or the court has reason to know the child at issue is an Indian child, then in addition to service of process required by these rules, the

petitioner must notify the parent, Indian custodian, and child's tribe or tribes as ICWA requires. The petitioner must provide notice by registered or certified mail with a return receipt requested.

- (2) If the identity or location of the parent or Indian custodian cannot be determined, the petitioner must give notice to the Secretary of the Interior by certified mail with a return receipt requested. The Secretary of the Interior has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of the right to intervene.
- (3) The court may not hold a hearing until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The court must grant up to 20 additional days to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

(i) **Waiver under ICWA.** The parent, Indian custodian, or the child's tribe may waive the 10-day notice requirement pursuant to ICWA and allow the preliminary protective hearing to proceed within the time limit provided by state law.

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

The provision permitting the parent, Indian custodian, or the child's tribe to waive the 10-day notice requirement does not conflict with ICWA and reflects current practice in some counties. Inclusion of the waiver provision allows timely disposition of cases without interfering with the rights afforded the parent, Indian custodian, or the tribe under ICWA. When the preliminary protective hearing is held as an emergency hearing under ICWA § 1922 and 25 C.F.R. § 23.113 the 10-day notice requirement does not apply.

### **Rule 330. In-Home Intervention**

- (a) **Generally.** In-home intervention allows a child to stay in the home after the filing of a dependency petition, while remaining under the supervision of DCS and the court and subject to criteria established in A.R.S. § 8-891 and subpart (b)(2) of this rule.
- (b) **Procedure.** The petitioner may request in-home intervention in the dependency petition. Regardless of whether the petitioner made the request in the dependency petition, the court may order in-home intervention if the court makes all the findings required by subpart (b)(2) of this rule.
- (1) **Hearing.** The court may consider in-home intervention at any time prior to the dependency adjudication. At a hearing when in-home intervention is considered, the court must ask whether the parent agrees to in-home intervention and to participate in services. In open court, the court must provide Form 2, request that the parent return the signed form, and note on the record that the form was provided. If the parent does not agree to in-home intervention, the court may allow the petitioner to file an amended dependency petition.
- (2) **Findings.** Before ordering in-home intervention, the court must find all the following:
- (A) the child has not been removed from the home pursuant to A.R.S. §§ 8-821 through 8-831;
  - (B) in-home intervention appears likely to resolve the risk issues described in subpart (b)(2)(D);
  - (C) the parent agrees to a case plan and participation in services; and
  - (D) one or both of the following conditions exists:
    - (i) the child is at risk of harm because the parent is unable or unwilling to provide food, clothing, shelter, or medical care, or
    - (ii) the parent is unable to provide proper care, control, and supervision of the child.
- (3) **Orders.** The in-home intervention order may include a training or treatment plan for the parent and the child. The order must include a specific time for completion of in-home intervention, which may not exceed one year from the date of the filing of the petition without the court's review and approval. The petitioner must file a status report with recommendations at least two weeks before the review hearing. The court must dismiss the dependency petition if the

time for completing in-home intervention has expired without a court extension or a dependency adjudication hearing has not been set.

- (4) ***Non-compliance.*** If the parent violates the in-home intervention order, the court may take whatever steps it deems necessary to obtain compliance, or it may rescind the order and set a dependency adjudication hearing. The court may allow the petitioner to file an amended dependency petition. If the court orders removal, the court must make the determinations required by Rule 325.

### **Rule 331. Preliminary Protective Conference**

- (a) Generally.** A preliminary protective conference must be held before the preliminary protective hearing. The conference facilitates the resolution of issues in a non-adversarial manner.
- (b) Appointment of a Facilitator.** The court must appoint a facilitator before the start of the preliminary protective conference. The facilitator may not be a party or the representative of a party to the proceeding. The facilitator must encourage all those attending the conference to participate, communicate, and identify areas on which the parties can agree.
- (c) Attendance.** Persons who are authorized by A.R.S. § 8-824(B) to attend a preliminary protective hearing may attend a preliminary protective conference. The court may impose reasonable restrictions on those in attendance if restrictions are required by the physical limitations of the facility, to maintain order and decorum, or to ensure the ability of the parties to fully participate in the conference.
- (d) Procedure.** The facilitator, parties, and participants must meet outside the presence of a judge to try to reach agreement on the custody and placement of the child, parenting time, visitation, and the services to be provided to the child and family. The parties will proceed to the preliminary protective hearing when the conference concludes.
- (e) Use of Statements.** Statements made by parties and participants during the conference are not protected and may be used in future proceedings.

### **Rule 332. Preliminary Protective Hearing**

**(a) Generally.** At the preliminary protective hearing, the court must determine whether continued temporary physical custody of the child is necessary, giving paramount consideration to the health and safety of the child.

#### **(b) ICWA.**

**(1) *Inquiry.*** The court must inquire at the start of the hearing if any party or participant has reason to know under 25 C.F.R. § 23.107 that the child is an Indian child.

**(2) *Emergency Removal or Placement.*** If there is reason to know the child is an Indian child and the child was removed from the physical custody of the parent or Indian custodian, the preliminary protective hearing must meet the requirements for an emergency hearing provided in ICWA § 1922 and 25 C.F.R. § 23.113. The petition or accompanying documents must contain the information listed in 25 C.F.R. § 23.113, including the efforts to contact the parent, Indian custodian, and tribe about the emergency proceeding.

#### **(3) *Proceedings.***

**(A)** The court must determine whether a judicial officer made a finding before the dependency petition was filed regarding the child's removal from the home, as provided by Rule 327(d)(1) and 25 C.F.R. § 23.113(d) and affirm the findings. Or, if a judicial officer did not previously make that finding, then it must find whether there was probable cause to believe that the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child pursuant to 25 C.F.R. § 23.113(d). At the preliminary protective hearing, a parent may request a hearing to contest the finding.

**(B)** If a judicial officer finds that that the emergency removal or placement was necessary to prevent imminent physical damage or harm to the child, the court must affirm the child's placement.

**(C)** If the court has made a finding that emergency removal or placement was not necessary to prevent imminent physical damage or harm, the court must return the child to the parent or Indian custodian, unless the court finds by a preponderance of the evidence that returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger, as provided by 25 C.F.R. § 23.114.

**(D)** A parent or Indian custodian has a right to request a temporary custody hearing under Rule 333.

**(4) Notification.**

**(A) Reason to know of Indian Status.** If there is reason to know the child is an Indian child, the court must order the petitioner to notify the parent, Indian custodian, the Indian child's tribe, or the Secretary of the Interior by registered or certified mail, as required by ICWA § 1912(a).

**(B) No reason to know.** If the court does not have sufficient evidence to determine that the child is an Indian child, then pursuant to 25 C.F.R. § 23.107, the petitioner must use due diligence to identify and work with all tribes in which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership.

**(5) Placement Preferences.** If there is reason to know the child is an Indian child, the court must find whether placement of the Indian child is in accordance with Rule 321 and ICWA § 1915 and 25 C.F.R. §§ 23.131 through 23.132.

**(c) Procedure.** At the preliminary protective hearing, the court must:

**(1)** appoint counsel pursuant to Rule 303;

**(2)** determine:

**(A)** whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 329;

**(B)** whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 312;

**(C)** whether paternity has been established as to any father, and if not, the court must ask the mother, and may take her testimony, concerning the identity and location of any potential father;

**(D)** whether reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D);

**(E)** whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition required by A.R.S. § 8-824(F);

**(F)** whether a proposed case plan for services has been submitted and whether it is reasonable and necessary to carry out the case plan; and

- (G) whether the parent admits, does not contest, or denies the allegations in the dependency petition;
- (3) if DCS is the petitioner, determine:
  - (A) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;
  - (B) whether DCS made arrangements, as provided by A.R.S. §§ 8-512, 8-512.01, and 8-514.05, for:
    - (i) the assembly of the child's medical records;
    - (ii) a medical assessment of the child;
    - (iii) the implementation of referrals; and
    - (iv) the communication of recommendations and results.
  - (4) identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825;
  - (5) review any agreements reached at the preliminary protective conference;
  - (6) conduct a temporary custody hearing pursuant to A.R.S. § 8-825 and Rule 333, if requested by a parent;
  - (7) consider as a mitigating factor the availability of reasonable services to the parent to prevent or eliminate the need for removal of the child and efforts of the parent to obtain and participate in these services;
  - (8) inform a foster parent, pre-adoptive parent, a member of the child's extended family with whom the child has been placed, or a relative identified as a possible placement, of the right to be heard in any court proceeding regarding the child; and
  - (9) provide a copy of Form 1, and request that the parent sign and return the form to the court and ensure that the parent understands the parent's rights and responsibilities pursuant to A.R.S. § 8-824(D), (E)(6), (E)(8), and (I).
- (d) **Findings.** At the conclusion of the hearing, the court must make findings that include the following:
  - (1) that the court has jurisdiction over the subject matter and persons before the court;

- (2) that the initial dependency hearing was held pursuant to Rule 334 for those parties who were present;
- (3) if a parent requested a review of temporary custody, that the hearing has been held;
- (4) that there is or is not probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication;
- (5) that the petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member or eligible for membership, to verify whether the child is in fact a member or a biological parent is a member and the child is eligible for membership;
- (6) that the parent was advised, and understands the consequences, of:
  - (A) failing to participate in reunification services, and
  - (B) failing to attend future proceedings;
- (7) if applicable, the reasons why siblings have not been placed together; and
- (8) other findings as appropriate or required by law.

