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10 **ARIZONA SUPREME COURT**
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12
13 IN RE PETITION TO AMEND RULES 304 AND
14 306 OF THE ARIZONA RULES OF
15 PROCEDURE FOR THE JUVENILE COURT
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17 Supreme Court No. 24-_____

18 Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, Tom Jose,
19 licensed attorney and Director of the Children’s Law Clinic at the Center for the Rights
20 of Abused Children, respectfully petitions this Court to amend the rules specified above
21 as proposed below. The proposed amendments seek to set a procedure for a child’s trial
22 attorney to request separate counsel for appeals from dependency, guardianship, and
23 termination proceedings, as well as clarify the duties of children’s attorneys during such
24 appeals.

I. Purpose of Proposed Rule Amendments.

The proposed rule amendments seek to make the practice of children’s appellate representation more similar to that of the appellate practice representing parents and the

1 State in appeals from dependency, guardianship, and termination orders. The rule
2 amendments would set a procedure for a child's trial counsel to seek the appointment of
3 separate counsel for any appeal from a dependency, guardianship, or termination order,
4 as well as clarify the court in which the appellate counsel must file notice of a change of
5 counsel within the same law firm. The rule amendments also seek to clarify the duties
6 owed by the child's attorney(s) to the child upon direct appeal of dependency,
7 guardianship, or termination orders.
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9 **II. Draft of Proposed Amendments.**

10 **Arizona Rules of Procedure for the Juvenile Court** 11 (deletions shown with ~~strike through~~, new language is underlined)

12 **Rule 304. Appearance, Substitution, and Withdrawal; Responsibilities of Parties**

13 **(a) [No change]**

14 **(b) Attorney's Duties.**

15 (1) *Appearance.* An attorney may appear as attorney of record by filing
16 a notice of appearance, a petition, or a motion to intervene. An attorney
17 may also enter an initial appearance by appearing personally or
18 telephonically and advising the court that the attorney is representing a
19 party. An attorney may not file a document in any action or act on
20 behalf of a party without appearing first as attorney of record.

21 (2) *Representation.* After an attorney has appeared of record in any
22 action, the attorney will be responsible for all matters involving the
23 action until:

24 (A) another attorney is substituted as attorney of record for a
party;

(B) the action is dismissed and the time for filing notice of appeal
has expired;

(C) the court enters an order terminating representation and, if
applicable, any time for filing a notice of appeal has expired; or

(D) if an attorney represented the party solely on appeal, the
issuance of an appellate mandate.

1 (c) [No change]

2 (d) **Attorney Substitution.**

3 (1) *Generally.* Except as provided in subpart (d)(2), an attorney may
4 substitute as attorney of record in a pending action only by court order.
5 The attorney must file a motion that contains the client's written
6 consent and a proposed order. The motion and proposed order may be
7 presented to the court ex parte. The substituting attorney must promptly
8 provide the signed order to the other parties' attorneys.

9 (2) *Within the Same Firm or Office.* If a pending case is transferred
10 within the same law firm or governmental office, the court must be
11 notified of the new attorney of record, including any changes in the
12 physical or email address. An order of substitution is not required. If
13 such a transfer is made for purpose of appeal, the notice shall be filed
14 with the appellate court before which the case is pending.

15 (e) [No change]

16 (f) **Concurrent Appellate Attorney for Child.** A child's attorney may
17 request that the juvenile court appoint different counsel to represent the child
18 during an appeal while the child's trial counsel continues to represent the child
19 in any ongoing proceedings in the trial court. Both attorneys shall ensure that
20 the child is kept apprised of the appeal.

21 (fg) **Duty of Attorney After Withdrawal or Substitution.** No later than 7
22 days after withdrawal or substitution, other than a substitution from within the
23 same firm or office, the former attorney must transfer the file and provide the
24 client's most current contact information and all disclosure to the new lawyer
or to the client, if self-represented. The attorney must preserve the file if the
client's whereabouts are unknown.

(gh) **Responsibility to the Court.**

(1) *Attorneys and Self-Represented Litigants.* Each attorney of record,
GAL, and self-represented litigant must remain informed of the status
of, and the deadlines in, pending actions in which that attorney or self-
represented litigant has appeared.

(2) *Attorneys.* An attorney who changes an office address, email
address, or telephone number must notify the clerk in each of the
counties in which that attorney has pending actions of the attorney's
current office and email address and telephone number, and must file a
notice in each case in which the attorney has appeared containing that
information.

(3) *Self-Represented Litigants.* Self-represented litigants must file a
notice containing their mailing address, telephone number, and any
email address, and provide copies of the notice to the other parties'

1 attorneys. It is the responsibility of a self-represented litigant to file an
2 updated notice of any change in contact information no later than 7 days
3 after the change, and to promptly provide a copy of the updated notice
to the parties' attorneys.

4 **Rule 306. Duties of Child's Attorney or a Child's GAL**

5 **(a) [No change]**

6 **(b) Provide Information About Court Proceedings.** An attorney and GAL
7 must keep the child informed, in an age and developmentally appropriate
8 manner, of the nature of each court proceeding, the child's right to attend
9 hearings and speak with the judge, any benefits or consequences of the child's
participation or lack of participation, the possible outcomes of each hearing,
10 the child's appellate rights, and other legal rights regarding the dependency
11 proceeding, and must explain the outcome of each hearing to the child.

12 **(c) Participate in the Proceedings.** When appropriate, an attorney and GAL
13 must participate in discovery, file pleadings, and subpoena witnesses. An
14 attorney and GAL must develop a position for each hearing. The duties of an
attorney and GAL include identifying appropriate family and professional
15 resources for the child. The attorney and GAL must inquire of the child
16 regarding potential placements and communicate this information to DCS and
17 the court as appropriate. The child's attorney must also ensure the child's
18 position is fully and fairly represented during an appeal, which may include
19 the filing of a brief or a notice of joinder in another party's brief.

20 **(d) Meet with the Child.** The attorney and GAL must meet in person with
21 the child before the preliminary protective hearing, or if that is not possible,
22 no later than 14 days after the preliminary protective hearing. The attorney
23 must ensure that the child has the attorney's contact information, which may
24 include providing such information to the child's caregiver. Thereafter, the
attorney and GAL must have meaningful in-person communication with the
child before every substantive hearing. Substantive hearings include all
preliminary protective hearings, all review hearings, permanency hearings,
any hearings involving placement, visitation or services, or any hearing to
adjudicate dependency, guardianship, or termination. Upon a showing of
extraordinary circumstances, a judge may modify the requirements of this
section for a particular substantive hearing. At each substantive hearing the
attorney and the GAL must inform the court of the child's position concerning
pending issues and the GAL must inform the court of what is in the child's
best interests. If the child is not present, the attorney or GAL must provide an
explanation for the child's absence.

1 (e) through (i) [No change]

2 **III. Similar Petitions.**

3 A review of this Court's website does not reveal any similar petition filed within
4 the last five years.

5 Respectfully submitted this 9th day of January, 2024.

6 **CENTER FOR THE RIGHTS OF ABUSED CHILDREN**

7 By: /s/ Tom Jose

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