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**ARIZONA SUPREME COURT**

In the matter of :	)	
	)	
PETITION TO AMEND RULE 41,	)	Supreme Court No. R-09-_____
RULE 47, RULE 47.1, RULE 50,	)	(Emergency or Expedited
RULE 52, RULE 58, AND RULE 68	)	Adoption Requested)
	)	
_____	)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed rule amendments to the Rules of Procedure for the Juvenile Court.

**I. Background and Purpose of the Proposed Rule Amendments and New Rules**

In the First Regular Session of the Forty-ninth Legislature (2009), the Legislature passed Senate Bills 1049, 1209, and 1246 as well as House Bills 2375 and 2622. These statutes have an impact upon the Rules of Procedure for the Juvenile Court, Part III, Dependency, Guardianship and Termination of Parental Rights. Senate Bill 1049 was signed by the governor on June 29, 2009, Senate Bills 1209 and 1246 were signed by the governor on July 13, 2009. The House Bills were signed by the governor on July 10, 2009 and July 13, 2009 respectively. Senate Bill 1049 is an Emergency, hence effective immediately. Senate Bills 1209 and 1246 have an effective date of September 30, 2009. House Bill 2375 also has an effective date of September 30, 2009. House Bill 2622 is effective from and after December 31, 2009.

Senate Bill 1049 (Chapter 8) requires prospective adoptive parents and all adult members of prospective adoptive parent's households to have a Level 1 fingerprint clearance

card, prior to certification. It also requires prospective adoptive parents and all adult members of prospective adoptive parents' households to certify on notarized forms whether they are awaiting trial on or have ever been convicted of certain specified criminal offenses in Arizona or other jurisdictions.

Senate Bill 1209 (Chapter 159) is cited as the "Bill of Rights for Children and Youth in Foster Care Act." While the section does not establish any cause of action on behalf of any person, it does articulate and enumerate twenty two rights for all children in foster care. The act also affords additional rights to children in foster care who are at least 16 years of age. The child's right to attend the child's court hearing and speak to the judge is the right that impacts the court system and may require the assistance of a rule for implementation.

Senate Bill 1246 (Chapter 154) allows a new factor for consideration in closing a court proceeding relating to dependent children, permanent guardianship and termination of parental rights. That factor is "whether an open proceeding could cause specific material harm to a criminal investigation." Senate Bill 1246 also provides that a "court proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality is open to the public, with closure subject to the criteria stated in A.R.S. § 8-525(B) and A.R.S. § 8-807(F)(2). The statute also provides that "If a court proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public or request a transcript be made of any previously closed proceeding. The statute outlines the factors to consider in granting such a request. Additionally, the statute specifies information for redaction, if the request for a transcript of a closed hearing is granted. Lastly, the statute allows any person to request to inspect court records of a proceeding involving disclosure of CPS

information regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality. The granting of such request is subject to the court's consideration of articulated factors and redaction.

House Bill 2622 (Chapter 148) directs the court at certain hearings to order the parent to provide the names and other information regarding the child's relatives or other persons with a significant relationship with the child who might have an interest in the child's placement. Additionally, the court is required at periodic review hearings and the initial hearing, to determine that the DES is attempting to identify placement of a child who is the subject of a dependency adjudication hearing with a grandparent, another member of the child's extended family, or a person who has a significant relationship with the child.

House Bill 2375 reduces the amount of time a foster child resides in a receiving foster home or shelter care facility before the receiving foster home parents, receiving foster home or shelter care facility are included in the child's periodic review hearing. The legislation now requires notice and the right to participate to receiving foster home parents, receiving foster homes or shelter care facilities where a child has resided for ten days or less.

## **II. Contents of the Proposed Rule Amendments and New Rules**

The proposed new rules include:

### **Rule 41**

#### **Open Proceedings, Considerations and Transcripts**

The proposed amendments to this rule provide for an additional factor in considering whether to close any dependency, permanent guardianship, or termination of parental rights proceeding to the public i.e. whether an open proceeding could cause specific material harm to a criminal investigation. Also, the new rule mandates that a court proceeding relating to child

abuse, abandonment or neglect that has resulted in a fatality or near fatality is open to the public, subject to the requirements of A.R.S. §8-525(B) and Section 8-807(F)(2). Lastly, in a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality, any person may subsequently request that the court reopen a proceeding or request a transcript be made of any previously closed proceeding.

### **Child's Right to Attend Hearing**

SB 1209 sets forth the rights of children in foster care. A.R.S. §8-528(A)(16) provides that a child in foster care has the right: "To attend the child's court hearing and speak to the judge." A.R.S. §8-528(A)(22) provides that a child in foster care has a right to understand and have a copy of the rights listed in the section. While it is not clear that a rule change must be adopted, amendments to Rule 41 that recognize the child's right to attend the child's court hearing and insuring that the child knows of this right aid in implementation of this statute.