(e) **Orders.** At the conclusion of the hearing, the court must enter orders:

- (1) returning the child to the parent, or if the child is not returned to the parent, declaring the child a ward of the court and entering orders regarding the placement of the child pending the determination of the dependency petition, and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 333(e);
- (2) approving or modifying any of the agreements the parties reached at the preliminary protective conference;
- (3) if paternity has not been established, that it be established through testing or execution of a voluntary acknowledgment of paternity;
- (4) if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, if such placement is in the children's best interests, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;
- (5) except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:

- (A) if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
  - (B) if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanent plan for the child.
- (6) that the parent provide the court with the names, relationships, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
  - (7) that the parent immediately inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;
  - (8) setting an initial dependency, a continued initial dependency, or a publication hearing for any party who was not served and did not appear, in accordance with A.R.S. § 8-842 and Rule 334 to comply with ICWA;
  - (9) setting dates for future proceedings, which may include a settlement conference, mediation, pretrial conference, or adjudication if a denial is entered; and
  - (10) entering other orders as appropriate or required by law.
- (f) **Copies for the Parties.** At the conclusion of the hearing, the court must provide a copy of the court's written findings and orders to each party who has appeared at the hearing.

### **Rule 333. Contested Review of Temporary Custody**

**(a) Generally.** If requested by the parent at the preliminary protective hearing, or at the initial dependency hearing if the parent was not served and did not appear for the preliminary protective hearing, the court must conduct a review of temporary physical custody of the child in an out-of-home placement; and determine:

- (1) whether removal of the child from the home was clearly necessary, and
- (2) whether the child should remain in an out-of-home placement.

**(b) Burden of Proof.** The petitioner must show there is probable cause to believe that continued temporary physical custody of the child in an out-of-home placement is clearly necessary to prevent abuse or neglect pending the dependency adjudication pursuant to A.R.S. §§ 8-824(F) and 8-825(C).

**(c) Procedure.** At the temporary custody hearing:

- (1) The court may limit testimony and evidence pursuant to A.R.S. § 8-824(E)(3).
- (2) Evidence may be presented in support of, or to rebut a finding of, the need for the continued temporary physical custody of the child in an out-of-home placement. The court may admit evidence under Rule 104(b), including hearsay. *See* A.R.S. § 8-825.
- (3) The parent must be permitted to present evidence in support of the child's return at the conclusion of the petitioner's case.
- (4) A parent may present, and the court may consider as a mitigating factor, evidence of the parent's participation in the healthy families program under A.R.S. § 8-481. *See* A.R.S. § 8-824(E)(4).
- (5) A parent may present, and the court must consider as a mitigating factor, the availability of reasonable services to prevent or eliminate the need for removal of the child and the parent's effort to obtain and participate in these services. *See* A.R.S. § 8-824(E)(5).

**(d) Findings.** The court must find whether there is probable cause to believe that continued temporary physical custody is clearly necessary to prevent abuse or neglect.

**(e) Orders.**

- (1) If the petitioner failed to meet the burden of proof, the court must order return of the child to the parent pending the determination of the dependency petition, pursuant to A.R.S. § 8-825(C)(1), or

- (2) if the petitioner met the burden of proof, the court may declare the child a temporary ward of the court pending the determination of the dependency petition and must continue the child in an out-of-home placement pursuant to A.R.S. § 8-825(C)(2).

### **Rule 334. Initial Dependency Hearing**

**(a) Generally.** At the initial dependency hearing, the court must determine whether service has been completed and whether the parent admits, denies, or does not contest the allegations in the dependency petition.

**(b) Time for the Hearing.**

**(1) *No Appearance at the Preliminary Protective Hearing.*** If a parent does not appear at the preliminary protective hearing, the court must set an initial dependency hearing no later than 21 days after the filing of the petition.

**(2) *Service by Publication.*** If service by publication is required, the court may set an initial dependency hearing after allowing sufficient time for publication and no less than 10 days after publication is complete.

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

**(1)** appoint counsel under Rule 303;

**(2)** determine:

**(A)** whether the parties have been served pursuant to A.R.S. § 8-841(D) and Rule 329;

**(B)** whether to close the proceeding and provide the admonition for a hearing that remains open to the public, as required by A.R.S. § 8-525 and Rule 312;

**(C)** whether paternity has been established as to any father, and if not, the court must ask the mother, and may take her testimony, concerning the identity and location of any potential father;

**(D)** whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and if services are available that would eliminate the need for continued removal pursuant to A.R.S. § 8-825(D);

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

**(4)** consider as a mitigating factor the availability of reasonable services to the parent to prevent or eliminate the need for removal of the child and efforts of the parent to obtain and participate in these services, as provided by A.R.S. § 8-824(E)(5);

**(5)** inquire if any party has reason to know that the child is an Indian child. *See* C.F.R. § 23.107;

- (6) provide the parent a copy of Form 1 and request the parent sign and return the form to the court and ensure that the parent understands the parent's rights and responsibilities. See A.R.S. § 8-824(D), (E)(6), (E)(8), and (I); and
- (7) inquire if the parent wishes to admit, not contest, or deny the allegations in the dependency petition.

(A) *Admission/No Contest.* If the parent admits or does not contest the allegations in the petition, the court must proceed with the dependency adjudication hearing pursuant to Rule 338 and set or conduct a disposition hearing under Rule 339.

(B) *Denial.* If the parent denies the allegations contained in the petition, the court must set a settlement conference, pretrial conference, or a mediation, and may set a dependency adjudication.

**(d) Failure to Appear.** The court may proceed with the dependency adjudication and disposition if it finds on the record specific facts upon which to adjudicate the child dependent and finds that the parent:

- (1) had notice of the hearing;
- (2) was properly served pursuant to Rule 329;
- (3) had been admonished regarding the consequences of failing to appear, including a warning that the hearing could go forward in the parent's absence, and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the dependency petition; and
- (4) failed to demonstrate good cause for the failure to appear.

**(e) Determination.** If DCS is the petitioner, the court should determine:

- (1) whether DCS placed, or is attempting to place, the child with a grandparent or another member of the child's extended family, including a person who has a significant relationship with the child;
- (2) whether DCS placed, or is attempting to place, the child with the child's siblings, if such placement is possible and is in the child's best interests, and if that is not possible, to maintain frequent visitation or other ongoing contact between all siblings; and
- (3) identify on the record all the documents the court has received and will consider, including DCS's report prepared pursuant to A.R.S. § 8-824(H) and other evidence permitted by A.R.S. § 8-825.

**(f) Findings.** All findings must be contained in a signed minute entry or order. At the conclusion of the hearing the court must make findings that include:

- (1) that the court has jurisdiction over the subject matter and persons before the court;
- (2) if a parent requested a review of temporary custody, that the hearing has been held;
- (3) whether there is probable cause to believe that continued temporary physical custody of the child is clearly necessary to prevent abuse or neglect pending the dependency adjudication;
- (4) confirmation under 25 C.F.R. § 23.107 – and based on a report, declaration, or testimony included in the record or by court order – that petitioner has used or will use due diligence to identify and work with all tribes for which there is reason to know the child may be a member or eligible for membership, to verify whether the child is in fact a member or a biological parent is a member and the child is eligible for membership;
- (5) if there is reason to know the child is an Indian child, whether the standards and burdens of proof required by ICWA are met, including whether placement is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences or continue the initial dependency and defer the findings as permitted by section (h);
- (6) that the parent was advised of, and understands the consequences of:
  - (A) failing to participate in reunification services, and
  - (B) failing to attend future proceedings.
- (7) if applicable, the reasons why siblings have not been placed together; and
- (8) other findings as appropriate and required by law.

