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ARIZONA SUPREME COURT

In the matter of:)
)
) Supreme Court No. 22-_____
PETITION TO AMEND RULES 102, 104,)
206, 218, 219, 224, 303, 312, 326, 334, 338) (Expedited Consideration
344, 353, AND 406 OF THE RULE OF) and Emergency Adoption
PROCEDURE FOR THE JUVENILE) Requested Pursuant to Rule
COURT) 28)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rules 102, 104, 206, 218, 219, 224, 303, 312, 326, 334, 338, 344, 353, and 406 of the Rules of Procedure for the Juvenile Court as proposed in Appendix A. The proposed amendments are prompted by the enactments of Senate Bill (SB) 1069, SB 1073, and SB 1079 from the 2022 Second Regular Session of the 55th Legislature as more particularly described below. The statutory changes in these bills will become effective on September 24, 2022.

Petitioner also seeks to amend 206(d) based on the enactment of SB 1391 from the 2021 First Regular Session of the 55th Legislature as more particularly

described below. The statutory changes in this bill became effective on September 29, 2021.

Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of the proposed rule amendments.

I. Purpose of the Proposed Rule Amendments.

A. SB 1069, Juvenile Dependency; Child Placement (Laws 2022, Ch. 5)

SB 1069 makes changes to A.R.S. § 8-221(A) to clarify when an attorney must be appointed in a juvenile delinquency case to specify that counsel must be appointed in proceedings that “commence with a petition or may involve detention.” It also removes “juvenile” from A.R.S. § 8-221(B) so that a finding of indigence for purposes of entitlement to court appointed counsel is no longer required for juveniles in delinquency proceedings and applies only to a parent or guardian. Accordingly, Petitioner proposes the following rule amendments:

- Amending Rule 206(b) to strike reference to the requirement that the court make a finding of indigence before appointing an attorney for a juvenile in a delinquency proceeding and inserting verbiage to indicate that an attorney must be appointed in a delinquency proceeding if it is commenced by petition or may involve detention.

- Moving the definition of “indigent” from Rule 206(c) to Rule 102(p) and amending the definition to read that “indigent” means that a person (instead of a juvenile) is not financially able to retain an attorney.
- Moving the verbiage from Rule 206(c) regarding a juvenile’s “right to be represented by a court-appointed attorney as provided in Title 8” to 206(b).
- Amending Rules 219(c)(1)(A) and 224(d)(2) to remove reference to the right to counsel “if the juvenile is indigent” so that the rule instead reads that the juvenile is entitled to court-appointed counsel “as provided by law.”
- Amending Rule 303(c) to remove the verbiage indicating that children in dependency and termination cases “are presumed indigent” and entitled to a court-appointed attorney because children in dependency and termination cases are entitled to a court-appointed attorney under A.R.S. § 8-221(A), regardless of whether they are indigent.

SB 1069 also amends A.R.S. § 8-525 to add A.R.S. § 8-537 to resolve an inconsistency as to when court proceedings related to dependent children, permanent guardianship, and termination of parental rights are open to the public. Accordingly, Petitioner proposes amending Rule 312(b) to indicate that these proceedings are

open to the public under A.R.S. § 8-525, except as *otherwise* required by A.R.S. § 8-537.

SB 1069 amends A.R.S. § 8-871(A)(1) to allow a court to grant a motion for permanent guardianship for a child when a child has not been adjudicated dependent if all parties have been served pursuant to A.R.S. § 8-872 and no party objects, instead of requiring that all parties consent to the permanent guardianship. Petitioner proposes amending Rule 344(a)(2) to reflect the same. Petitioner also proposes amending Rule 344(c)(1) to specify that service of a motion for guardianship must also include “any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement,” as required by A.R.S. § 8-872(B).

SB 1069 creates a new subsection (B) in A.R.S. § 8-871 that details the procedures and duties of the Department of Child Safety (DCS) when a motion for permanent guardianship is filed for a child who is the subject of a dependency petition that was not filed by DCS. Petitioner proposes adding these procedures to Rule 344(a)(2) by dividing subsection (a)(2) into two subsections, “(a)(2)(A)” and “(a)(2)(B).” Subsection (a)(2)(B) would set forth the procedures for scenarios contemplated by the new A.R.S. § 8-871(B).

B. SB 1073, Juveniles; Adjudication; Disposition; Probation (Laws 2022, Ch. 6)

Among other things, SB 1073 modifies the list of factors the court is required to consider when determining whether a juvenile who is charged with specified felony offenses should be detained in a juvenile detention center or an adult facility. It also allows the director of juvenile court services to file a motion requesting the juvenile's transfer to an adult facility based on the juvenile's conduct while in detention. Petitioner proposes amending Rule 218(h) for this purpose, to clarify that only after considering the factors in A.R.S. § 8-305(D) may the juvenile be transferred to an adult facility upon the filing of a criminal complaint charging an offense listed in A.R.S. § 13-501 or upon hearing a motion filed by the director of juvenile court services pursuant to A.R.S. § 8-305(E).

