

## **PART IV. ADOPTIONS**

### **1. General Adoption Provisions**

#### **Rule 401. Scope of Rules**

**(a) Application.** The Rules in Part IV govern procedures in adoption proceedings.

**(b) Interpretation.** The court should interpret the rules in Part IV 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 402. Meaning of Terms**

(a) **Generally.** For purposes of this part:

- (1) **“Agency”** has the meaning provided in A.R.S. § 8-101(2).
- (2) **“Investigative Report”** has the meaning provided in A.R.S. § 8-105.
- (3) **“Parent”** means the child’s biological, adoptive, or legal mother or father whose rights have not been terminated. “Parent” does not include a person whose paternity has not been established pursuant to A.R.S. § 25-812 or § 25-814.
- (4) **“Parties”** include the prospective adoptive parent, the person to be adopted, the parents of the person to be adopted, any person or entity whose consent is required to effectuate an adoption, and any other person or entity who has been permitted by the court to intervene in the proceedings pursuant to Rule 113 or ICWA.
- (5) **“Social Study”** has the meaning provided in A.R.S. § 8-112.

(b) **ICWA Definitions and Placement Preferences.**

- (1) **Definitions.** In cases subject to ICWA, the terms “parent,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe,” and “extended family member” have the meanings shown in Rule 302.
- (2) **Preadoptive Placement Preferences.** A preadoptive placement of an Indian child must comply with ICWA § 1915 and 25 C.F.R. §§ 23.131 through 23.132 and must be the least restrictive setting that most approximates a family and in which the child’s special needs, if any, may be met. The child must be placed within reasonable proximity to the child’s home, taking into account any special needs of the child. In the absence of good cause to the contrary, preference must be given to a placement with:
  - (A) a member of the Indian child’s extended family;
  - (B) a foster home licensed, approved, or specified by the Indian child’s tribe;
  - (C) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - (D) an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child’s needs.
- (3) **Adoptive Placement Preferences.** An adoptive placement of an Indian child must comply with ICWA § 1915 and 25 C.F.R. §§ 23.130 through 23.132. If the

child's tribe has not established a different order of preference, preference must be given, in the absence of good cause to the contrary, to a placement with:

- (A) a member of the Indian child's extended family;
- (B) other members of the Indian child's tribe; or
- (C) other Indian families.

**Rule 403. Confidentiality; Release of Information**

**(a) Confidentiality of Adoption Records.** All adoption records are confidential and must be withheld from public inspection unless authorized by law, court order, or as provided in these rules.

**(b) Release of Information.** The court may release identifying and non-identifying information about the adoptee or birth parents as provided by A.R.S. § 8-121.

**(c) Records of Indian Adoption.** Under ICWA § 1917, upon a request filed with the court by an Indian individual who has reached the age of 18 and who was the subject of an adoptive placement, the court that entered the final adoption decree must inform the individual of the tribal affiliation, if any, of the individual's biological parents, and provide other information necessary to protect any rights flowing from the individual's tribal relationship. If the biological parent executed a notarized statement requesting anonymity, information pertaining to the biological parent must be redacted prior to release. The court must also comply with the requirements of ICWA § 1951.

**Rule 404. Appointment, Appearance, and Withdrawal of Counsel**

- (a) **Appointment.** The court may appoint counsel for a person who is entitled to counsel and determined to be indigent as provided by law, these rules, or ICWA. To determine whether a person is indigent, the court may require the person to provide proof of financial resources by filing a financial questionnaire provided by the court. The court may question the person under oath. If the court determines the person is not indigent, it may order the person to pay a reasonable portion of the cost of counsel or deny the request to appoint counsel. If the court enters an order appointing or denying counsel, it must provide a copy of the order or minute entry to the parties.
- (b) **Appearance.** Counsel may enter an appearance by:
- (1) personally appearing in open court and advising the court that counsel is representing a party, or
  - (2) filing a written notice of appearance and providing copies to the assigned judge and all parties.
- (c) **Withdrawal of Counsel.** Unless otherwise authorized by the court, a request to withdraw as counsel must be in writing, and a copy of the request must be provided to the parties.

