

The Honorable Robert Brutinel  
Presiding Judge  
Superior Court in Yavapai County  
Chair, Committee on Juvenile Courts  
c/o Legal Services Office  
1501 W. Washington, Suite 414  
Phoenix, Arizona 85007-3231  
602-452-3283

**ARIZONA SUPREME COURT**

In the matter of :	)	
	)	
PETITION TO AMEND RULE 41 OF	)	Supreme Court No. R-08-0029
THE RULES OF PROCEDURE FOR THE	)	
JUVENILE COURT	)	REPLY TO COMMENTS
	)	
_____	)	

Robert Brutinel, Presiding Judge of Yavapai County Superior Court, and Juvenile Court, and Chair of the Committee on Juvenile Courts (COJC) and petitioner in this matter hereby replies pursuant to Rule 28(D) to comments requested and received by the Court and to issues raised regarding this petition. This reply was approved by the COJC at the June 18, 2009 meeting with two members abstaining.

**RESPONSE TO COMMENTER’S RECOMMENDED CHANGES IN PROPOSED RULES**

**Arizona Department of Economic Security, Division of Children, Youth and Families**

While Petitioner is cognizant and respectful of the multiple issues raised by the Arizona Department of Economic Security, Division of Children, Youth and Families, Petitioner respectfully disagrees with incorporating the suggested language, as it erodes the goal of the rule, i.e. to make attendance by the child at a substantive dependency hearing, the presumption or rule instead of the exception.

Petitioner concurs that Petitioner's Exhibit A, outlining the proposed amendment to Rule 41, does not reflect the amendments made to the rule on emergency basis by this court's order in R-08-0020. Petitioner agrees that the proposed amendments to Rule 41 must reflect the current language of the rule.

### **Children's Action Alliance**

Beth Rosenberg, Director of Child Welfare and Juvenile Justice for the Children's Action Alliance filed a comment stating: "CAA is supportive of the concepts expressed in the proposed court rule. We are concerned, however, in its implementation." Ms. Rosenberg goes on to express concern about taking children out of school to attend court hearings, particularly in light of court scheduling problems and the fact that many court matters are not heard in a timely matter. The suggestion that each county's dependency court have in place a calendaring system that schedules and holds hearings generally on time, while not a subject matter for this rule, is consistent with the Resource Guidelines for improving court practice in child abuse and neglect cases promulgated and published by the National Council of Juvenile and Family Court Judges that courts should certainly follow.

### **Cynthia J. Sweet, Law Offices of Cynthia J. Sweet**

Petitioner respectfully disagrees that the proposed amendment's requirements are unworkable and overly time-consuming. Petitioner would, however, agree to specify that the motion could be either oral or written, with any necessary confidentiality requirements protected. Petitioner further strongly disagrees that such a motion with respect to an infant is "absurd and a waste of time." Judges benefit from observing the child's appearance, the child's interaction with caregivers, and the child's overall affect. Having an infant present for even one hearing

emphasizes for the judge and all the parties that the case is about a child and decisions will have long term impact on the infant and the infant's growth.

### **Office of Yavapai County Public Defender**

Jennifer Jordan, Director of Indigent Juvenile Defense for the Office of the Yavapai County Public Defender filed a comment outlining Pro and Con arguments. The comment noted that: "The petition to amend Rule 41 advances excellent aspirations to ensure that children's voices are heard in dependency proceeding and that their interests and concerns are effectively represented." Ms. Jordan went on to recommend modified language "...as a means to accomplish those goals while being sensitive to the child's needs and leaving it to counsel to determine the most effective method of representation." Petitioner respectfully suggests that the recommended language will serve to erode the rule and that the initial language of the rule is the best means to accomplish the purpose of ensuring that every child in the dependency system has a voice in the court decisions that are made about their lives.

### **Thea Gilbert, Attorney Representing Children in Pima County Juvenile Court**

Petitioner recognizes the issues outlined by Ms. Gilbert, but respectfully suggests that changing the rule to read "may" will completely erode the stated goal of the rule to ensure that every child in the dependency system has a voice in the court decisions that are made about their lives.