C. SB 1079, Child Placement; Procedural Time Limits (Laws 2022, Ch. 30)

SB 1079 adds A.R.S. § 8-530.03, requiring all parties involved in child placement proceedings to adhere to procedural time limits, which includes dependency, termination of parental rights, and guardianship proceedings and prohibits procedural time limits from being waived, extended, or continued, unless it is necessary for the full and fair presentation of evidence and the best interests of the child are not adversely impacted. It also limits continuances to 30 days unless the court makes a written finding that extraordinary circumstances exist and removes verbiage from A.R.S. § 8-842(C) allowing a continuance of an initial dependency hearing and dependency adjudication hearing for good cause.

Petitioner points out that this statute adopts court procedural rules, which the Court can alter if necessary. However, if the Court is inclined to adopt and incorporate the statute's procedural requirements into the Arizona Rules of Procedure for the Juvenile Court, Petitioner proposes adoption of the amendments as explained below and as set forth in Appendix A.

The procedures contemplated by A.R.S. § 8-530.03 are currently set forth in Rule 346(b) regarding guardianship adjudication hearings and Rule 353(b) regarding termination adjudication hearings, so Petitioner proposes carrying over similar language to Rule 334(h) regarding the initial dependency hearing and Rule 338(b)(2) regarding the dependency adjudication hearing. Proposed amendments remove reference to "good cause" and instead state that a continuance may be granted only when it is necessary for the full and fair presentation of evidence. Any continuance exceeding 30 days would require a finding of extraordinary circumstances.

The proposed amendments would also carry over language requiring that a motion for a continuance exceeding 30 days due to extraordinary circumstances be filed within 5 days of discovering the extraordinary circumstances and require the court to make written findings and set forth the factual basis for the continuance.

SB 1079 adds a provision to A.R.S. § 8-537 that requires the termination adjudication hearing be held no later than 90 days after the initial termination hearing if the petition for termination of parental rights is contested. Petitioner proposes

amending Rule 353(b) to add a new subsection (b)(2) to reflect this. SB 1079 also requires the court to make a written finding that substantial evidence exists that additional time is in the best interest of the child if a continuance exceeding 60 days is granted. Petitioner proposes amending existing Rule 353(b)(3) to add this requirement.

SB 1079 also renumbers A.R.S. § 8-872, prompting a need to change the reference in Rule 104(d)(1) from A.R.S. § 8-872(E) to A.R.S. § 8-872(F).

D. SB 1391, Juvenile Proceedings; Appointment of Attorney (Laws 2021, Ch. 228)

Among other things, SB 1391 from the 2021 First Regular Session of the 55th Legislature removes from A.R.S. § 8-221(E) the ability for a court to consider a juvenile's financial resources for purposes of determining how much it should order be reimbursed for court-appointed counsel. It also removes the court's authority under this section to order a juvenile to the reimbursement of costs for court-appointed counsel. Accordingly, Petitioner proposes striking the references in Rule 206(d) that allow a court to consider the juvenile's financial resources for this purpose or order a juvenile to reimburse the costs of a court-appointed attorney.

E. Technical Amendments

Petitioner's proposed rule amendments include the following technical amendments:

- Rule 303(a)(3) to remove an extra period at the end of the sentence.
- Rule 326(b) to renumber (2)(A) and (B) to (1)(A), (B), and (C).
- Rule 406(d) to replace the reference to Rule 67 with a reference to Rule 401.

II. Preliminary Comments.

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

III. Request for Emergency Adoption.

With the exception of SB 1391 which became effective on September 29, 2021, the legislation identified in this petition will become effective on September 24, 2022. Therefore, as permitted by Supreme Court Rule 28(h), Petitioner requests expedited consideration of all proposed rule amendments at the Court's August 2022 Rules Agenda with a comment period to follow, emergency adoption of all proposed rule amendments, and consideration for permanent adoption at the Court's December 2022 Rules Agenda.

Respectfully submitted this 6th day of July, 2022.

By /s/
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APPENDIX A

(deletions shown with ~~striketrough~~, new language is underlined)

PART I. GENERAL PROVISIONS

Rule 102. Definitions

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

(a) through (o) [No Change]

(p) “Indigent” means that a person is not financially able to retain an attorney.

~~(p-q)~~ **“Judicial officer”** includes a judge, a judge pro tempore, and a commissioner.