### **R-08-0029**

The court will also be considering other edits to Rule 41 (See R-08-0029) at this agenda. Conforming changes will be necessary, should the court adopt the rule changes requested in both petitions.

### **Rule 47**

The proposed amendments to this rule address the statutory changes allowing any person to request to inspect court records of a proceeding involving the disclosure of CPS information regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality. The rule also specifies factors for the court to consider in ruling on the request, and includes a requirement for redaction.

**Rule 47.1**

The proposed amendments to this rule require the court, at periodic review hearings and the initial hearing, to determine that the DES is attempting to identify placement of a child who is the subject of a dependency adjudication hearing with a grandparent, another member of the child's extended family, or a person who has a significant relationship with the child.

**Rule 50**

The proposed amendment to this rule requires the court to order the parent or guardian to provide names, the types of relationships and all available information necessary to locate persons related to the child or who have a significant relationship with the child at the Preliminary protective hearing.

**Rule 52**

The proposed amendment to this rule requires the court to order the parent or guardian to provide names, the types of relationships and all available information necessary to locate persons related to the child or who have a significant relationship with the child at the Initial dependency hearing.

**Rule 58**

The proposed amendments to this rule address the statutory changes reducing the number of days a child has resided in a receiving foster home (thirty to ten within the last six months) for the foster parents to receive notice of proceedings and the right to participate. The amendments also reduce the number of days a child has resided in a shelter care facility or receiving foster home (thirty to ten within the last six months) for the shelter care or receiving foster home to receive notice of proceedings and the right to participate.

## **Rule 68**

The proposed amendment to this rule requires, as part of the Investigative Report, a valid fingerprint clearance card of the prospective adoptive parent(s) and a valid fingerprint clearance card for each other adult member of the household, as required by law. The prospective parent and each other adult member of the household must certify on forms that are provided by the division and that are notarized whether that person is awaiting trial or has ever been convicted of any criminal offenses, as required by law.

### **III. Pre-Petition Distribution and Comment**

The proposed rule changes were circulated electronically to members of the Committee on Juvenile Courts (COJC). Comments were received from Assistant Attorney General, Patricia Trebesch, and Diane McGinnis, director, Pinal County Juvenile Court Services.

Patricia Trebesch's suggested change regarding placement of the transcript payment provision in rule 41(H) was incorporated. Rule 68(b) was edited as well to reflect that in private adoptions forms are provided by the agency and not the division. The rule now refers to "forms that are provided for in A.R.S. §8-105(D)," rather than forms provided by the division.

Diane McGinnis's suggestions and questions lead to a review of the draft rule language in an effort to determine if greater clarity could be achieved. The first question posed essentially dealt with the definition of household member. Arizona Administrative Code R6-5-5801(18) defines "Household member" in the context of Family Foster Parent Licensing Requirement. It states: "Household member" means a person who resides in an applicant's or foster parent's household for 21 consecutive days or longer, or who resides in the household periodically throughout the year for more than a total of 21 days. The court may wish to refer to this definition in a comment, as it is likely to draw questions as to who is "household member". Rule

47 was edited to clarify that the rule is referencing court records in a case i.e. the records kept by the clerk. The remainder of the comments from Diane McGinnis will be provided to the court in a separate memorandum.

**IV. Effective Date of the Proposed new Rule**

Petitioner respectfully requests that the proposed new rules be adopted on an expedited basis pursuant to Rule 28(G) effective on and after September 30, 2009, as that is the effective date of the statutory changes necessitating the rule changes, with distribution for comment following adoption. The proposed rule amendments and rules are attached as Appendix A.

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

By \_\_\_\_\_  
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# Appendix A

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

**A.** 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. A court proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality is open to the public, subject to the requirements of (D) of this rule and A.R.S. §8-807(F)(2).

**B.** A child in foster care has the right to attend the child's court hearing and speak to the judge. At the first hearing in any dependency, permanent guardianship, or termination of parental rights proceeding, the court shall determine that the child has been informed of and understands this right.

**BC.** [No Change]

**CD.** [No Change]

**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.
6. Whether an open proceeding could cause specific material harm to a criminal investigation.

**EF.** [No Change]

**FG.** [No Change]

**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 of this rule. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may request a transcript be made of

any previously closed proceeding. The person who requested the transcript shall pay the cost of the transcript. In ruling on this request, the court shall consider the factors prescribed in Section D of this rule. If the court grants a request for a transcript of any closed proceeding, the court shall redact from a transcript any information that:

1. Is essential to protect the privacy, well-being or safety interests prescribed in Section D of this rule.
2. Protects the identity and safety of a person who reports child abuse or neglect and to protect any other person if the court believes that disclosure of the CPS information would be likely to endanger the life or safety of any person.
3. The court has received that is confidential by law. The court shall maintain the confidentiality of the information as prescribed in the applicable law.

**III.** [No Change]

## **Rule 47. Release of Information**

**A.** All records pertaining to dependency, guardianship and termination of parental rights shall be maintained as confidential and shall be withheld from public inspection except upon order of the court or as otherwise provided by law.