**(g) Orders.** At the conclusion of the hearing, the court must enter orders:

- (1) returning the child to the parent, or if the child is not returned to the parent, affirming or modifying the prior orders regarding the placement of the child pending the determination of the dependency petition and visitation/parenting time, if any, pursuant to A.R.S. §§ 8-824(J), 8-825(C), and Rule 333;
- (2) if paternity has not been established, that it be established through testing or execution of a voluntary acknowledgement of paternity;

- (3)** if siblings have not been placed together, requiring that DCS make reasonable efforts to place a child with siblings, if such placement is in the children's best interests, or if that is not possible, to maintain frequent visitation or other ongoing contact between the siblings;
- (4)** except as provided in A.R.S. §§ 8-824(H)(9) and 8-846, regarding services for the child and parent as follows:
  - (A)** if the child is in the custody of DCS, that DCS make reasonable efforts to provide services to facilitate reunification, including visitation/parenting time; or
  - (B)** if the child is not in the custody of DCS, that the parties participate in reasonable services that will facilitate reunification of the family, including visitation/parenting time, or another permanency plan for the child.
- (5)** if the petitioner has not verified whether the child is an Indian child, that the petitioner must continue to use due diligence to make that determination;
- (6)** where the court knows or has reason to know that an Indian child is involved, that the petitioner notify the parent, the Indian child's tribe, or the Secretary of the Interior, as required by ICWA § 1912(a);
- (7)** that the parent provide the court with the names, relationship, and contact information necessary to locate persons who are related to the child or who have a significant relationship with the child, unless the parent informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child;
- (8)** that the parent immediately inform DCS and the court at future hearings if they become aware of new information on the location of a relative or individual with whom the child has a significant relationship;
- (9)** that the petitioner effectuate service on any party under Rule 329 who has not been served and set a continued initial dependency hearing or a publication hearing in accordance with A.R.S. § 8-842;
- (10)** setting dates for future proceedings, which may include a settlement conference, mediation, a pretrial conference, or an adjudication if a denial is entered;
- (11)** that may stay the proceedings, and order an in-home intervention if appropriate and as provided by A.R.S. §§ 8-842(C) and 8-843(F) and Rule 330;
- (12)** as appropriate and required by law and Rules 338 and 339 if the party admits or does not contest the allegations in the petition or fails to appear; and

(13) entering other orders as appropriate or required by law.

**(h) Continuance.** The court for good cause, including the following reasons, may continue the initial dependency hearing:

- (1) service of process on the parties and notification under ICWA has not been completed;
- (2) additional time is required to comply with the requirements of ICWA or additional time is requested by the child's tribe; or
- (3) additional time is required to obtain and consult with an attorney and the child's best interests would not be adversely affected.

### **Rule 335. Qualified Residential Treatment Program; Judicial Review**

(a) **Generally.** A child may be placed in a qualified residential treatment program under the conditions set forth in this rule, subject to approval and review by the court.

#### **(b) Definitions.**

- (1) **“Qualified Residential Treatment Program”** (“QRTP”) means a program that is licensed as described in 42 U.S.C. § 672(k)(4) to serve children with specific treatment needs who need short term placement out of their homes and that qualifies for funding under the federal FFPSA.
- (2) **“Qualified Individual”** means a trained professional or licensed clinician who:
  - (A) is qualified to conduct a QRTP assessment;
  - (B) is not an employee of DCS unless the requirement is waived pursuant to 42 U.S.C. § 675a(c)(1)(D); and
  - (C) is not connected to or affiliated with any placement setting in which children are placed by the State unless the requirement is waived pursuant to 42 U.S.C. § 675a(c)(1)(D).
- (3) **“QRTP Assessment”** means an evaluation by a qualified individual that assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool as described in 42 U.S.C. § 675a(c)(1).

(c) **Time to Complete the Assessment and Documentation.** No later than 30 days after the start of the child’s placement in a QRTP, a qualified individual must do all of the following:

- (1) prepare an assessment of the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool as described in 42 U.S.C. § 675a(c)(1);
- (2) determine whether the needs of the child can be met in kinship care with a grandparent or another member of the child’s extended family, including a person who has a significant relationship with the child, or in a foster home, and if not, which setting from among the settings specified in 42 U.S.C. § 472(k)(2) would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short- and long-term goals for the child, as specified in the permanency plan for the child; and
- (3) develop a list of child-specific short- and long-term mental and behavioral health goals.

**(d) QRTP Placement and Approval.**

**(1) *Notice and Disclosure.***

- (A)** DCS must promptly notify the parties of the child's placement no later than 24 hours, excluding weekends and holidays, after the child is placed in the QRTP in the manner prescribed in Rule 324.
- (B)** DCS must file a notice with the court of the child's placement in the QRTP no later than 5 court days after the placement.

**(2) *Procedure.***

- (A)** Upon notice by DCS that the child is placed in a QRTP, the court must set a hearing no later than 60 days after the child's placement to assess and review the need for the QRTP placement.
- (B)** DCS must file a motion seeking approval of the child's placement in the QRTP no later than 10 court days after receipt of the QRTP assessment. The motion must contain supporting documentation, including the QRTP assessment. If no party objects to placing the child in the QRTP, the court may rule upon the motion based on the supporting documentation without a hearing.
- (C)** In deciding the motion, whether contested or uncontested, the court must consider:
  - (i)** the QRTP assessment, any related documentation, and additional relevant evidence including testimony and the positions of the parties;
  - (ii)** whether the child, child's family, and individuals who are identified as important to the child have had an opportunity to express their views on the placement decision;
  - (iii)** whether placement of the child in the QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment; and
  - (iv)** whether that placement is consistent with the short- and long-term goals for the child as specified in the child's permanency plan, or if the needs of the child can be met through another available alternative placement.

**(3) *Findings.*** In a signed minute entry or order, the court must find that:

- (A)** the child's needs cannot be met by the child's parent, in kinship care with a grandparent or another member of the child's extended family, including a

person who has a significant relationship with the child or in a foster home with support services;

- (B) a shortage or lack of family home is not the reason why the child is placed in the QRTP;
- (C) the child's placement in the QRTP provides the most effective and appropriate level of care in the least restrictive environment;
- (D) the placement is consistent with the child's permanency plan; and
- (E) if there is reason to know the child is an Indian child, the placement complies with the standards of Rule 321.

(4) **Orders.** The court must enter the following orders:

- (A) approving or disapproving the child's placement in the QRTP;
- (B) if the child's placement is approved, setting a further hearing as provided in section (e);
- (C) if the child's placement in a QRTP is not approved, ordering DCS to investigate alternative placements and setting a further hearing if necessary; and
- (D) if it is in the child's best interests, providing for contact with siblings and other family members consistent with the treatment plan.

(e) **Continuing Review of QRTP Placement.**

- (1) **Procedure.** If the child remains placed in a QRTP for more than 60 days, the court must review the child's placement and follow the procedures set forth in subparts (d)(2) and (3) of this rule at every subsequent hearing under Rule 341 or Rule 343 or a QRTP placement review set by the court. DCS must disclose subsequent reports received from the QRTP to the court and parties no later than 15 days before the QRTP placement review.
- (2) **Findings.** In addition to the findings and orders required by subparts (d)(3) and (d)(4), the court must also make the following findings in a signed minute entry or order:
  - (A) ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement with a parent, in kinship care, relative care, or in a foster home;

- (B) order that the specific treatment or service that the child needs is being provided;
  - (C) the length of time the child is expected to need additional treatment; and
  - (D) the efforts made to prepare the child for transition to a parent, kinship care including a person who has a significant relationship with the child, legal guardian, or an adoptive home or foster family home.
- (f) **Discharge.** The petitioner must file a motion for change of physical custody prior to discharge from the QRTP, unless there are exigent circumstances. Under those circumstances, the motion must be filed upon discharge or as soon as practicable.

### **Rule 336. Settlement Conference**

- (a) **Generally.** The court with the parties' agreement may conduct a settlement conference to help identify and resolve issues.
- (b) **Settlement Conference Memorandum.** No later than 5 days before the settlement conference, or as otherwise provided by the court, each party must provide the court, but not file or exchange with other parties, a confidential memorandum that addresses the following:
- (1) a general description of the contested issues and the position of the party with respect to each issue;
  - (2) a general description of the evidence the party will present;
  - (3) a summary of any attempts to settle the matter; and
  - (4) any other information a party believes would be helpful to the settlement process, including acceptable settlement proposals.
- (c) **Procedure.**
- (1) The assigned trial judge may conduct the settlement conference only with the consent of the parties. In all other cases, another judicial officer must conduct the settlement conference.
  - (2) Statements made in the course of the settlement conference must not be used in future hearings, except as permitted by Arizona Rule of Evidence 408.
  - (3) The court may engage in ex parte communications with the consent of all those participating in the conference.
  - (4) The parties must inform the assigned judge of the result of the settlement conference.
- (d) **Findings and Orders; Further Proceedings.** All findings and orders must be contained in a signed minute entry or order. At the conclusion of the settlement conference, the court may do any of the following:
- (1) If the court finds that the parent admits or does not contest that the child is dependent, it may adjudicate the child dependent and enter findings and orders pursuant to Rule 338, and it may set or conduct a disposition hearing pursuant to Rule 339.
  - (2) If the parties are unable to reach agreement, the court must set or affirm a dependency adjudication hearing and may set a pretrial conference.

**(e) Admonitions.**

- (1)** If the court sets a further hearing, it must address the parent in open court and advise that the parent's failure to attend the pretrial conference or the dependency adjudication hearing without good cause may result in a finding that the parent has waived legal rights and is deemed to have admitted the allegations in the dependency petition. The court also must advise the parent that the hearings may go forward in the parent's absence and may result in a finding of dependency based on the record and evidence presented.
- (2)** The court must also advise the parent that failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child.
- (3)** The court must find that the parent was advised of and understands the consequences of failing to participate in reunification services and failing to attend future proceedings. The court may provide the parent with a copy of Form 1, request that the parent sign and return a copy of the form, and note on the record that the form was provided.