### **Office of the Legal Advocate**

William Owsley, Dependency Division Chief, Office of the Legal Advocate, filed a comment that stated: "Although strongly supportive of the goal to maximize the opportunities for children to have a voice in their own proceedings, undersigned opposes requiring the

children's attendance at every hearing." Mr. Owsley then goes on to suggest modified language that essentially incorporates language from Section 9(a), ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. Petitioner urges the court to adopt the modified language of the rule, as shown in Exhibit A. The modified language includes the essence of the ABA Model Act as well as other edits reflecting the comments made to the rule petition.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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“EXHIBIT A”

## **Rule 41. Attendance at hearings.**

**A.** Each child who is the subject of an abuse or neglect proceeding is a party to that proceeding and has the right to attend and fully participate in all hearings related to their case. At every substantive dependency hearing, such as the Preliminary Protective Hearing, the Report and Review hearing, and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon oral or written motion of the child, including motion made at the hearing, the court shall determine whether the child was properly notified of his or her right to attend the hearing and may enter a written order excusing a child from each hearing, for good cause shown. Good cause shall include the child's informed assertion that the child does not want to attend the hearing. Such assertion may come via the avowal of counsel. The Court shall determine whether counsel for the child had meaningful contact with the client prior to each substantive hearing.

**AB.** Except as otherwise provided pursuant to statute or court rule, court proceedings relating to dependent children, permanent guardianships and termination of parental rights are open to the public.

**BC.** The court may limit the presence of a participant to the time of the participant's testimony if:

1. It is in the best interest of the child; or
2. It is necessary to protect the privacy interests of the parties and will not be detrimental to the child.

**CD.** The court may impose reasonable restrictions as may be required by the physical limitations of the facility or to maintain order and decorum.

**DE.** At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall ask the parties if there are any reasons the proceeding should be closed. For good cause shown, the court may order any proceeding to be closed to the public. In considering whether to close the proceeding to the public, the court shall consider:

1. Whether doing so is in the child's best interests.
2. Whether an open proceeding 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 and caregivers and any other person whose privacy rights the court determines need protection.
4. Whether all parties have agreed to allow the proceeding to be open.
5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.

**EF.** At the beginning of a hearing that is open to the public, the court shall admonish all attendees that they are prohibited by order of the court from disclosing outside the hearing

personally identifiable information about the child, the child's siblings, parents, guardians, or caregivers and any others mentioned in the hearing. A person who remains in the courtroom after the admonition submits to the jurisdiction of the court and shall abide by the orders of the court prohibiting disclosure of that information. Failure to abide by the orders shall be deemed contempt of court. The court shall explain contempt of court to all attendees, including observers, and the possible consequences of violating an order of the court. For the purposes of this subsection, "personally identifiable information" includes name, address, date of birth, social security number, tribal enrollment number, telephone or telefacsimile number, driver license number, places of employment, school identification or military identification number or any other distinguishing characteristic that tends to identify a particular person.

**FG.** The court may close an open proceeding at any time for good cause shown and after considering the factors prescribed in Section D.

**GH.** If a proceeding has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public. In ruling on this request, the court shall reconsider the factors prescribed in Section D.

**HI. Notice.**

(A) If the Arizona Department of Economic Security (the Department) is the petitioner, it shall notify the foster parents, pre-adoptive parents, relative caregivers or relative who has been identified as a possible placement for a child in foster care under the responsibility of the State of the date, time, and location of all proceedings to be held with respect to the child. Foster parents, pre-adoptive parents, or relative caregivers of a child in foster care under the responsibility of the State shall have a continuing duty to provide the Department with a current and correct mailing address, including addresses identified as protected by court order.

(B) If the petitioning party is not the Department, the court shall ensure that foster parents, pre-adoptive parents, or relative caregivers are notified of all proceedings to be held with respect to the child.

(C) The foster parents, pre-adoptive parents, or relative caregivers shall be afforded the right to be heard in any proceeding to be held with respect to the child. This right shall not be construed to require that any foster parents, pre-adoptive parents, or relative caregivers be made a party to such proceeding solely on the basis of such notice and a right to be heard.

(D) Nothing in this rule shall be construed to limit the periodic review hearing notice requirements of ARS § 8-847(B).