**Rule 405. Appointment of a GAL**

The court may appoint a GAL in an adoption proceeding in the circumstances provided by Rule 305. The duties of the GAL are generally described in Rules 306 and 308.

## **Rule 406. Disclosure and Discovery in Contested Adoptions**

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

- (1) ***Duty to Disclose.*** If the court at any stage of the proceeding, on its own initiative or on request of a party, determines that an adoption is contested, 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 and 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 statute or court order.
- (4) ***Ongoing Disclosure Requirement.*** Unless the court orders otherwise, any relevant document received 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.

**(b) Pretrial Disclosure Statement in Contested Adoption.** Unless the court orders otherwise, the parties must disclose to each other and the court, in the form of a pretrial disclosure statement, the following information no later than 30 days prior to a contested hearing:

- (1) the uncontested facts deemed material;
- (2) the contested issues of fact and law that may be material or applicable;
- (3) a statement of other issues of fact or law that each party believes to be material;
- (4) the witnesses each party intends to call at trial, including their names, addresses and telephone numbers, and in addition, a description of the substance of each witness's expected testimony. No witness may be called at trial other than those disclosed in accordance with this rule, except for good cause shown. The pretrial disclosure statement must note witnesses whose testimony will be offered in the form of a deposition; and
- (5) a list of and copies of all exhibits that each party intends to use at trial. If a party objects to the admission of an exhibit, the party must file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court no later than 10 days after receipt of the list of exhibits.

Specific objections or grounds not listed in the disclosure statement are deemed waived, unless otherwise ordered by the court. No exhibits may be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

**(c) Methods of Discovery.** The parties may agree to utilize the discovery procedures 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.

**(d) Sanctions.** On a party's motion or the court's own initiative, the court may impose sanctions on a party who fails to disclose information in a timely manner. Sanctions may include granting a continuance, precluding the evidence, or entering any order against a party the court deems appropriate. Any sanction should be consistent with the intent of these rules as set forth in Rule 67 and should not exclude competent and potentially significant evidence that bears on the child's best interests.

## **Rule 407. 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 as provided by 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, after the time for a response has expired or if no party objects, the court may rule on the motion with or without a hearing.
- (e) **Motion to Continue.** A motion to continue must be made in good faith and must state the reasons for the continuance. The party requesting the continuance must advise the court of any impending and expiring time limits. The court may grant a motion to continue for good cause.
- (f) **Motion to Set Aside.** A motion to set aside a final order rendered by the court must conform to the requirements of Civil Rule 60(b) through (d), except that the motion must be filed no later than one year after entry of the final order, unless the moving party alleges grounds pursuant to Civil Rule 60(b) (1), (2) or (3), in which case the motion must be filed no later than 6 months after entry of the final order. The court may not extend these time limits. A motion to set aside a final order under Civil Rule 60(b)(4) may be filed at any time. If the child is an Indian child, the provisions of ICWA §§ 1913 and 1914 apply. If a motion under this section seeks to set aside a final order of adoption, Rule 417 also applies.