**(f) ICWA.** If ICWA applies, the court must make findings pursuant to the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.

**(g) Other Findings and Orders.** The court may make other findings and enter any other orders that may be appropriate or required by law.

### **Rule 337. Pretrial Conference**

- (a) **Generally.** The court may hold a pretrial conference before the dependency adjudication hearing to determine whether the parties are prepared and intend to proceed to the dependency adjudication hearing, or whether it is still possible for the parties to resolve the remaining issues without a hearing.
- (b) **Procedure Before the Conference.** The parties must confer before the pretrial conference and determine:
- (1) whether the parent will admit or not contest the allegations of the petition;
  - (2) whether the parties have completed disclosure under Rule 315;
  - (3) the amount of time needed for the hearing;
  - (4) the scheduling of the witnesses;
  - (5) any other issue raised by the parties; and
  - (6) whether the hearing will be closed to the public.
- (c) **Procedure at the Pretrial Conference.** At the pretrial conference:
- (1) The parties will advise the court of the status of the issues listed in section (b).
  - (2) If the parties wish to discuss possible settlement, the court may schedule a settlement conference pursuant to Rule 336 or mediation.
  - (3) A parent may admit or not contest the allegations, which the court may accept, and the court may proceed with disposition pursuant to Rule 339.
  - (4) The court may proceed with the adjudication as provided in section (e) if the parent fails to appear without good cause.
  - (5) The court may affirm or modify the trial dates.
  - (6) The court may limit the issues to be litigated at the dependency adjudication hearing.
- (d) **Admission/No Contest.** If the court finds that the parent admits or does not contest that the child is dependent, the court may adjudicate the child dependent and enter its findings and orders pursuant to Rule 338 and set or conduct a disposition hearing pursuant to Rule 339.
- (e) **Failure to Appear.** If a parent fails to appear, then pursuant to A.R.S. § 8-844(F) the court may proceed with the dependency adjudication and disposition if it finds on the record specific facts upon which to adjudicate the child dependent and that the parent:

- (1) had notice of the hearing;
  - (2) had been admonished regarding the consequences of failing to appear, including a warning that the hearing could go forward in the parent's absence, and that failure to appear may constitute a waiver of rights and an admission of the allegations contained in the dependency petition; and
  - (3) failed to demonstrate good cause for the failure to appear and is deemed to have waived the parent's rights and admitted the allegations in the dependency petition.
- (f) **ICWA.** To complete an adjudication when ICWA applies, the court must make findings pursuant to the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child satisfies ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences.
- (g) **Affirm the Dependency Adjudication Hearing.** If the parties are unable to agree, the court must set or affirm a dependency adjudication hearing date or set another proceeding to facilitate settlement. The court may order the parties to file, prior to the adjudication hearing, pretrial statements pursuant to Rule 315(d) or proposed findings of fact and conclusions of law.
- (h) **Admonition.** The court must provide a copy of Form 1 and request that the parent sign and return the form to the court to ensure that the parent understands the parent's rights, responsibilities, the future court dates, and the consequences of failing to appear or failing to participate in reunification services.
- (i) **Findings and Orders.** All findings and orders must be in a signed minute entry or order.

### **Rule 338. Dependency Adjudication Hearing**

(a) **Generally.** At the dependency adjudication hearing, the court must determine whether the petitioner has met the burden of proving the child dependent.

(b) **Time.**

- (1) **Requirement.** The dependency adjudication hearing must be completed no later than 90 days after service of the dependency petition on the parent.
- (2) **Continuance.** The court may continue a dependency adjudication hearing beyond the time prescribed by A.R.S. § 8-842(C) for 30 days on a showing of good cause, and for a longer period upon a finding of extraordinary circumstances. The court must state in writing the factual basis for extending time based on extraordinary circumstances. Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances under this section.

(c) **Burden of Proof.**

- (1) **Cases Not Subject to ICWA.** The petitioner must prove the allegations in the petition by a preponderance of the evidence.
- (2) **ICWA Cases.** If the child is an Indian child, the petitioner must prove by clear and convincing evidence, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. This proof is required even when a parent admits or does not contest the allegations in a dependency petition. The petitioner also must prove by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, and that those efforts have proven unsuccessful. *See* ICWA § 1912 and 25 C.F.R. § 23.121. These requirements are in addition to the proof required by subpart (c)(1).

(d) **Admission/No Contest.** A parent may waive the right to a contested hearing on the allegations contained in the dependency petition by admitting or not contesting the allegations orally or in writing. In accepting an admission or if the parent does not contest the allegations in the petition, the court must:

- (1) determine whether the parent understands the rights being waived;
- (2) determine whether the parent knowingly, intelligently, and voluntarily admits or does not contest the allegations;

- (3) determine a factual basis to support a finding of dependency; and
- (4) enter the findings and orders set forth in section (h).

**(e) Failure to Appear.** If a parent fails to appear and pursuant to A.R.S. § 8-844(F), the court may proceed with the dependency adjudication and disposition if it finds on the record specific facts upon which to adjudicate the child dependent and finds that the parent:

- (1) had notice of the hearing;
- (2) had been admonished regarding the consequences of failing to appear, including a warning that the hearing could go forward in the parent's absence, and that failure to appear may constitute a waiver of rights and an admission of the allegations contained in the dependency petition; and
- (3) failed to demonstrate good cause for the failure to appear and is deemed to have waived the parent's rights and admitted the allegations in the dependency petition.

**(f) Procedure After Denial.** If a parent appears at the dependency adjudication hearing and continues to deny the allegations of the petition, the court must conduct a contested adjudication hearing.

**(g) Amendments to Conform to the Evidence.** An amendment to conform to the evidence may be made during or after the presentation of evidence pursuant to Civil Rule 15(b).

**(h) Findings and Orders.** Findings and orders must be in a signed minute entry or order. As to each parent and based on the record and evidence presented, the court must:

- (1) enter findings that the court has jurisdiction over the subject matter and persons before the court;
- (2) if the petitioner failed to meet the required burden of proof, dismiss the petition and return the child to the parent;
- (3) if the parent failed to appear, made the findings required by section (e);
- (4) if the petitioner met the burden of proof, state specific facts that support a finding of dependency and adjudicate the child dependent;
- (5) enter orders concerning the placement and custody of the child pending disposition;

- (6) if ICWA applies, make findings pursuant to the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the preferences;
- (7) conduct the disposition hearing pursuant to Rule 339, or set the disposition hearing no later than 30 days after the adjudication;
- (8) address the parent in open court and advise that failure to attend further proceedings without good cause or failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child. The court must advise the parent that hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failing to attend subsequent proceedings or participate in reunification services. The court may provide the parent with a copy of Form 1, request that the parent sign and return a copy of the form, and note on the record that the form was provided; and
- (9) make other findings and enter any other orders appropriate or required by law.

### **Rule 339. Disposition Hearing**

- (a) **Generally.** The court must conduct a disposition hearing for a dependent child pursuant to A.R.S. § 8-845.
- (b) **Time Limits.** The court must hold a disposition hearing no later than 30 days after the dependency adjudication hearing.
- (c) **Considerations.** To determine the appropriate disposition, including the placement of the child and the case plan, the court may consider the parties' positions, any reliable statements or documents, and any testimony or other evidence, including information the court may have considered at a previous hearing.
- (d) **Court Action.** At the conclusion of the hearing, in a signed minute entry or order, the court must:
- (1) if DCS is a party, order DCS to make reasonable efforts to provide services to the child and child's parent pursuant to A.R.S. § 8-846(A);
  - (2) if DCS is not a party, direct the parties, at the court's discretion, to participate in reasonable services that will facilitate reunification of the family or another permanent plan for the child pursuant to A.R.S. § 8-825(D)(2);
  - (3) enter orders concerning the placement and custody of the child;
  - (4) set a review hearing within 6 months and set the permanency hearing;
  - (5) advise the parties present at the hearing and those identified in Rule 341(b)(1) of their right to participate in periodic review hearings;
  - (6) if ICWA applies, make findings regarding the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131 or whether there is good cause to deviate from the placement preferences; and
  - (7) make any other findings and enter any other orders as may be appropriate or required by law.
- (e) **Advisement Regarding Failure to Appear or to Participate in Reunification Services.** At the conclusion of the hearing, the court must address the parent in open court and advise the parent that failing to attend further proceedings without good cause or to participate in reunification services may result in termination of parental rights or the establishment of a permanent guardianship of the child. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of these consequences and that

the parent understands these consequences. *See* A.R.S. § 8-824(E)(6) and (8). The court may provide the parent with a copy of Form 1, request the parent to sign and return a copy of the form, and note on the record that the form was provided.

## **Rule 340. Motion to Determine the Provision of Reunification Services**

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

- (1) A party may file a motion pursuant to A.R.S. § 8-846 asking the court to relieve DCS of the duty to provide reunification services.
- (2) If the child is an Indian child, the court's granting of the motion does not determine whether active efforts are necessary under ICWA § 1912 and 25 C.F.R. §§ 23.120 and 23.121.

