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Task Force on the Rules of Procedure for the Juvenile Court, Petitioner
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Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

SUPPLEMENTAL PETITION) Supreme Court No. R-20-0044
TO ADOPT NEW JUVENILE)
RULES 349, 350, AND 419 AND) REPLY
NEW FORMS 7 AND 8, AND TO)
AMEND FAMILY LAW RULE 43.1)
_____)

(1) Introduction. The Task Force on the Rules of Procedure for the Juvenile Court filed a supplemental petition on September 30, 2021 requesting the adoption of three additional juvenile rules, two additional juvenile forms, and an amendment to the Rules of Family Law Procedure. Although these rules and forms were not included in petitioner’s primary petition, they were closely related to the primary petition’s subject matter. The Court’s December 8, 2021 Order adopted these rules on an emergency basis, effective July 1, 2022, and opened the supplemental petition for public comment. Because the Task Force was disbanded a few weeks thereafter, the Court authorized the Task Force Editorial Group to file this Reply.

Two comments were filed concerning the supplemental petition. Both comments concerned Rule 419 (“notice of completed adoption”) and Form 7 (“verified parent information form”).

(2) Rule 419 and Form 7. New Rule 419 in Part IV on adoptions addresses the termination of child support orders when a child is adopted. When a child is adopted, ongoing support obligations terminate by operation of law under A.R.S. §§ 8-539 and 25-503(Q)(3). As explained in the supplemental petition, there is currently no mechanism for providing notification of the adoption to the family law division or to the parties in the underlying family case, and parents subject to such orders may unwittingly continue to pay child support. The notification process established by Rule 419 (“Notice of Completed Adoption”) would facilitate termination of those ongoing support orders.

The procedure required by proposed Rule 419 entails the use of two new forms, identified as Form 7 (“verified parent information form”) and Form 8 (“notice of completed adoption”). Rule 419 requires the prospective adoptive parent or the Department of Child Safety to provide to the juvenile court clerk a completed Form 7 at least 10 days before the adoption hearing. Form 7 includes the child’s name and date of birth, and the name, date of birth, and social security number of the parents whose rights are being terminated. Rule 419(b)(3) requires the juvenile court clerk to maintain Form 7 as an unfiled document in the adoption case.

Rule 419(c) requires the juvenile court clerk, after the adoption order is entered and using the information provided by Form 7, to search the Arizona state case registry established under A.R.S. § 46-442 for both Title IV-D and Non-IV-D cases to determine whether there is a child support order for the adopted child. If the search confirms the existence of a child support order, the clerk is then required to transmit a completed Form 8 (“notice of completed adoption”) to the Arizona Title IV-D agency and to the appropriate in-state or out-of-state court clerks, or to the subject parents or their attorneys of record, as applicable. If the notice of completed adoption is filed with an Arizona court, an amendment to Family Law Rule 43.1 requires the court clerk to treat Form 8 as a confidential record. After completing these duties, Rule 419(e)(2) requires the juvenile court clerk to destroy Form 7.

Pre-filing vetting of this procedure garnered the support of the Maricopa and Pima County Clerks but also revealed the concerns of clerks in other counties, as noted in the supplemental petition. After the Court opened the supplemental petition for public comment, two formal comments were filed on the Court Rules Forum, the first by the Court’s Family Court Improvement Committee (“FCIC”) and the second by the Arizona Association of Superior Court Clerks (“AASCC”).

(3) Summary of the comments. The FCIC’s comment supported Form 7 “in concept,” provided that two concerns were addressed. First, the FCIC

expressed a preference that Form 7 be “filed and served.” The second concern was that the time for the clerk to complete a search of the registry, which was unspecified, should have a deadline.

The AASCC comment expressed concern with Rule 419(e)(2), the provision referenced above that requires the clerk to destroy Form 7 after completing the registry search. Thirteen counties – all of whom use the AJACS case management system – opposed the provision regarding destruction. These clerks maintain that they are courts of record under the Arizona Constitution (Article 6, Section 30) and because their clerks will be relying on the information in Form 7 to prepare Form 8, they have a duty to retain Form 7. They also contend that it is “extremely rare” for a document that is presented to the clerks to not be formally filed in a case file.¹

The Clerks in Maricopa and Pima Counties – who maintain their own case management systems, respectively iCIS and Agave – did not oppose the destruction provision. Maricopa currently uses a form that is similar to Form 7, and after confirming the existence of a child support order, the clerks destroy the form. The AASCC comment further advises that “the Maricopa County Clerk routinely works with documents that are not necessarily filed into a case file.” Nevertheless, the

¹ But see, for example, Civil Rule 5.1(c)(2) (“documents not to be filed”) and Civil Rule 8(g), which requires that a plaintiff complete and “submit,” rather than file, a civil cover sheet.

comment goes on to state that the Maricopa County Clerk does not object to filing Form 7 if the Court determines that is the better course.