## 2. Adoption Proceedings

### Rule 408. Certification to Adopt

- (a) **Application for Certification.** Any prospective adoptive parent must submit a written application for certification and be certified by the court as acceptable to adopt children, as provided by A.R.S. § 8-105, before filing a petition to adopt. This requirement does not apply to individuals identified in A.R.S. § 8-105(N).
- (b) **Dismissal of the Application Due to Insufficient Information.** If the court is unable to certify the applicant as acceptable to adopt a child because the application lacks the information required by A.R.S. § 8-105, the court may dismiss the application or permit the applicant to submit supplemental information. If the court dismisses the application, the applicant may submit a subsequent application, in which event the court may consider information contained in the original application.
- (c) **Court Action.** No later than 60 days after receiving the investigative report and recommendation required by A.R.S. § 8-105, the court may:
- (1) certify that the applicant is acceptable to adopt children;
  - (2) require further investigation if it finds that additional information is necessary for making an appropriate decision regarding certification; or
  - (3) determine that the applicant is unacceptable to adopt children, in which event it must notify the applicant and the person, department, agency, or entity responsible for preparing the certification report of the court's determination, the reason for the denial, and the applicant's right to a hearing on the denial of certification.
- (d) **Motion for Hearing on Denial of Certification.** The applicant may file a motion requesting a hearing on the denial of certification. The motion must be filed no later than 30 days after entry of the minute entry or order denying certification. The court must set an evidentiary hearing that begins no later than 60 days after the filing of the motion. The court must notify the applicant and the person, division, agency, or entity responsible for preparing the certification report of the location, date, and time of the hearing.
- (e) **Pretrial Conference.** On request of a party or on its own, the court may set a pretrial conference.
- (f) **Access to Information.** The applicant may obtain a copy of the information contained in the court's file as prescribed by law. Before providing a copy, the clerk

must redact the results of the criminal background check, information obtained from DCS records, and information provided by references, other than names.

**(g) Burden of Proof.** The burden is on the applicant, or any other party ordered by the court, to show acceptability to adopt by a preponderance of the evidence.

**(h) Procedure.** The hearing must be informal, and the court must consider all evidence admitted under Rule 104(b), including hearsay. Documents that the parties want the court to consider must be marked and entered into evidence. The court for good cause may continue the hearing.

**(i) Findings and Orders.** The court must make specific findings of fact concerning the applicant's acceptability to adopt based upon the evidence presented at the hearing. All findings and orders must be in a signed minute entry or written order. The court must advise the applicant of the right to appeal an adverse ruling.

## **Rule 409. Petition for Child's Custody by a Non-Certified Person**

### **(a) Petition.**

- (1) ***By a Prospective Adoptive Parent.*** Except as provided in A.R.S. § 8-108(C), a prospective adoptive parent who is not yet certified to adopt, but who has custody of a child the person intends to adopt, must petition the court for an order permitting the person to keep custody of the child pending certification. The person must do so no later than 5 days after obtaining custody. The petition must set forth how and when the child came into the petitioner's care, why continued custody is in the child's best interests, and whether there is reason to know the child is an Indian child.
- (2) ***By Others.*** An agency, DCS, or person other than a prospective adoptive parent may petition the court for custody of a child pending placement of the child for adoption. Upon the filing of the petition, the court must set the matter for hearing and order the person currently having custody to show cause why the court should not grant the petition.

**(b) Notice of Hearing.** Unless otherwise provided by a local rule or administrative order, a notice of hearing must accompany the petition and include the location, date, and time of the hearing. The notice must require the attendance of persons or entities identified in subpart (d)(2).

**(c) Service.** The petitioner must serve the petition and notice of hearing in any manner reasonably designed to ensure the attendance at the hearing of the persons and entities identified in subpart (d)(2). If there is reason to know that the child who is the subject of the petition under this rule is an Indian child and the proceeding is involuntary under ICWA, the child's parent, Indian custodian, and tribe must be notified of the hearing as provided by Rule 411.

### **(d) Procedure.**

- (1) ***Time.*** The court must set a hearing no later than 10 days after the petition was filed, but the court may waive this time limit for good cause.
- (2) ***Attendance.*** The following persons or entities must attend the hearing, unless the court for good cause waives their attendance: the prospective adoptive parent, the child, and the person or representative of DCS or the agency responsible for preparing reports for the court pursuant to A.R.S. § 8-105.

