

SUPREME COURT

STATE OF ARIZONA

In the matter of :)
)
PETITION TO AMEND RULE 48.) Supreme Court No. R-10-____
)
)
_____)

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 Amendment

In the Second Regular Session of the Forty-eighth Legislature (2008), the Legislature passed House Bill 2453, this bill was signed by the Governor on June 24, 2008 with an effective date of September 26, 2008. This statute had an impact upon the Rules of Procedure for the Juvenile Court, Part III, Dependency, Guardianship and Termination of Parental Rights.

As a consequence of the 2008 statutory amendments, Rule 41 was modified in September 2008 to provide for open court proceedings relating to dependent children, permanent guardianships and termination of parental rights. The proposed amendments also provided for the hearings to be closed for good cause and admonitions to be given to attendees.

During the process of the 2008 post legislative session rule drafting, the need to do a conforming amendment to Rule 48 was inadvertently missed. This need is now apparent and has prompted the filing of this Rule Petition. Rule 48 will now require that the Notice of Hearing “advise of the right to make a request or motion prior to any hearing, that the hearing be closed to the public.”

House Bill 2453 (Chapter 278) mandated that court proceedings regarding dependent children, permanent guardianship, and termination of parental rights be open to the public. A court may close a hearing for good cause shown, thus the presumption is now for open hearings rather than closed hearings with the need to request that the hearing is closed.

II. Contents of the Proposed Rule Amendments and New Rules

The proposed new rule conforms Rule 48(c) to the 2008 changes in Rule 41 concerning open court proceedings, and notice requirements. Rule 48(c) will now require that the Notice of Hearing “advise of the right to make a request or motion prior to any hearing, that the hearing be closed to the public.”

III. Pre-Petition Distribution and Comment

The proposed rule changes were circulated electronically to Judges Robert Brutinel, Norman Davis, John Nelson, Richard Weiss and Sally Simmons. The petition was then circulated to members of the committee on Juvenile Courts (COJC). The COJC members who responded agreed with the changes. No negative comments were received.

IV. Effective Date of the Proposed new Rule

Petitioner respectfully requests that the proposed new rule be adopted at the Court’s 2010 Rules Agenda, with an immediate effective date. The proposed rule amendments and rules are attached as Appendix A.

Respectfully submitted this ____ day of December, 2009.

By _____
David K. Byers, Director
Administrative Office of the Courts
1501 W. Washington St.
Phoenix, Arizona 85007

Appendix A

Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process.

A. [No change]

B. [No change]

C. **Notice of hearing.** In addition to information required by law, the notice of hearing shall advise the parent, guardian or Indian custodian that failure to appear, without good cause shown, may result in a finding that the parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the allegations in the petition. The notice shall state that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in an adjudication of dependency, the termination of parental rights or the establishment of a permanent guardianship based upon the record and evidence presented. The notice of hearing shall also advise of the right to make a request, or motion prior to any hearing, that the hearing be ~~open~~ closed to the public.

D. [No change]

E. [No change]