

TO:

Rule 28 Distribution
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ATTACHMENT¹

RULES OF PROCEDURE FOR THE JUVENILE COURT

PART I. GENERAL PROVISIONS

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Rule 102. Definitions

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

(a)-(o) [No change]

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

~~**(p)**~~**(q)** [No change in text]

~~**(q)**~~**(r)** [No change in text]

~~**(r)**~~**(s)** [No change in text]

~~**(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)** [No change in text]

~~**(u)**~~**(v)** [No change in text]

~~**(v)**~~**(w)** [No change in text]

~~**(w)**~~**(x)** [No change in text]

~~**(x)**~~**(y)** [No change in text]

~~**(y)**~~**(z)** [No change in text]

~~**(z)**~~**(aa)** [No change in text]

~~**(aa)**~~**(bb)** [No change in text]

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¹ Additions to the text of the current rule are shown by underscoring and deletions are shown by ~~strike through~~.

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

(a)-(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)-(J) [No change]

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)-(4) [No change]

(5) *Social Study.* In a termination adjudication hearing, a social study prepared pursuant to under Rule 351, under A.R.S. § ~~8-236~~ 8-536, or by court order admissible as evidence unless a party has filed a notice of objection as required by Rule 315(d)(1)(E). If the court sustains any objections, the court may:

(A)-(B) [No change]

(6)-(11) [No change]

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PART II. DELINQUENCY

1. Delinquency Scope and Procedures

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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~~ 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)** [No change in text]

~~(f)~~**(e)** [No change in text]

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2. Delinquency Proceedings

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Rule 218. Detention and Probable Cause Hearing.

(a)-(c) [No change]

(d) Detention Hearing.

(1) *Finding of Probable Cause.* A juvenile may be detained only if there is probable cause to believe the juvenile committed the acts alleged in the petition or complaint. Probable cause may be based upon allegations in a police report or a citation narrative prepared by a law enforcement office, ~~or~~ along with a properly executed affidavit or sworn testimony.

(2)-(4) [No change]

(e)-(f) [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 under A.R.S. § 8-305(E). The filing of a criminal complaint is the date of arrest for purposes of Criminal ~~Rules 4~~ Rule 4.1.

(i) [No change]

Rule 219. Advisory Hearing

(a)-(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)-(E) [No change]

(2)-(7) [No change]

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Rule 224. Revocation of Probation

(a)-(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)-(G) [No change]

(e) [No change]

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

1. General Provisions; Parties, and Participants

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

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

(1)-(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)-(e) [No change]

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2. General Provisions on Proceedings and Procedures

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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)-(g) [No change]

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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) **[No change in text]**

~~(4)~~(3) **[No change in text]**

~~(5)~~(4) The court must provide the parent with Form 1, 2, ~~or~~ 3, or 4, as applicable, and request the parent to sign and return the form to the court before the hearing adjourns.

~~(6)~~(5) **[No change in text]**

(c)-(f) [No change]

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3. Dependency Proceedings

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Rule 334. Initial Dependency Hearing

(a)-(g) [No change]

(h) Continuance.

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

~~(1)(A)~~ [No change]

~~(2)(B)~~ additional time is required to comply with the requirements of ICWA or additional time is requested by the child's tribe; ~~or~~

~~(3)(C)~~ additional time is required to obtain and consult with an attorney and the child's best interests would not be adversely affected; ~~;~~

~~(4)(D)~~ 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)(E)~~ the court makes a finding of extraordinary circumstances, which include but are not limited to acts or omissions that are unforeseen or unavoidable.

(2) Motion. Any party requesting a continuance based on extraordinary circumstances must file a motion that specifies those circumstances and must file the motion no later than 5 days after discovering them.

(3) Finding. The court's finding of extraordinary circumstances must be in writing and set forth the factual basis for the continuance.

(4) Duration. A continuance cannot exceed 30 days unless the court makes a finding of extraordinary circumstances under (h)(1)(E).

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Rule 338. Dependency Adjudication Hearing

(a) [No change]

(b) Time.

(1) [No change]

(2) *Continuance.*

(A) Generally. 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.

(B) Duration. The court may grant a continuance that exceeds 30 days only upon a finding of extraordinary circumstances, which include but are not limited to acts or omissions that are unforeseen or unavoidable. Failure to complete discovery before the date set for the dependency adjudication hearing does not constitute extraordinary circumstances.

(C) Motion. Any party requesting a continuance based on extraordinary circumstances must file a motion that specifies those circumstances and must file the motion no later than 5 days after discovering them.

(D) Finding. 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)-(h) [No change]

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4. Guardianships Proceedings

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

(a) Motion.

(1) [No change]

(2) *Pre-adjudication Motion.*

(A) Generally. 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) Non-DCS Petition. If the pending dependency petition was not filed by DCS, the court must notify DCS of the motion for permanent guardianship no later than 14 court days after the petition’s filing. No later than 10 days after the court sends the notification, DCS must investigate 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 under A.R.S. § 8-872(F) to be prepared and provided to the court no later than 10 days after the filing 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 under a court order in a foster-adoptive placement, pursuant to under Rule 106.

(2) [No change]

(d)-(g) [No change]

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5. Proceedings for Termination of Parental Rights

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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) *Deadline After Permanency Hearing.* If a motion for termination of parental rights is filed, the termination adjudication hearing must be held no later than 90 days after the permanency hearing.

(2) *Deadline if Petition Is Contested.* 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.

(3) *30-Day Continuance.* 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) *Longer Continuance.* The court may continue the hearing for a longer period only on a finding of extraordinary circumstances. Extraordinary circumstances, which include but are not limited to acts or omissions that are unforeseen or unavoidable. Any party requesting a continuance must file a motion on this basis that specifies the extraordinary circumstances no later than 5 days after discovering those circumstances~~

them. 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)-(h) [No change]

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PART IV. ADOPTIONS

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Rule 406. Disclosure and Discovery in Contested Adoptions.

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