**(e) Findings and Orders.** All finding and orders must be contained in a signed minute entry or order. The court must:

- (1) determine whether the custody requested by the petitioner is in the child's best interests;
- (2) grant the petition, or deny the petition and order that the child be placed with another person or agency if it is in the child's best interests;
- (3) if the court grants custody to a prospective adoptive parent who has not been certified to adopt, order that the prospective adoptive parent file an application for certification to adopt within 30 days. If the prospective adoptive parent or agency has not identified at the hearing who will prepare a report and recommendations pursuant to A.R.S. § 8-105, the court must set a status hearing within 30 days to determine the status of the certification; and
- (4) if there is reason to know that the child is an Indian child, make findings required under ICWA, including whether there is compliance with the placement preferences or whether there is good cause to deviate from the placement preferences under ICWA § 1915 and 25 C.F.R. §§ 23.130 through 23.132.

**(f) Expiration of Custody Order.**

- (1) ***Expiration and Extension.*** The order granting custody of a child to the prospective adoptive parent under this rule expires 6 months after it is entered. The court may extend the custody order for good cause.
- (2) ***Status Hearing.*** Before the order expires, the court must set a status hearing to determine whether the prospective adoptive parent has been certified and has filed a petition to adopt. The court may waive the attendance of the parties at the status hearing if the court has sufficient information showing that the prospective adoptive parent is proceeding with the adoption in a timely manner. The court may vacate the hearing upon the filing of a petition to adopt.

**(g) Termination of Custody.** The court for good cause may terminate a custody order it has entered under this rule before the expiration date, but before doing so it must provide notice and an opportunity to be heard to the prospective adoptive parent and DCS or any agency that placed the child.

## **Rule 410. Petition to Adopt**

**(a) Contents of the Petition.** A petition to adopt must be captioned, “In the Matter of\_\_\_, a person under the age of 18 years,” and the allegations of the petition may be based upon information and belief. In addition to information required by A.R.S. § 8-109, the petition must contain the following information:

- (1)** whether all necessary consents have been obtained, noting any exceptions as provided by law;
- (2)** whether a petition for termination of parental rights has been granted or is pending, including any pending special action or appeal;
- (3)** whether approval has been granted through the Interstate Compact on the Placement of Children, if applicable; and
- (4)** if the child is an Indian child:
  - (A)** the name of the Indian child’s tribe, if known;
  - (B)** whether there is compliance with the placement preferences required under ICWA § 1915 and 25 C.F.R. § 23.130;
  - (C)** whether the petitioner reasonably believes that the Indian child is a resident or domiciliary of an Indian reservation; and
  - (D)** whether the Indian child is a ward of a tribal court.

**(b) Setting a Hearing on a Petition.** The court must hold the hearing on the petition:

- (1)** no later than 60 days after the filing of the petition if the child has resided in the home of the prospective adoptive parent for at least one year immediately preceding the filing of the petition for adoption. If the prospective adoptive parent is the stepparent of the child, this requirement applies only if the stepparent has been married to the birth or legal parent of the child for at least one year;
- (2)** no later than 90 days after the filing of the petition if the child is under three years of age or has resided in the home of the prospective adoptive parent for at least six months preceding the filing of the petition for adoption. If the prospective adoptive parent is the stepparent of the child, this requirement applies only if the stepparent has been married to the birth or legal parent of the child for at least one year; or
- (3)** in all other cases, no later than 6 months after the filing of the petition.

**(c) Expedited Hearing.** The court must hold an expedited hearing if a party files a motion supported by an affidavit that an expedited hearing is in the child's best interests and that any of the following is true:

- (1)** the child is suffering from a chronically debilitating progressive or fatal disease, as diagnosed by a licensed physician;
- (2)** a prospective adoptive parent, birth parent, or legal parent is terminally ill, as diagnosed by a licensed physician;
- (3)** the child is free for adoption, is at least 16 years of age, consents to adoption, and has lived with the prospective adoptive parent or parents for at least 6 months; or
- (4)** the court finds other compelling reasons relating to the special needs and welfare of the child to expedite the hearing.