An Appendix to the AASCC comment contained the following modifications to Rule 419:

- (a) Modifying subpart (b)(1) to require that DCS or the prospective adoptive parent “file” rather than “provide” Form 7, and further requiring that the filing of the form be “under seal in the adoption case.”
- (b) Striking subpart (b)(3), which provides, “the juvenile court clerk must maintain Form 7 as an unfiled document in the adoption case.”
- (c) Striking subpart (e)(2), which requires the clerk to “destroy Form 7” after the clerk completes the registry search and distributes Form 8.

The AASCC comment did not address the absence in Rule 419 of a time limit for the clerk to complete a search of the registry

(4) Discussion. In response to the FCIC’s comment about a time limitation, the Editorial Group proposes adding to Rule 419(d) a requirement that the clerk’s actions must be completed no later than 30 days after the submission date of Form 7. The Clerks have concurred with this proposed time. The revision to section (d) is shown in the Appendix to this Reply.

The more challenging issue is whether Form 7 should be filed, as the AASCC’s comment proposes, or simply provided as an unfiled document and then

destroyed, as the Task Force initially proposed. The Editorial Group has given the Clerk's proposal considerable thought and concluded that the Task Force's initial proposal is more sensible and practical.

First, the Task Force believed that the information contained in Form 7 was not necessary to complete the adoption proceeding. Indeed, had this information been necessary for the adoption proceeding, it would have already been contained in the court file, and there would be no need to request it in Form 7. The Task Force was mindful that the purpose of Form 7 is to determine whether a child support order exists in a family law or IV-D case. It is immaterial to the adoption case. The adoption judge does not need to review Form 7 during an adoption proceeding; the form does not even come into play until after the adoption has been completed. The Task Force concluded that because the information contained in the form is not required for the adoption, there is no need to file the document in the adoption case file.

Second, no other judicial officer or person should have a reason, or the capability, to access Form 7. A petition to adopt, and hence the adoption, might not be filed in the venue where the parent's rights were terminated. A family law judge in another county who sought to review the adoption file would be unable to gain access. Even if the adoption occurred in the same county as the termination, the adoption file would be a separate file; it would be challenging for another judge to

locate the adoption file because of limited case access. It is indeed the lack of access by family court judges to the adoption file that spurred the need for Rule 419. If a child support order exists, Form 8 would be provided to a IV-D agency, or to the parties in the family law proceeding and filed as a confidential document in an underlying Arizona family law case. At that point, Form 7 will have fulfilled its purpose; Form 8 would become the operative document. A parent who owed support and whose rights were terminated would have no need, and no ability, to access Form 7 in the adoption file due to confidentiality; the parent's interest would be satisfied by Form 8.

Third, and based on its belief that Form 7 was not necessary for the adoption case, the Task Force reasoned there was no necessity to permanently maintain it. By comparison, the AASCC comment proposed that the form, upon filing, would need to be sealed. The Task Force believed that sealing would be a cumbersome and unnecessary process, particularly if the form is filed electronically rather than in paper.² Any subsequent destruction of a sealed Form 7 would require the court to enter an order allowing the form to be unsealed and destroyed. There would also

² Arizona's fifteen counties do not have uniform practices for filing documents in adoption cases. In Maricopa County, effective January 1, 2021, filers may electronically file case initiating adoption documents through a county portal. Most counties, however, have no e-filing portal for adoption cases. Some counties allow the submission of documents as e-mail attachments. A few counties require paper-filing for these cases and then scan the paper documents into the case management system.

be also security and access concerns if a sealed Form 7 was electronically transmitted from a courthouse to another location to allow a clerk to perform the registry search. The Editorial Group concurs with the Task Force: an unfiled Form 7 should be destroyed after completion of the registry search.

(5) Conclusion. The Editorial Group therefore affirms the decision made by the Task Force, to wit, that the rule specify that Form 7 be provided to the clerk, and that it be maintained as an unfiled document rather than as a filed document; and that the clerk destroy Form 7 after the clerk has completed the tasks specified by Rule 419.