**B.** Any person may request to inspect court records in a case involving child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court shall consider:

1. Whether doing so is in the child's best interests.
2. Whether inspection of records would endanger the child's physical or emotional well-being or the safety of another 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 inspection.
5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.
6. Whether inspection of records could cause specific material harm to a criminal investigation.

**C.** If the court grants the request for inspection of court records, the court shall redact any information subject to the requirements of A.R.S. § 8-525(B) and (6) and A.R.S. § 8-807(F)(2).

## **Rule 47.1. Mandatory Judicial Determinations**

If a child has been removed from the child's home by the state authority, the court shall make protecting the child from abuse or neglect the first priority. The court shall make the following determinations within the time periods set forth and shall state on the record a factual basis for each determination:

**A.** [No Change]

**B.** At the preliminary protective hearing and the initial dependency hearing, whether the department is attempting ~~made attempts~~ to identify and assess placement of the child with the child's grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

**C.** At the periodic review hearing, the court shall determine:

1. Whether the department has identified and assessed placement of the child with a relative or person who has a significant relationship with the child.

2. Whether the parent or guardian provided the court the names, type of relationship and all available information necessary to locate persons related to the child or who have a significant relationship with the child or informed the court that there is insufficient information available to locate a relative or person with a significant relationship with the child.

3. Whether the parent or guardian informed the department immediately if the parent or guardian became aware of new information related to the existence or location of a relative or person with a significant relationship with the child.

~~**C.D.**~~ [No Change]

~~**D.E.**~~ [No Change]

~~**E. F.**~~ [No Change]

~~**F. G.**~~ [No Change]

**Rule 50. Preliminary protective hearing**

**A. Purpose.** [No Change]

**B. Procedure.** [No Change]

**C. Findings and orders.** [No Change 1-6]

7. Order the parent or guardian to provide the court the names, type of relationship and all available information necessary to locate persons related to the child or who have a significant relationship with the child unless the parent or guardian informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child. The court shall further order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of new information related to the existence or location of a relative or person with a significant relationship to the child.

78. [No Change]

**Rule 52. Initial dependency hearing**

**A. Purpose.** [No Change]

**B. Time limits.** [No Change]

**C. Procedure.** [No Change]

**D. Findings and orders** [No Change 1-9]

10. Order the parent or guardian to provide the court the names, type of relationship and all available information necessary to locate persons related to the child or who have a significant relationship with the child unless the parent or guardian informs the court that there is not sufficient information available to locate a relative or person with a significant relationship with the child. The court shall order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of new information related to the existence or location of a relative or person with a significant relationship with the child.

4011. [No Change]

**E. Continuance.** [No Change]

**Rule 58. Review Hearing**

**A. Purpose.** [No Change]

**B. Notice.**

**1. Right to participate.** At a proceeding to review the disposition orders of the court, the court shall provide the following persons notices of the review and the right to participate in the proceeding and any further proceedings:

- a. The authorized agency charged with the child’s care and custody.
- b. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for ~~thirty~~ ten days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.
- c. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than ~~thirty~~ ten days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.
- d. [No Change]
- e. [No Change]
- f. [No Change]
- g. [No Change]
- h. [No Change]
- i. [No Change]
- j. [No Change]

**2. Sibling information exchange program.** [No Change]

**C. Reports.** [No Change]

**D. Contested Issues.** [No Change]

**E. Procedure.** [No Change]

**F. Findings and Orders.** [No Change]

Rules of Procedure for the Juvenile Court

Part IV. Adoption

2. General Adoption Provisions

**Rule 68. Definitions**

**A. Definitions.**

**1. Parent.** [No Change]

**2. Parties.** [No Change]

**3. Investigative Report.** The investigative report shall include the following;

a. A home study;

b. The application for certification to adopt ~~which~~ shall be accompanied by a valid fingerprint clearances card of the prospective adoptive parent(s) and a valid fingerprint clearance card for each other adult member of the household, as required by law. The prospective parent and each other adult member of the household must certify on forms that are provided for in A.R.S. § 8-105(D) and that are notarized whether that person is awaiting trial or has ever been convicted of any criminal offenses listed in A.R.S. § 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction. ~~or an affidavit that the applicant and each adult living in the applicant's home have been fingerprinted and shall indicate the date the fingerprints were submitted for processing.~~ The application shall identify ~~all adults living in the applicant's home~~ all adult members of the applicant's household who are subject to fingerprinting. The application shall further advise whether the applicant currently has temporary custody of the child and the expiration date of the custody order; and

c. [No Chance]

**B.** [No Change]

**1. Parent.** [ No Change]

**2. Indian Child.** [No Change]

**3. Indian Child's Tribe.** [No Change]

**4. Indian Custodian.** [No Change]

**5. Indian Tribe.** [No Change]

**6. Extended Family Member.** [No Change]

**7. Preadoptive or Foster Care Placement Preferences.** [No Change]

**8. Adoptive Placement Preferences.** [No Change]