**(d) Indian Child.** If there is reason to know the child is an Indian child and the parent or Indian custodian did not voluntarily place the child for adoption, then under 25 C.F.R. § 23.112, 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 adoption hearing.

### **Rule 411. Service of the Petition to Adopt and Notice of Hearing**

**(a) Generally.** Except as provided in section (c), service of the petition and a notice of hearing must be accomplished under Civil Rules 4.1 and 4.2, but Civil Rules 4.1 and 4.2 are deemed modified as follows:

- (1) *No Summons.*** References to service of a summons are inapplicable because no summons is issued.
- (2) *Petitioner and Respondent.*** References to “plaintiff” mean the petitioner. References to “defendant” mean the respondent.

**(b) Persons to Serve.** The petitioner must serve the petition and a notice of hearing on the following persons:

- (1)** the person, department, or agency conducting the social study required by A.R.S. § 8-112;
- (2)** any person, department, or agency required by A.R.S. § 8-106 to give consent, unless consent and a waiver of notice were filed previously; and
- (3)** any person who has initiated a paternity action within the time required by A.R.S. § 8-106 (J).

**(c) Indian Child.** If there is reason to know that the child is an Indian child and the parent or Indian custodian did not voluntarily place the child for adoption, then in addition to service of process required by this rule, under 25 C.F.R. § 23.111, the petitioner must also give notice to 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 of the right to intervene.

**(d) Objections.** Any person objecting to the petition must promptly file an objection before the hearing.

## **Rule 412. Birth Parent Living Expenses**

- (a) **Motion for Approval.** Any person or agency wishing to pay living expenses for a birth parent in excess of one thousand dollars, as provided by A.R.S. § 8-114, must file a motion supported by an affidavit signed by the birth parent justifying the expenses. The affidavit must specify the amounts allocated to the individual's monthly expenses for which approval is sought and explain why the expenses are needed for the time period requested.
- (b) **Procedure.** Unless waived by the court on a showing of good cause, the court must hold a hearing no later than 10 days after the filing of the motion and notify the parties of the location, date, and time of the hearing. If the court holds a hearing, it may require the attendance of the birth parent or the person or agency wishing to pay living expenses. The court must verify the identity of the birth parent before entering any orders.
- (c) **Findings and Orders.** The court must promptly determine whether the expenses are permissible under A.R.S. § 8-114. All findings and orders must be in a signed minute entry or order.

### **Rule 413. Consent to Adopt**

**(a) Generally.** Individuals must give consent as required by A.R.S. § 8-106. Consent must meet the requirements of A.R.S. § 8-107.

**(b) Consent in Open Court for an Out-of-State Adoption.** This section governs procedures relating to the signing of consents by a birth parent as part of an out-of-state adoption where the consents are required to be given in open court.

- (1)** Any person required to sign a consent to adopt before the court must move the court to set a hearing for the purpose of taking the consent. The court must promptly set a hearing and notify the person seeking to give consent of the location, date, and time of the hearing.
- (2)** The person required to give consent, or the prospective adoptive parent, must make arrangements for the presence of a certified court reporter at the hearing if one is required to effectuate an out-of-state adoption. The person required to give consent also must provide the court with copies of the consents for signature, if required, and must include an additional copy for the court. All copies of the signature establishing consent must be accompanied by self-addressed, stamped envelopes if the person consenting will request that the court mail the consents to the state where the adoption will occur.
- (3)** At the hearing, the person seeking to give consent must provide the court with proof of identification. The identification must include a photograph of the person so that the court can verify the identity of the person before taking a consent to adopt.