### **(b) Procedure.** The court must consider whether one or more of the statutory circumstances in A.R.S. § 8-846(D) through (F) exist.

- (1) The court may rule on the motion without a hearing unless a hearing is requested.
- (2) If a party requests a hearing, evidence may be presented concerning whether reunification services are required, which may include:
  - (A) the parties' oral or written reports;
  - (B) documents entered into evidence at prior proceedings;
  - (C) expert testimony or reports;
  - (D) documents agreed upon by the parties; and
  - (E) any other evidence admitted by the court.

### **(c) Findings.** If the court finds by clear and convincing evidence that reunification services are not required, the court must set forth the specific factual basis for its findings in a signed minute entry or written order and, if the child is an Indian child, include findings pursuant to the standards and burdens of proof required by ICWA § 1912 and 25 C.F.R. § 23.121.

### **(d) Orders.**

- (1) If the court denies the motion, the court must order DCS to continue to make reasonable efforts to provide services to the child and the child's parent as provided by A.R. S. § 8-825(D)(1).
- (2) If the court grants the motion, the court must order that the petitioner is relieved of the duty to provide reunification services and must enter other orders required by A.R.S. § 8-845(C). If the child has been adjudicated dependent, the court must set a permanency hearing as required by A.R.S. § 8-862(A)(1).

## **COMMENT TO 2022 AMENDMENT**

In cases involving Indian children, the discontinuation of services may adversely affect any future attempt to terminate parental rights. ICWA requires that before terminating parental rights, the court must be satisfied that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.

### **Rule 341. Review Hearing**

**(a) Generally.** Pursuant to A.R.S. § 8-847, the court must conduct periodic review hearings at least once every 6 months after the disposition hearing to review the progress of the parties in achieving the case plan goals and determine whether the child continues to be dependent.

#### **(b) Notice.**

- (1) *Court's Duty to Notify of the Right to Participate.*** At a proceeding to review the disposition orders of the court, the court must notify the following persons of the review hearing and their right to participate in the review proceeding and any future proceedings:
- (A)** the authorized agency charged with the child's care and custody;
  - (B)** the child's tribe as required under ICWA;
  - (C)** any foster parents in whose home the child resides or has resided within the last 6 months, except for those foster parents who maintain a receiving foster home where the child has resided for 10 days or less. The petitioner must provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute;
  - (D)** a shelter care facility or receiving foster home where the child resides or has resided within the last 6 months for more than 10 days. The petitioner must provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph;
  - (E)** the child's parent, unless:
    - (i)** the rights of a parent to the child have been terminated by court action; or
    - (ii)** the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in A.R.S. § 8-107.
  - (F)** the child, if 12 years of age or older;
  - (G)** the child's relative, as defined in A.R.S. § 8-501, if that relative files with the court a written notice to participate;
  - (H)** a person permitted by the court to intervene in the dependency proceeding;
  - (I)** a physical custodian in whose home the child resides or has resided within the last 6 months;

(J) any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement; and

(K) any other person the court deems appropriate.

(2) ***Sibling Information Exchange Program.*** If the court finds that a child is no longer dependent, before it dismisses the proceeding the court must provide notice of the sibling information exchange program as required by A.R.S. § 8-543 to the following:

(A) the child in the proceeding for whom the periodic review hearing is held, and

(B) a parent or guardian with legal custody of the child for whom the periodic review hearing is held.

(c) **Reports.** The petitioner must provide a report to the court and the parties at least 15 days before the review hearing that addresses:

(1) the placement of the child;

(2) the services being provided to the child and family, including the educational needs of the child;

(3) the progress the parties have made in achieving the case plan goals; and

(4) whether the child continues to be dependent.

(d) **Contested Issues.** Any party seeking an evidentiary hearing on any issue must file a motion requesting that the matter be set for a contested hearing. The motion must identify the issues to be litigated, the names and addresses of all witnesses, and the estimated time the parties will need to present evidence. Upon receiving the motion, the court may reset the matter to provide sufficient time for an evidentiary hearing or it may proceed with the review hearing as scheduled.

(e) **Procedure.**

(1) Absent any party's objection, the court may consider the oral or written reports of the parties, documents entered into evidence at prior proceedings, documents agreed upon by the parties, and any other reports pursuant to Rule 104.

(2) Any documents that the parties wish the court to consider as evidence must be marked and admitted before the hearing concludes.

(3) The court must address the recommendations of the Foster Care Review Board on the record, as provided by A.R.S. § 8-515.03(1).

- (4) The court must consider any safety plan as well as any other safety issues that might prevent the child's return to a parent or that might affect the child's placement.
  - (5) At the first periodic review hearing, the court must consider whether a parent of a child under 3 years of age at the time of removal has substantially neglected or willfully refused to participate in reunification services offered by DCS.
- (f) Findings and Orders.** All findings and orders must be in a signed minute entry or order.
- (1) At the conclusion of the hearing, the court must:
    - (A) dismiss the petition and return the child to the parent if the court finds the child is not dependent, or
    - (B) make a finding that the child continues to be dependent.
  - (2) If the court finds that the child continues to be dependent, the court must:
    - (A) enter orders concerning:
      - (i) the placement, custody, and educational needs of the child, and
      - (ii) services to be provided to the family and child.
    - (B) if the child is not placed with a parent, determine whether DCS has identified and assessed whether placement of the child with a relative or person who has a significant relationship with the child is possible;
    - (C) determine whether the parent has complied with orders the court has issued pursuant to A.R.S. § 8-824(E)(7);
    - (D) set the next review hearing within the time provided by A.R.S. § 8-847;
    - (E) set a permanency hearing no later than 12 months after the date the child was removed from the home;
    - (F) address and advise the parent in open court that the parent's failure to attend further proceedings without good cause or the parent's failure to participate in reunification services, if appropriate, may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The

court may provide the parent with a copy of Form 1, request that the parent sign and return a copy of the form and note on the record that the form was provided;

- (G) if there is reason to know child is an Indian child, make findings pursuant to the standards and burdens of proof required under ICWA, including whether placement of the Indian child is in accordance with ICWA § 1915, 25 C.F.R. § 23.131, and Rule 50.2; and
- (H) make other findings as appropriate or required by law.

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

In considering safety issues under subpart (e)(4), judges and parties should consider the American Bar Association's publication titled Child Safety, A Guide for Judges and Attorneys (2009).

## **Rule 342. Motion for Return of the Child**

- (a) **Generally.** At any time after the temporary custody hearing, a parent may file a motion with a supporting factual basis that asks the court to return the child to the parent's custody pursuant to A.R.S. § 8-861.
- (b) **Time Limits.** The court must set a hearing no later than 30 days after the filing date of the motion unless the parties agree otherwise.
- (c) **Burden of Proof.** The moving party has the burden of establishing by a preponderance of the evidence that the return of the child would not create a substantial risk of harm to that child's physical, mental, or emotional health or safety.
- (d) **Report and Response.**
- (1) ***DCS is the Petitioner.*** When DCS is the petitioner, it must file a report with the court at least 15 days before the hearing and provide copies to all parties. The report must address the following:
    - (A) the current case plan and goals of the case plan;
    - (B) the parent's compliance with the case plan; and
    - (C) the petitioner's opinion on whether returning the child to the parent would create a substantial risk of harm to the child's physical, mental, or emotional health or safety.
  - (2) ***DCS is Not the Petitioner.*** When DCS is not the petitioner, the petitioner must file a response to the motion at least 15 days before the hearing.
- (e) **Procedure.** The court may consider evidence admissible under Rule 104(b), which may include hearsay, to determine whether the child can be returned to the parent. The court must consider any failure of the parent to comply with the terms of the case plan as evidence that return of the child would create a substantial risk of harm to the child.
- (f) **Findings and Orders.** The court must make factual findings even when no party objects to the motion. All findings and orders must be in a signed minute entry or order. The court must:
- (1) return the child to the parent if the court finds that the parent met the burden of proof under section (c); or if the parent did not meet the burden of proof under section (c), the court must deny the motion;
  - (2) set or affirm future hearing dates;

- (3) address and advise the parent in open court that the failure to attend further proceedings without good cause and failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent with a copy of Form 1, request that the parent sign and return a copy of the form, and note on the record that the form was provided;
- (4) if ICWA applies, and the court has not yet done so, make findings pursuant to the standards and burdens of proof required under ICWA and the Regulations, including whether placement of the Indian child is in accordance with ICWA § 1915 and 25 C.F.R. § 23.131, or whether there is good cause to deviate from the preferences; and
- (5) make any other findings and enter any other orders appropriate or required by law.