The Editorial Group acknowledges that the Court may prefer the recommendation of the AASCC. In that event, the yellow-highlighted language in the Appendix to this Reply would accommodate the AASCC alternative by (1) undoing the strikethrough in section (b) and subpart (d)(5); (2) striking the remaining, yellow-highlighted language in subparts (b)(1) and (b)(3) and section (e); and (3) in the first sentence of section (d), deleting the bracketed words “provided to” and using the bracketed words “filed with.” The AASCC alternative would also require a change to the first bulleted instruction of Form 7, as also shown in the Appendix to this Reply. If the Court does not adopt the AASCC alternative, no change to Form 7 is necessary.

There is no controversy regarding the 30-day limit for completing the registry search, and the Editorial Group requests the amendment to section (d) shown in the Appendix to this Reply, using the words “provided to” that are shown in brackets, and deleting the words “filed with” that also are shown in brackets. The Editorial Group also requests that the word “ensure” replace the word “assure” in section (a).

RESPECTFULLY SUBMITTED this 31st day of May 2022.

By /s/ Rebecca White Berch
Rebecca White Berch (Justice, ret.)
Chair of the Task Force Editorial Group

Copy emailed this 31st day
of May 2022 to:

Susan Pickard on behalf of the
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spickard@courts.az.gov

Hon. Donna McQuality
Arizona Association of Superior Court Clerks
DMcQuality@courts.az.gov

Appendix to the Reply

The additions below are shown with underline and the deletions are shown with ~~strikethrough~~. Additions and deletions are also shown with yellow highlight.

Rule 419. Notice of Completed Adoption

(a) **Generally.** The purpose of this rule is to assure ensure that a parent's child support obligations terminate upon adoption of the child, as required under A.R.S. §§ 8-117, 8-539, and 25-503(Q)(3).

(b) Verified Parent Information Form (Form 7).

(1) Either DCS or the prospective adoptive parent must complete a Verified Parent Information form, Form 7, and provide file the completed form to with the juvenile court clerk in the adoption case, under seal, no later than 10 days before the adoption hearing. DCS must complete the form if the child is dependent. Otherwise, the prospective adoptive parent must complete the form.

(2) Form 7 must include:

(A) the child's full name and date of birth; and

(B) the full name, date of birth, and social security number for each parent whose rights were terminated after consent or by court order.

(3) The juvenile court clerk must maintain Form 7 as an unfiled document in the adoption case.

(c) **Search of the Registry.** At the time the court enters an adoption order and using the information provided in Form 7, the clerk must search the Arizona state case registry established under A.R.S. § 46-442 for both Title IV-D and Non-IV-D cases to determine whether there is a child support order for the adopted child.

(d) **Search Results; Notice of Completed Adoption (Form 8).** If the clerk's search confirms the existence of a child support order, the clerk must take the following action no later than 30 days after Form 7 is [provided to] [filed with] the juvenile court clerk, as applicable.

- (1) If there is a child support order in a Title IV-D case, whether it is an in-state or out-of-state order, the clerk must transmit a completed Notice of Completed Adoption, Form 8, to the Arizona IV-D agency.
- (2) If there is a child support order in an in-county, non-IV-D case, the clerk must send a completed Form 8 to the last known address of the parties in the family law case and their attorney of record.
- (3) If there is a child support order in an out-of-county, non-IV-D case, the clerk must transmit a completed Form 8 to the clerk of that county. The receiving clerk also must send a completed Form 8 to the to the last known address of the parties in the family law case and their attorneys of record;
or
- (4) If a child support order is listed on Form 7 for an out-of-state court in a non-IV-D case, the clerk must send a completed Form 8 to the address of the parties listed on Form 7.

(5) ~~After completing the responsibilities specified above, the clerk must file Form 8 in the Arizona family law case, if an Arizona case has been identified, as a confidential record under Family Law Rule 43.1(h).~~

(e) Clerk's Subsequent Duties. After completing the responsibilities specified above, the clerk must:

- (1) file Form 8 in the Arizona family law case, if an Arizona case has been identified, as a confidential record under Family Law Rule 43.1(h); and
- (2) destroy Form 7.

Person Filing: _____
Address (if not protected): _____
City, State, Zip Code: _____
Telephone: _____
Email Address: _____
Representing [] Self or Attorney for [] _____
Lawyer's Bar Number: _____

_____ COURT OF ARIZONA
IN _____ COUNTY

In the Matter of:

(Names of Child(ren) under 18 years of age)

Case Number: _____

**CONFIDENTIAL VERIFIED
PARENT INFORMATION FORM
[Form 7]**

(Assigned to Hon. _____
Division _____)

- This form must be **submitted to filed with** the juvenile court clerk not later than 10 days before the adoption hearing. Please use additional sheets if necessary.

[The remainder of the form has no changes.]