**(c) Consent to Adopt an Indian Child.** If there is reason to know that the child is an Indian child, in addition to requirements as provided by law, the consent to adopt must contain the following information:

- (1)** the name and birth date of the Indian child;
- (2)** the name of the Indian child's tribe;
- (3)** the identifying number or other indication of the Indian child's membership in the tribe;
- (4)** the name and address of the consenting parent or Indian custodian; and
- (5)** the name and address of the person, division, or agency through whom any preadoptive or adoptive placement has been or is to be made.

- (d) Findings and Orders.** At the conclusion of the hearing the court must state, in a signed minute entry or order, that consents were signed by the person appearing before the court. If there is reason to know that the child is an Indian child, the consents must be accompanied by the presiding judge's certificate that the terms and consequences were fully explained in detail in English or interpreted in a language the parent could understand, and were understood by the parent. *See* ICWA § 1913 and 25 C.F.R. §§ 23.124 through 23.126. The signed consents must be returned to the person consenting to the adoption.
- (e) Invalid Consent.** A consent given fewer than 72 hours after the birth of the child is invalid. In the case of an Indian child, any consent given prior to or within 10 days after the birth of an Indian child is invalid.

## **Rule 414. Petition to Revoke Consent**

- (a) **Petition to Revoke Consent.** A person seeking to revoke the person's own consent to the adoption of a child before entry of a final order of adoption must file a petition stating the basis for the relief sought. A person who seeks to revoke consent after entry of a final adoption order must proceed under Rule 417.
- (b) **Service.** The court must prepare a notice of hearing that specifies the date, time, and location of an initial hearing.
- (1) The court must provide a copy of the petition and notice of hearing to the prospective adoptive parent or the parent's attorney, DCS, or the agency to whom the consent was originally given. The court must provide the copies in a manner that is reasonably calculated to provide prompt notice.
  - (2) If the original consent was given to DCS or another agency, the entity must provide copies of the petition to revoke consent and notice of hearing to the prospective adoptive parent.
- (c) **Appointment of Counsel.** The court must appoint counsel for an indigent petitioner as provided in Rule 404.
- (d) **Appointment of a GAL.** On a party's or the court's own initiative, the court may appoint a GAL for the child. If the court grants the petition to revoke consent, the GAL, if warranted, may file a dependency petition.
- (e) **Initial Hearing and Evidentiary Hearing.** The court must set an initial hearing no later than 15 days after the petition is filed. At the initial hearing, the court must determine whether notice has been provided, and if so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. The court may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 136 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.
- (f) **Burden of Proof.** The person seeking to revoke consent must prove by clear and convincing evidence that the consent to adopt was the result of fraud, duress, or undue influence.
- (g) **Procedure.** The court must consider evidence in the form of testimony and documents that have been admitted into evidence under Rule 104(b).
- (h) **Findings and Orders.** The court's findings must be in a signed minute entry or order. If a consent is revoked, the court must enter orders concerning the custody of the child. The court must advise the parties of their right to appeal.

**(i) Revocation of Consent to Adopt an Indian Child.** The parent of an Indian child who seeks to revoke a consent to adopt may do so at any time before the court enters a final order of termination of parental rights or adoption. The revocation may be accomplished by filing a sworn statement of intent to revoke consent with the clerk of the court where the consent was originally filed, or as otherwise required by 25 C.F.R. § 23.128. The court must then order the return of the Indian child as soon as practicable to the custody of the parent.

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

Proceedings to revoke a consent to adopt should be more formal and more expeditious than other types of juvenile proceedings due to the potential impact on all parties, particularly the child. The court should consider the appointment of a GAL for the child if it appears that valid grounds exist to revoke the consent.