### **Rule 343. Permanency Hearing**

- (a) **Generally.** At the permanency hearing, the court must determine the child's permanency plan and enter orders that are necessary to accomplish the plan within a specific time.
- (b) **Time Limits.** Pursuant to A.R.S. § 8-862, the permanency hearing must be held:
- (1) no later than 30 days after the disposition hearing, if the court under A.R.S. § 8-846 relieved DCS of the duty to provide reunification services;
  - (2) no later than 6 months after the removal of a child who was under 3 years at the time of removal from the child's home; or
  - (3) no later than 12 months after the child's removal from the home in all other cases, unless otherwise permitted by law.
- (c) **Procedure.** At the permanency hearing, the court:
- (1) must consider testimony or documents admitted into evidence under Rule 104(b), which may include hearsay;
  - (2) must consider the permanency plan proposed by DCS pursuant to a prior court order; and
  - (3) may allow the child to speak with the court during the hearing to assist the court in determining a permanency plan for the child.
- (d) **Findings and Orders.** All findings and orders must be in a signed minute entry or order. The court must make findings and:
- (1) determine the appropriate permanency plan for the child, make the determination required by Rule 325, and order the petitioner to accomplish the plan within a specific time;
  - (2) set a review hearing within the time required by A.R.S. § 8-847(A), but every review hearing after the permanency hearing for that child may be designated a permanency hearing;
  - (3) if the court determines that termination of parental rights or the establishment of a permanent guardianship is clearly in the best interests of the child, order DCS, the child's attorney, or the child's GAL to file a motion or petition pursuant to A.R.S. § 8-862 to terminate parental rights—or to establish a permanent guardianship—no later than 10 days after the permanency hearing, and appoint counsel for the parent as provided in Rule 303;

- (4) address and advise the parent in open court that failure to attend further proceedings without good cause and failure to participate in reunification services, if appropriate, may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court must advise the parent that the hearings may go forward in the parent's absence. The court must make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent with a copy of Form 3 (if the permanency plan is guardianship) or Form 4 (if the permanency plan is termination of parental rights), request that the parent sign and return a copy of the form, and note on the record that the form was provided;
- (5) if there is reason to know the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA, including whether placement of the Indian child is in accordance with ICWA § 1915, 25 C.F.R. § 23.131, and Rule 321, or whether there is good cause to deviate from the preferences;
- (6) if the child is in an out-of-home placement, the court must make a finding as to whether the placement continues to be appropriate and in the child's best interests; and
- (7) make other findings as appropriate or required by law.

## 4. Guardianship Proceedings

### Rule 344. Motion, Notice of Hearing, Service of Process, and Order for Permanent Guardianship

#### (a) Motion.

- (1) *Generally.* Any party to a dependency proceeding may file a motion for permanent guardianship of a child who has been adjudicated dependent. The motion must contain all the information required by A.R.S. §§ 8-871 and 8-872.
- (2) *Pre-adjudication Motion.* A motion may be filed before the dependency adjudication. If the child has not been adjudicated dependent, all parties must consent to the permanent guardianship. If any party objects to the pre-adjudication motion, the court may schedule a settlement conference or mediation, or it may strike the motion and proceed with the dependency petition.

#### (b) Notice of Hearing.

- (1) *Generally.* A notice of hearing must inform the parent of the location, date, and time of the initial guardianship hearing.
- (2) *Failure to Appear.* The notice of hearing also must advise the parent that the parent's failure to appear without good cause may result in a finding that the parent waived legal rights and is deemed to have admitted the allegations in the motion for guardianship. The notice also must advise the parent that the hearing may go forward in the parent's absence and may result in the establishment of a permanent guardianship based upon the record and evidence presented.

#### (c) Service.

- (1) *Generally.* The moving party must serve the motion for guardianship and notice of hearing on the parties pursuant to Rule 106.
- (2) *Indian Child.* If the motion alleges or the court has reason to know the child at issue is an Indian child, then in addition to service of process required by this rule, the moving party must also notify the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of their right to intervene.

**(d) Hearing Involving an Indian Child.** The court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant up to 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the initial guardianship hearing.

**(e) Providing Notice of the Hearing to Other Persons.** In addition to serving the notice of hearing on the parties, the moving party must also provide a copy of the notice of hearing to the following persons:

- (1) the child's current physical custodian;
- (2) any foster parent with whom the child has resided within 6 months prior to the date of the hearing;
- (3) the prospective guardian if the guardian is not the current physical custodian; and
- (4) any other person the court orders to be provided with the notice of the hearing.

**(f) Investigation and Report.**

- (1) Upon filing of a motion for guardianship, the court may order DCS, if DCS is legal custodian of the child, to conduct an investigation and prepare a report for the initial guardianship hearing addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship.
- (2) If DCS is not the legal custodian, the court may order the child's attorney, GAL, or a party to prepare this report.
- (3) If the child is an Indian child, the report must address whether the prospective guardian falls within the placement preferences required under ICWA or whether good cause exists to deviate from the placement preferences.
- (4) A copy of the report must be provided to the parties and the court at least 10 days before the initial guardianship hearing.

**(g) Other Orders.** Pending the hearing, the court may enter other orders that are in the child's best interests.

### **Rule 345. Initial Guardianship Hearing**

**(a) Generally.** At the initial guardianship hearing, the court determines whether service has been completed under Rule 344(c), whether notice of the hearing has been provided to those persons identified in Rule 344(e), and whether the parent admits, denies, or does not contest the allegations contained in the motion for guardianship.

**(b) Time Limits.** Unless the court orders or permits otherwise under A.R.S. § 8-864, the initial guardianship hearing must be held no later than 30 days after the Rule 343 permanency hearing, or if there has not been a permanency hearing, no later than 30 days after the filing of a motion for permanent guardianship.

**(c) Procedure.** At the initial guardianship hearing the court must:

- (1)** inquire if any party has reason to know that the child at issue is an Indian child;
- (2)** appoint an attorney pursuant to Rule 303(b), unless an attorney has previously been appointed;
- (3)** appoint an attorney for the child pursuant to Rule 303(c), if none has been previously appointed and, if appropriate, a GAL;
- (4)** determine whether service of process has been completed as to each party pursuant to Rule 344 or whether any party has waived service, and whether notice of the hearing has been provided to those persons identified in Rule 344;
- (5)** determine whether the report ordered by the court has been completed and provided to the parties;
- (6)** advise the parent of the following rights:
  - (A)** the right to an attorney, including a court-appointed attorney if the parent is indigent;
  - (B)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party;
  - (C)** the right to trial by the court on the guardianship motion; and
  - (D)** the right to use the process of the court to compel the attendance of witnesses;
- (7)** determine whether the parent admits, denies, or does not contest the allegations contained in the motion for guardianship.
  - (A) Admitted or Not Contested.** If the parent admits or does not contest the allegations, the court may proceed with the guardianship adjudication hearing and enter findings and orders pursuant to Rule 346.

(B) *Denied.* If the parent denies the allegations, the court must set the matter for a trial, which must begin no later than 90 days after the initial guardianship hearing. The court also may, if appropriate, schedule a settlement conference, mediation, or pretrial conference. If the child has not been adjudicated dependent and any party objects to a permanent guardianship, the court may schedule a settlement conference or mediation or may strike the motion for guardianship and proceed with the dependency petition.

**(d) Findings and Orders.** At the conclusion of the hearing, the court must:

- (1) enter findings concerning notification and service and the court's jurisdiction over the subject matter and persons before the court;
- (2) set a continued initial guardianship hearing as to any party who was not served and did not appear;
- (3) address the parent in open court and advise that:
  - (A) failure to appear at the guardianship pretrial conference, settlement conference, or guardianship adjudication hearing without good cause may result in a finding that the party waived legal rights and is deemed to have admitted the allegations in the guardianship motion; and
  - (B) the guardianship adjudication hearing may go forward in the party's absence and may result in the establishment of a permanent guardianship based upon the record and evidence presented;
- (4) make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings;
- (5) if the child is an Indian child, make findings pursuant to the standards and burdens of proof required under ICWA; and
- (6) make findings and enter other orders that may be appropriate or required by law.

**(e) Form.** The court may provide the parent with a copy of Form 3, "Notice to Parent in a Guardianship Action." The court also may request that the parent sign and return a copy of the form and note on the record that the form was provided.

**(f) Failure to Appear.**

- (1) The court may proceed with the guardianship adjudication hearing if the parent, without good cause, fails to appear at the initial guardianship hearing and the court finds that the parent:
  - (A) had notice of the initial guardianship hearing;

- (B) was properly served pursuant to Rule 344; and
  - (C) had been admonished regarding the consequences of failing to appear at the initial guardianship hearing, including a warning that the adjudication hearing could go forward in the parent's absence, and that failing to appear may constitute a waiver of rights and an admission of the allegations in the guardianship motion.
- (2) At the hearing, the court may grant the motion and establish a guardianship based on the record and evidence presented if the requirements of subpart (f)(1) are satisfied and the moving party can meet the burden of proof required for guardianship. The court must enter its findings and orders pursuant to Rule 346(g). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA and as set forth in Rule 346(c)(2).

## **Rule 346. Guardianship Adjudication Hearing**

**(a) Generally.** At a guardianship adjudication hearing, the court must determine whether the prospective guardian is a fit and proper person to become the permanent guardian of the child, and whether guardianship is in the best interests of the child.