~~(q-r)~~ **“Juvenile”** means a person under the age of 18 years and may be referred to in these rules as a “child,” “youth,” or “minor.” For purposes of these rules, “juvenile” also includes a person within the juvenile court's jurisdiction under A.R.S. § 8-202.

~~(r-s)~~ **“Juvenile court”** means a division or department of the superior court designated to preside over juvenile court proceedings as described in Rule 101(a).

~~(s-t)~~ **“Minute entry”** is defined by Supreme Court Rule 125. An unsigned minute entry may constitute an order of the court. However, to be appealable, an order must be signed as required by Rule 601. See, now, Rule 505.

~~(t-u)~~ **“Out-of-home placement”** means the placing of a child in the custody of an individual or agency other than the child's parent or legal guardian and includes placement in temporary custody pursuant to A.R.S. § 8-821, voluntary placement pursuant to A.R.S. § 8-806, or placement due to a dependency action.

~~(u-y)~~ **“Parent”** means the child's biological, adoptive, or legal mother or father whose rights have not been terminated. “Parent” does not include a person whose paternity has not been established pursuant to A.R.S. § 25-812 or § 25-814.

~~(v-w)~~ **“Presiding judge”** means the presiding judge of the juvenile court or the judge's designee, unless these rules specify otherwise.

~~(w-x)~~ **“Probation officer”** as used in these rules means a juvenile probation officer.

~~(x-y)~~ **“State”** means the State of Arizona.

~~(y-z)~~ **“Supreme Court Rule”** means a rule in the Rules of the Supreme Court of Arizona.

~~(z-aa)~~ **“Trial,”** as used in these rules, means an adjudication hearing.

~~(aa-bb)~~ **“UCCJEA”** means the Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 through 25-1067, which defines a “[c]hild custody proceeding” under the Act to include “a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which legal custody, physical custody or visitation with respect to a child is an issue or in which that issue may appear.” A.R.S. § 25-1002(4).

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

(a) through (c) [No Change]

(d) Admissibility of Reports.

(1) “*Child Safety Worker’s Report*” means a narrative report, as appropriate to the hearing, containing the following information:

(A) the reasons the child was removed from the custody of the parent, guardian, or Indian custodian;

(B) the services provided to prevent removal;

(C) the case plan goal and the services provided to achieve the goal;

(D) the steps taken by the parent, guardian, or Indian custodian to comply with the case plan;

(E) the child's current placement and, in the case of an Indian child, whether the placement falls within the preferences as set forth in ICWA or whether good cause exists to deviate from ICWA's preferences;

(F) the services provided to meet the child's needs;

(G) the efforts made to ensure the educational stability of a child, including but not limited to the appropriateness of the child's current school placement, school attendance, services to help achieve the child's education potential, special education services (when indicated), and grade level progress or progress toward graduation;

(H) the recommended dispositional orders;

(I) the recommended changes to the case plan goal, services, or placement; and

(J) the recommended permanent plan.

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

(2) through (11) [No Change]

PART II. DELINQUENCY

1. Delinquency Scope and Procedures

Rule 206. Appointment of an Attorney for a Juvenile

(a) [No Change]

(b) Appointment of an Attorney. A juvenile has the right to be represented by a court-appointed attorney as provided in A.R.S. Title 8. The juvenile court must

appoint counsel for the juvenile ~~if the court finds that the juvenile is indigent in a delinquency proceeding if it is commenced by petition or may involve detention.~~

~~(c) **Meaning of Indigent.** “Indigent” means that a juvenile is not financially able to retain an attorney. A juvenile is deemed indigent and has the right to be represented by a court-appointed attorney as provided in A.R.S. Title 8.~~

~~(d-c) **Determination of the Cost of a Court-Appointed Attorney.** The court may order the juvenile or the juvenile's parent to provide proof of financial resources by completing the court's financial questionnaire. The court also may question the parent under oath about the parent's available financial resources. If the court determines the juvenile is entitled to a court-appointed attorney, the court may order the juvenile and the juvenile's parent to pay a reasonable portion of the cost of a court-appointed attorney. The cost of a court-appointed attorney may not be assessed against DCS or ADJC.~~

~~(e-d) **Manner of Appointment.** The court must provide a copy of its order or minute entry appointing or denying the appointment of an attorney to the juvenile, the parent, the court-appointed attorney, and the State.~~

~~(f-e) **Waiver of Counsel.** A juvenile may waive the right to an attorney if the court finds, after a colloquy with the juvenile and considering the juvenile's age, education, apparent maturity, and understanding, that the juvenile's waiver is knowing, intelligent, and voluntarily. A waiver of the right to an attorney must be in writing or in a minute entry. The court should obtain a waiver of an attorney in the presence of the juvenile's parent.~~

2. Delinquency Proceedings

Rule 218. Detention and Probable Cause Hearing.