**Rule 415. Documentation Required to Adopt**

**(a) Before the Hearing.** No later than 10 days before the finalization of an adoption, the petitioner must provide to the court the following documents, if applicable:

- (1) a copy of the birth certificate of the child to be adopted;
- (2) a notarized affidavit signed by the birth mother identifying all potential fathers of the child as provided bylaw;
- (3) an affidavit that a search of paternity filings was conducted;
- (4) a certificate from the Department of Health Services signed by the State Registrar of Vital Statistics stating that a diligent search has been made of the putative fathers registry for notices of claims of paternity from potential fathers, and the results of the search;
- (5) the affidavit of service of process upon all potential fathers as provided by A.R.S. § 8-106;
- (6) an affidavit of compliance from an attorney or agency as provided by A.R.S § 8-130;
- (7) a verified accounting required by A.R.S § 8-114, unless the prospective adoptive parent is the child’s stepparent;
- (8) any birth parent’s notarized statement as described in A.R.S. § 8-106; a contact preference form as described in A.R.S. § 36-340; and a notarized statement from any birth parent granting or denying permission to be informed of the death of the child;
- (9) the original agreement between the birth parent and prospective adoptive parent regarding future communications among the parties, as provided by A.R.S. § 8-116.01; and
- (10) the social study required by A.R.S § 8-112 or as ordered by the court.

**(b) At the Hearing.** The following documents must be provided to the court at the hearing:

- (1) a certified copy of the birth certificate of the child to be adopted;
- (2) the certificate of adoption;
- (3) the order of adoption; and
- (4) all original consents as provided by law.

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

This rule requires the petitioner to file a birth certificate. However, in some counties, the filed birth certificate is scanned and shredded and cannot thereafter be returned to the petitioner. The certified birth certificate might be the petitioner's only "original" birth certificate, and most families want to retain it for the child's historical records. This rule accordingly requires the petitioner to file a photocopy of the birth certificate and to present a certified original document to the judicial officer at the Rule 416 hearing. The judicial officer can compare the certified copy with the copy on file to assure that the filed document is authentic, and then the judicial officer can return the certified document to the petitioner.

## **Rule 416. Hearing to Finalize Adoption**

- (a) **Attendance.** The prospective adoptive parent, the spouse of the prospective adoptive parent, unless otherwise ordered by the court, and the child to be adopted must attend the hearing. The court may permit virtual attendance as provided by Rule 110. For good cause, the court may permit testimony by an oral deposition of an adoptive parent who is unable to attend the final adoption hearing, if the deposition was conducted in open court before the hearing.
- (b) **Burden of Proof.** The burden of proof is on the petitioner to prove by a preponderance of the evidence that the prospective adoptive parent is a fit and proper person to adopt and that it is in the best interests of the child to be adopted.
- (c) **Procedure.** At the hearing the court must:
- (1) receive testimony from the parties verifying the information in the petition to adopt;
  - (2) if the child is 12 years of age or older, determine whether the child consents to the adoption;
  - (3) review any post-placement agreements between the parties under A.R.S. § 8-116.01 and approve such agreements, as appropriate;
  - (4) terminate the parental rights of the birth parent under Arizona law, if not terminated previously;
  - (5) if the child is an Indian child, determine whether:
    - (A) the tribe was notified of the proceedings and the right to intervene, if applicable;
    - (B) the parent or Indian custodian's consent to the adoption was taken in accordance with ICWA § 1913;
    - (C) the placement complies with the placement preferences set forth in ICWA, or whether good cause exists for deviating from the placement preferences provided in ICWA §1915 and 25 C.F.R. §§ 23.130 through 23.132; and
    - (D) the parental rights of the parent or Indian custodian have been terminated in accordance with ICWA § 1912, 25 C.F.R. §§ 23.121 through 23.122, and Rule 351; and
  - (6) set an additional hearing if the court cannot proceed with the adoption hearing for any reason.

**(d) Findings and Orders.** The court must make its findings in a signed minute entry or order and grant or deny the petition to adopt at the conclusion of the hearing. The court may take the matter under advisement if information required by law was not received by the court before or at the hearing, as required by these rules.