### **(b) Time Limits.**

- (1)** Unless the court orders or permits otherwise under A.R.S. § 8-864, the guardianship adjudication hearing must begin no later than 90 days after the filing of a motion for permanent guardianship.
- (2)** The court may continue the hearing for no more than 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected.
- (3)** The court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion that specifies the extraordinary circumstances. The party must file the motion no later than 5 days after discovering those circumstances. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

### **(c) Burden of Proof.**

- (1)** The moving party has the burden of proving the allegations by clear and convincing evidence, except as provided in subpart (c)(2).
- (2)** If the child is an Indian child, the moving party has the burden of proving the allegations beyond a reasonable doubt, in accordance with ICWA § 1912. The moving party also must prove beyond a reasonable doubt, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The moving party must prove that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have proven unsuccessful.

**(d) Admitted or Not Contested.** The parent may waive the right to trial on the allegations contained in the guardianship motion by admitting or not contesting the allegations orally or in writing. In either circumstance, the court must:

- (1) determine whether the parent understands the rights being waived;
- (2) determine whether the parent knowingly, intelligently, and voluntarily admits or does not contest the allegations;
- (3) determine whether a factual basis exists to support the establishment of a guardianship; and
- (4) proceed with entering the findings and orders set forth in section (g).

**(e) Failure to Appear.**

- (1) The court may proceed with the guardianship adjudication hearing if the parent fails to appear at the hearing without good cause, and the court finds the parent:
  - (A) had notice of the guardianship adjudication hearing;
  - (B) was properly served pursuant to Rule 344; and
  - (C) had been admonished regarding the consequences of failing to appear at the guardianship adjudication hearing, including a warning that the hearing could go forward in the parent's absence and that failing to appear may constitute a waiver of rights and an admission to the allegations in the guardianship motion.
- (2) At the hearing, the court may establish a guardianship based on the record and evidence presented if the requirements of subpart (e)(1) are satisfied and the moving party can meet the burden of proof required for guardianship. The court must enter its findings and orders pursuant to section (g). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA and set forth in subpart (c)(2).

**(f) Child's Position.** The court must consider a child's objection to the appointment of the person nominated as permanent guardian. The court may appoint as guardian the person nominated by a child 12 years of age or older, unless the court finds it would not be in the child's best interests to do so.

**(g) Findings and Orders.** At the conclusion of the hearing, the court must:

- (1) enter findings as to the court's jurisdiction over the subject matter and persons before the court;
- (2) if the moving party has met its burden of proof:
  - (A) make specific findings of fact in support of the establishment of a guardianship and appoint a permanent guardian;

- (B) enter appropriate orders governing the powers and duties of the guardian as set forth in A.R.S. § 14-5209;
  - (C) enter visitation orders, if appropriate;
  - (D) order the parent to contribute to the support of the child, if appropriate;
  - (E) direct DCS to assist the permanent guardian in making an application for guardianship subsidy, if available;
  - (F) set an annual review and order the preparation of a report, as required by A.R.S. § 8-872; and
  - (G) dismiss the dependency action;
- (3) if the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA;
  - (4) if the moving party fails to meet the burden of proof, the court must deny the guardianship motion, establish a revised permanency plan, and set a review hearing; and
  - (5) make other findings and enter any other orders appropriate or required by law.
- (h) Successor Permanent Guardian.** At the guardianship hearing, or by notice filed after the appointment of a permanent guardian or a successor permanent guardian under A.R.S. § 8-874, the guardian may inform the court of the identity and contact information of potential successor permanent guardians.

### **Rule 347. Successor Permanent Guardianships**

- (a) Motion.** If a permanent guardian appointed pursuant to A.R.S. § 8-872 is unable or unwilling to continue to serve as permanent guardian, the permanent guardian, DCS, or any interested party may file a motion for appointment of a successor permanent guardian. The motion must be verified by the person filing the motion and contain all information required by A.R.S. § 8-874(A).
- (b) Affidavit.** If the motion identifies a proposed successor permanent guardian, the motion must be accompanied by an affidavit by the proposed successor permanent guardian that includes the information required by A.R.S. § 8-874(B).
- (c) Procedures and Orders.** Upon receiving a motion for successor permanent guardianship, the court must follow the procedures and enter orders as required by A.R.S. § 8-874(C).
- (d) Notice.** The court must order the person filing the motion to provide notice as required by A.R.S. § 8-874(D). If the child is an Indian child, the person must provide notice as required by ICWA.

### **Rule 348. Initial Successor Permanent Guardianship Hearing**

**(a) Generally.** At the initial successor permanent guardianship hearing, the court must determine whether service has been completed and the notice of the hearing has been provided to those persons identified pursuant to A.R.S. § 8-874(D), and whether the parent admits, denies, or does not contest the allegations contained in the motion for appointment of a successor permanent guardian.

**(b) Burden of Proof.**

- (1) The moving party has the burden of proving the allegations in the motion by clear and convincing evidence.
- (2) If the child is an Indian child, the moving party has the burden of proving the allegations as provided in Rule 346(c)(2).

**(c) Procedure.** At the initial successor permanent guardianship hearing, the court must:

- (1) inquire if any party has reason to know that the child at issue is an Indian child as defined by ICWA;
- (2) determine whether notice of the hearing has been provided to those persons identified in A.R.S. § 8-874(D); and
- (3) follow the procedures specified in Rule 346 and A.R.S. § 8-874(C).

**(d) Child's Position.** The court must consider a child's objection to the appointment of the person nominated as successor permanent guardian. The court may appoint as guardian the person nominated by a child 12 years of age or older, unless the court finds it would not be in the child's best interests to do so.

**(e) Findings.** The court must grant the motion, terminate the appointment of the current permanent guardian, and appoint the proposed successor permanent guardian as the child's permanent guardian if the court finds that the movant has met its burden of proof that:

- (1) the previously appointed permanent guardian is unable or unwilling to serve;
- (2) the proposed successor permanent guardian is suitable to assume the responsibilities of permanent guardian; and
- (3) the appointment would be in the child's best interests.

**(f) Review Hearing.** If the court enters an order appointing a successor permanent guardian, the court must set a review hearing no later than one year after the

appointment. It also may order DCS or an appropriate agency or person to conduct an investigation and submit a written report before the hearing.

- (g) Provisional Permanent Guardian.** The court may appoint the proposed successor permanent guardian as a provisional permanent guardian of the child for a period not exceeding 9 months. The court must set a hearing to determine whether the appointment should be made permanent, and direct DCS to monitor the placement during the period of provisional appointment and to provide necessary services to support the provisional placement, including assisting the provisional permanent guardian to make an application for guardianship subsidy and other available benefits.
- (h) Other Orders.** The court also may enter orders necessary for the child's safety and well-being, including providing for contact between the child and parents, siblings, relatives, or others, if contact is in the child's best interests. The court may order the parent to contribute to the support of the child and to pay any costs for visitation to the extent it finds the parent is able to contribute.
- (i) Denial of the Motion.** If the court denies the motion to appoint a successor permanent guardian or does not appoint a provisional or successor permanent guardian, the court may enter orders necessary for the child's safety and well-being, and may order DCS or the child's attorney or GAL to file a dependency petition regarding the child, and proceed as provided in A.R.S. § 8-874(J) and (K).

## 5. Proceedings for Termination of Parental Rights

### Rule 349. Petition, Motion, Notice of Hearing, and Service of Process and Orders

(a) **Petition for Termination of Parental Rights.** Any person or agency who has a legitimate interest in the welfare of a child may file a petition for termination of parental rights pursuant to A.R.S. § 8-533. The petition must allege the grounds for termination and meet the requirements of A.R.S. § 8-534. The petition also must state whether there is reason to know the child is an Indian child.

(b) **Motion for Termination of Parental Rights.** If the court has determined in a pending action that a child is dependent and has also determined that termination of parental rights may be in that child's best interests, the court may order DCS, the child's attorney or GAL, or another party, to file a motion for termination of parental rights no later than 10 days after the permanency hearing. The motion must allege the grounds for termination as provided by A.R.S. § 8-533. The motion also must state whether there is reason to know the child is an Indian child.

#### (c) Notice of Hearing.

(1) **Generally.** A notice of hearing must advise the parent of the location, date, and time of the initial termination hearing.

(2) **Failure to Appear.** The notice of hearing must advise the parent of the following:

(A) that failure to appear at the initial hearing, pretrial conference, status conference, or termination adjudication hearing without good cause may result in a finding that the party has waived legal rights and will be deemed to have admitted the allegations in the petition or motion for termination of parental rights, and

(B) that the hearing may go forward in the absence of the parent and may result in the termination of parental rights based upon the record and evidence presented.

#### (d) Service.

(1) **Generally.**

(A) **Who Must Be Served.** The petitioner under section (a) must serve the parent of the child, the person with legal custody or decision-making regarding the child, and the GAL of any party.

**(B) *Manner of Service.***

- (i)** A petition for termination under section (a) must be served by the petitioner pursuant to Civil Rule 4.1 or 4.2.
- (ii)** The moving party under section (b) must serve the motion as provided by Rule 106.