(a) through (g) [No Change]

(h) Release to County Jail. After considering the factors listed in A.R.S. § 8-305(D), the court A juvenile may be released a juvenile from a juvenile detention facility to a county jail upon the filing of a criminal complaint charging a juvenile with an offense listed in A.R.S. § 13-501 or upon hearing a motion filed by the director of juvenile court services requesting the transfer pursuant A.R.S. § 8-305(E). The filing of a criminal complaint is the date of arrest for purposes of Criminal Rules 4.

(i) [No Change]

Rule 219. Advisory Hearing

(a) and (b) [No Change]

(c) **Procedure.** At the advisory hearing:

(1) *Advise of Rights.* The court must advise the juvenile and the juvenile's parent of the juvenile's constitutional rights, including the rights:

(A) to be represented by counsel, and to have the court appoint counsel if the juvenile is indigent, as provided by law;

(B) through (E) [No Change]

(2) through (7) [No Change]

Rule 224. Revocation of Probation

(a) through (c) [No Change]

(d) **Advisory Hearing.**

(1) [No Change]

(2) *Procedure.* At the advisory hearing:

(A) Advise of Rights. The court must advise the juvenile and the juvenile's parent of the juvenile's constitutional rights, including the rights:

(i) to be represented by counsel, and to have the court appoint counsel if the juvenile is indigent, as provided by law;

(ii) through (v) [No Change]

(B) through (G) [No Change]

(e) [No Change]

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

1. General Provisions; Parties, and Participants

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

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

(1) and (2) [No Change]

(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) [No Change]

(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) and (e) [No Change]

2. General Provisions on Proceedings and Procedures

Rule 312. Public Attendance at Hearings

(a) [No Change]

(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 otherwise required by A.R.S. § 8-537.

(c) through (g) [No Change]

Rule 326. Required Admonitions and Findings

(a) [No Change]

(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:

(~~2~~A) a pretrial conference or an adjudication hearing in a dependency, guardianship, or termination hearing;

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

(~~B~~C) a status conference in a termination proceeding.

(~~3~~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.

(~~4~~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.

(~~5~~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.

(~~6~~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) through (f) [No Change]

3. Dependency Proceedings

Rule 334. Initial Dependency Hearing

(a) through (g) [No Change]

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

(1) [No Change]

(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;

(4) it is necessary for the full, fair, and proper presentation of evidence and the best interests of the child would not be adversely affected; or

(5) the court makes 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.

A continuance cannot exceed 30 days unless the court makes a finding of extraordinary circumstances under (5).

Rule 338. Dependency Adjudication Hearing

(a) [No Change]

(b) **Time.**

(1) [No Change]

(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 if~~ it is necessary for the full, fair, and proper presentation of evidence and the child's best interests would not be adversely affected. The court may grant a continuance that exceeds 30 days only upon 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 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) through (h) [No Change]

4. Guardianships Proceedings

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

(a) Motion.

(1) [No Change]

(2) Pre-adjudication Motion.

(A) A motion may be filed before the dependency adjudication. If the child has not been adjudicated dependent, the court may grant a permanent guardianship if all parties must consent to the permanent guardianship have been served and no party objects. 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) If the pending dependency petition was not filed by DCS, the court must notify DCS of the motion for permanent guardianship within 14 court days of filing. DCS has 10 court days from the date the notification was sent to conduct an investigation into the petition's allegations and inform the court of its position on the guardianship. If DCS objects to the guardianship, it may file a motion to intervene in the dependency action or file a separate dependency petition. The court may order a guardianship report pursuant to A.R.S. § 8-872(F) to be prepared and provided to the court within 10 days of the order to provide the report.

(b) [No Change]

(c) Service.

(1) Generally. The moving party must serve the motion for guardianship and notice of hearing on the parties, including any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement, pursuant to Rule 106.

(2) [No Change]

(d) through (g) [No Change]

5. Proceedings for Termination of Parental Rights

Rule 353. Termination Adjudication Hearing

(a) [No Change]

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

(1) If a motion for termination of parental rights was filed, the termination adjudication hearing must be held no later than 90 days after the permanency hearing.

(2) If a petition for termination of parental rights is contested, the termination adjudication hearing must be held no later than 90 days after the initial termination hearing.

~~(2-3)~~ ¶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

~~(3-4)~~ ¶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. If the hearing is continued for more than 60 days, the court must make a written finding that substantial evidence exists that the additional time is in the best interest of the child.

(c) through (h) [No Change]

PART IV. ADOPTIONS

Rule 406. Disclosure and Discovery in Contested Adoptions.

(a) through (c) [No Change]

(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 ~~67-401~~ and should not exclude competent and potentially significant evidence that bears on the child's best interests.