**(e) ICWA.** If the child is an Indian child:

(1) the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA; and

(2) pursuant to ICWA § 1951, the court must direct the clerk to provide the Secretary of the Interior with a copy of the final adoption decree and the following information:

(A) the name and tribal affiliation of the child;

(B) the names and addresses of the biological parents;

(C) the names and addresses of the adoptive parents; and

(D) contact information for DCS or any agency having files or information relating to such adoptive placement.

**(f) Dismissal of a Dependency Action.** If the adopted child is a ward of the court in the county where the adoption is granted, the court must dismiss the dependency action. If the child is a ward of the court in another county or state, the court must direct the department or agency that has legal custody of the child to file a motion to dismiss in the county where the child is a ward, or to notify the other state of the adoption order.

### **Rule 417. Setting Aside an Adoption**

- (a) Motion to Set Aside.** A person seeking to set aside a final order of adoption must file a motion to set aside the order within the time limits set by Rule 407(f).
- (b) Appointment of a GAL.** On a party's motion or the court's own initiative, the court may appoint a GAL for the child. If the court grants the motion to set aside, the GAL, if warranted, may file a dependency petition.
- (c) Initial Hearing.** The court must set an initial hearing no later than 10 days after the filing date and advise the parties of the date, time, and location of the initial hearing. At the initial hearing, the court must determine whether notice has been provided, and if so, the court must set a date for an evidentiary hearing no later than 30 days after the initial hearing. The court may set a mediation before that date. The court also must order that the parties exchange information as provided in Rule 406 no later than 15 days before the evidentiary hearing. The court may extend these time limits for good cause.
- (d) Burden of Proof.** The burden is on the person seeking to set aside the adoption to prove the allegations contained in the motion by clear and convincing evidence.
- (e) Procedure.** The court must consider evidence in the form of testimony and documents that have been admitted into evidence under Rule 104(b).
- (f) Indian Child.** After an adoption is final, the parent of an Indian child may withdraw consent to the adoption and petition the court to vacate the adoption decree on the ground that the consent was obtained through fraud or duress under ICWA § 1913. If the court finds that consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to the parent as soon as practicable. An adoption of an Indian child that has been effective for at least two years may not be invalidated unless otherwise permitted under state law. An Indian parent or custodian also may move to set aside an adoption for reasons other than fraud or duress, pursuant to Rule 407(f).
- (g) Findings and Orders.** The court must make its findings in a signed minute entry or order. The court must advise the parties of their right to appeal and, if court sets the adoption aside, it must enter orders concerning custody of the child. If ICWA applies, the court must make findings and enter orders pursuant to the standards and burdens of proof required under ICWA.

### **COMMENT TO 2022 AMENDMENT**

Proceedings to set aside an adoption should be more formal than other types of juvenile proceedings due to the potential impact on all parties, particularly the child.

The Indian Child Welfare Act contemplates the return of the child to the parent or Indian custodian if the adoption is set aside. The court should return the child in the absence of clear and convincing evidence, including testimony of a qualified expert, that return of the child to the parent or Indian custodian would likely result in serious emotional or physical damage to the child.

## **Rule 418. Enforcement or Modification of Post-Placement Agreements**

**(a) Motion to Enforce or Modify.** After a good faith attempt to mediate any disagreements, any party to a court-approved post-placement agreement under A.R.S. § 8-116.01 may move the court to enforce or modify the agreement. The motion must state the parties' efforts to mediate their disagreements before the motion was filed. The court must set a hearing and notify the parties of the location, date, and time of hearing.

### **(b) Findings and Orders.**

- (1)** At the conclusion of the hearing, the court will determine whether there has been a breach of the post-placement agreement, and whether the original agreement should be enforced or modified.
- (2)** The court may modify an approved agreement if it finds that modification is necessary to serve the best interests of the child and one of the following is true:
  - (A)** the modification is agreed to by the adoptive parents, or
  - (B)** exceptional circumstances have arisen since the agreement was approved that justify modification of the agreement.
- (3)** The court must make its findings in a signed minute entry or order.