**(C) *Time for Service.*** The petition or motion for termination and notice of hearing must be served by the moving party on the parties and any other person as provided by law no later than 10 days before the initial termination hearing.

**(2) *Service Involving an Indian Child.*** If the petition or motion alleges or the court has reason to know the child is an Indian child, in addition to the service required by this rule, the petitioner or moving party must also notify the parent, Indian custodian, and tribe by registered or certified mail with return receipt requested. If the identity or location of the parent or Indian custodian cannot be determined, the petitioner or moving party must give notice by registered or certified mail to the Secretary of the Interior, who has 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. The notice must advise the parent or Indian custodian and the tribe of the right to intervene.

**(3) *Hearing Involving an Indian Child.*** The court may not hold a hearing until at least 10 days after receipt of notice by the child's parent or Indian custodian and the tribe or the Secretary of the Interior. On written request by the parent, Indian custodian, or tribe, the court must grant no more than 20 additional days to prepare for the hearing. The child's parent, Indian custodian, or tribe may waive the 10-day notice requirement for purposes of proceeding with the initial guardianship hearing.

**(e) *Orders.*** The court may enter orders pending the hearing that are in the child's best interests.

### **Rule 350. Initial Termination Hearing**

**(a) Generally.** At an initial termination hearing, the court must determine whether service has been completed and whether the parent admits, denies, or does not contest the allegations contained in the petition or motion for termination of parental rights.

**(b) Time Limits.**

**(1) *On Petition.*** If a termination of parental rights is requested by petition, the initial termination hearing must be held no fewer than 10 days after the completion of service, as provided by A.R.S. § 8-535(B).

**(2) *On Motion.*** If a termination of parental rights is requested by motion, the initial termination hearing must be held no later than 30 days after the permanency hearing, as provided by A.R.S. § 8-862(D)(2).

**(c) Procedure.** At the initial termination hearing the court must:

- (1)** inquire if any party has reason to know that the child is an Indian child;
- (2)** appoint an attorney pursuant to Rule 303(b), unless an attorney has previously been appointed;
- (3)** appoint an attorney for the child pursuant to Rule 303(c), if none has been previously appointed and, if appropriate, a GAL;
- (4)** determine whether service of process has been completed pursuant to Rule 349 or waived as to each party;
- (5)** advise the parent of the following rights:
  - (A)** the right to an attorney, including a court-appointed attorney if the parent is indigent;
  - (B)** the right to trial by the court on the termination petition or motion;
  - (C)** the rights to call witnesses and to cross examine witnesses who are called to testify by another party; and
  - (D)** the right to use the process of the court to compel the attendance of witnesses;
- (6)** determine whether the parent admits, denies, or does not contest the allegations contained in the motion or petition to terminate parental rights; and
  - (A) *Admits or Does Not Contest.*** If the parent admits or does not contest the allegations, the court may proceed with the termination adjudication hearing and enter findings and orders under Rule 351.

(B) *Denies.* If a petition for termination was filed, the court may schedule mediation, or it may set a pretrial conference or status conference. If a motion for termination of parental rights was filed and the parent denies the allegations, the court must set the matter for an adjudication hearing no later than 90 days after the permanency hearing. The court may schedule a settlement conference, a pretrial conference, or mediation, if appropriate.

(7) Determine how a verbatim record of the termination adjudication hearing will be made.

**(d) Findings and Orders.** At the conclusion of the hearing, the court must:

- (1) enter findings concerning notification and service and the court's jurisdiction over the subject matter and persons before the court;
- (2) set a continued initial termination hearing as to any party who was not served and did not appear;
- (3) address the parent in open court and advise that:
  - (A) failure to appear at the termination pre-trial conference, status conference, or termination adjudication hearing without good cause may result in a finding that the parent has waived legal rights and will be deemed to have admitted the allegations in the termination petition or motion; and
  - (B) that the hearing may go forward in the absence of the parent and may result in the termination of parental rights based upon the record and evidence presented;
- (4) make specific findings that it advised the parent of the consequences of failure to attend subsequent proceedings;
- (5) if the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA;
- (6) make findings and enter other orders that are appropriate or required by law.

**(e) Form.** The court may provide the parent with a copy of Form 4, "Notice to Parent in a Termination Action." The court also may request that the parent sign and return a copy of the form and note on the record that the form was provided.

**(f) Failure to Appear.**

- (1) The court may proceed with the termination adjudication hearing if the parent fails to appear at the initial termination hearing without good cause, and the court finds that the parent:

- (A) had notice of the initial termination hearing;
  - (B) was properly served pursuant to Rule 349;
  - (C) had been admonished regarding the consequences of failing to appear at the initial termination hearing, including a warning that the adjudication hearing could go forward in the parent's absence, and that failing to appear may constitute a waiver of rights and an admission of the allegations in the termination petition or motion.
- (2) At the hearing, the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (f)(1) are satisfied and the petitioner or moving party has met the burden of proof required for termination. The court must enter its findings and orders pursuant to Rule 351(h). If the child is an Indian child, the court must make findings pursuant to the standards and burdens of proof required under ICWA and as set forth in Rule 351(h)(2)(D).

### **Rule 351. Termination Adjudication Hearing**

**(a) Generally.** At a termination adjudication hearing, the court must determine whether the petitioner or moving party has met the burden of proving at least one ground for terminating parental rights, and whether termination is in the child's best interests.

**(b) Time for Hearing a Termination Motion.** If a motion for termination of parental rights was filed:

- (1) the termination adjudication hearing must be held no later than 90 days after the permanency hearing;
- (2) the court may continue the hearing for no more than 30 days beyond the 90-day limit if it finds that the continuance is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected; and
- (3) the court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion that specifies the extraordinary circumstances no later than 5 days after discovering those circumstances. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

**(c) Burden of Proof.** The petitioner or moving party has the burden of proving:

- (1) by clear and convincing evidence, the alleged grounds for termination, and
- (2) by a preponderance of the evidence, that the termination would serve the child's best interests.

**(d) Burden of Proof for an Indian Child.** If the child is an Indian child, in addition to the burdens under subparts (c)(1) and (c)(2), the petitioner or moving party must also prove:

- (1) beyond a reasonable doubt, with evidence that must include testimony from a qualified expert witness, that continued custody of an Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, in accordance with ICWA § 1912 and 25 C.F.R. §§ 23.121 through 23.122; and
- (2) by clear and convincing evidence that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of

an Indian family and that those efforts have proven unsuccessful, in accordance with ICWA § 1912 and 25 C.F.R 23.121 and 23.2.

**(e) Admission/No Contest.** The parent may waive the right to trial on the allegations contained in the petition or motion for termination of parental rights by admitting or not contesting the allegations orally or in writing. In either circumstance, the court must:

- (1) determine whether the parent understands the rights being waived;
- (2) determine whether the parent knowingly, intelligently, and voluntarily admits or does not contest the allegations;
- (3) determine whether a factual basis exists to support the termination of parental rights; and
- (4) make the findings and enter the orders set forth in section (h).

**(f) Failure to Appear.**

- (1) The court may proceed with the termination adjudication hearing if the parent fails to appear at the hearing without good cause, and the court finds that the parent:
  - (A) had notice of the termination adjudication hearing;
  - (B) was properly served pursuant to Rule 349; and
  - (C) had been admonished regarding the consequences of failing to appear at the termination adjudication hearing, including a warning that the hearing could go forward in the parent's absence and that failing to appear may constitute a waiver of rights and an admission to the allegations contained in the termination petition or motion.
- (2) At the hearing, the court may terminate parental rights based on the record and evidence presented if the requirements of subpart (f)(1) are satisfied and the petitioner or moving party has met the burden of proof required for termination. The court must enter its findings and orders pursuant to section (h).

**(g) Social Study.** A social study prepared pursuant to A.R.S. § 8-536 or by court order is admissible as provided in Rule 104(d)(5).

**(h) Findings and Orders.** At the conclusion of the hearing, the court must:

- (1) enter findings as to the court's jurisdiction over the subject matter and persons before the court; and

- (2)** enter findings on whether the petitioner or moving party has met its burden of proof and, if so,
  - (A)** make specific findings of fact in support of the termination of parental rights and grant the motion or petition for termination;
  - (B)** appoint a guardian for the child, but it may vest legal custody in another person or authorized agency;
  - (C)** enter orders for the financial support of the child;
  - (D)** if the child is an Indian child, make findings pursuant to the standards required under ICWA, including whether placement of the child is in accordance with ICWA §1915 and 25 C.F.R §§ 23.130 through 23.131, or whether there is good cause under 25 C.F.R. § 23.132 to deviate from the placement preferences; and
  - (E)** set or reaffirm the dependency review hearing.
- (3)** whenever possible, obtain from a birth parent a notarized statement under A.R.S. § 8-534(B);
- (4)** if the petitioner or moving party has not met its burden of proof:
  - (A)** deny the termination petition or motion; and
  - (B)** if appropriate, order the parties to submit a revised case plan before the dependency review hearing.