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ARIZONA SUPREME COURT

In the matter of:	)	
	)	
PETITION TO AMEND RULE 349 AND	)	Supreme Court No. 24-_____
ADOPT RULE 354, RULES OF	)	
PROCEDURE FOR THE JUVENILE	)	(Expedited Consideration and
COURT	)	Emergency Adoption
	)	Requested Pursuant to Rule 28)
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the Rules of Procedure for the Juvenile Court to adopt a new Rule 354 and make a technical amendment to Rule 349, as proposed in Appendix A. The proposed adoption of Juvenile Rule 354 is prompted by the enactment of House Bill (HB) 2486 during the Second Regular Session of the Fifty-sixth Legislature, as more particularly described below. A copy of HB 2486 is attached as Appendix B.

HB 2486 will become effective on September 14, 2024. Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of

proposed Juvenile Rule 354, with an effective date of September 14, 2024 and an immediate effective date for the technical amendment to Rule 349.

I. HB 2486, Parent-Child Relationship; Restoration (Laws 2024, Ch. 147)

A. Background

HB 2486 creates A.R.S. § 8-547, which establishes the circumstances when a terminated parent-child relationship can be restored. Specifically, if a parent-child relationship has been terminated pursuant to A.R.S. Title 8, chapter 4, article 5, HB 2486 allows the Department of Child Safety (DCS), the child, an Indian child's tribe, the child's attorney or guardian ad litem, or the terminated parent to petition for restoration of the parent-child relationship if:

- the child is in the care or custody of DCS;
- the child has not achieved permanency, is unlikely to achieve permanency and is not in a preadoptive placement;
- at least two years have passed since the parent-child relationship was terminated, unless there is a demonstration of good cause for an earlier filing, which must be included in the petition; and
- the dependency adjudication finding did not include, or the parent-child relationship was not terminated because, the parent committed or was found to have failed to protect the child from an act involving any of the following:
 - i) serious physical injury as defined in A.R.S. § 8-201;

- ii) sexual abuse or sexual conduct with a minor;
- iii) any conduct that resulted in the near death or death of a minor; or
- iv) a dangerous crime against children as defined in A.R.S. § 13-705.

HB 2486 also contains provisions for the information that is required to be in the petition and further requires DCS to conduct an assessment and submit a report to the court that includes whether restoration is in the child's best interests and a description of the diligent efforts DCS has made to locate a permanent placement for the child.

If the court finds by clear and convincing evidence that the restoration of the parent-child relationship is in the best interests of the child, including that the return of the child would not create a substantial risk of harm to the child's physical, social, mental, or emotional health or safety, the court must order DCS to conduct a trial in-home placement (“trial”) of the child with the terminated parent and provide the court with an evaluation of the trial within three to six months of its start date.

After receiving the DCS evaluation, the court can grant the restoration petition or order DCS to continue the trial; however, the trial cannot exceed one year. If, during the trial, there is a substantiated report of abuse or neglect of the child by the terminated parent or parents or if DCS determines that the child's health, safety, or well-being is threatened, DCS must immediately terminate the trial and notify the

court and the child's attorney, guardian ad litem, and Indian tribe, if applicable, of the termination.

After the trial, if the court finds by clear and convincing evidence that the terminated parent has demonstrated the remediation necessary for the restoration of the parent-child relationship, including the ability and willingness to properly care for the child, and restoration of the parent-child relationship is in the best interests of the child, including consideration of the child's position on the restoration of the parent-child relationship and any other relevant factors, the court must grant the restoration petition.

B. Summary of Proposed Juvenile Rule 354

The proposed new Juvenile Rule 354 establishes procedures for processing petitions to restore parental rights. The structure and process of proposed Juvenile Rule 354 track current Juvenile Rule 349 (“revocation of a permanent guardianship”). Proposed Rule 354 consists of subparts (a) through (k), summarized as follows:

1. Subpart (a) sets out a general explanation of the purpose of the rule and tracks A.R.S. § 8-547(A). This subpart also includes a definition of “terminated parent,” a term that is intentionally used in this rule to distinguish from a “parent,” which is defined in Juvenile Rule 102(v) as “the child’s biological, adoptive, or legal mother or father *whose rights have not been terminated.*” Emphasis added. A.R.S. §

8-547(K) also provides a definition of “parent,” but limits it to the “natural father or mother” and whose rights *have* been terminated.

To avoid confusion between the use of the term “parent” throughout the rest of the juvenile rules, proposed Juvenile Rule 354, and A.R.S. § 8-547, Petitioner proposes using the term “terminated parent” in proposed Juvenile Rule 354 and defining it as “the natural father or mother whose parental rights have been terminated as to the child who is the subject of the petition to restore the parent-child relationship.”

Petitioner’s rationale for placing the definition of “terminated parent” in Juvenile Rule 354 in lieu of Juvenile Rule 102 is twofold: (1) the term “terminated parent” is used only in proposed Juvenile Rule 354, and (2) placing it in proposed Juvenile Rule 354 will avoid renumbering the definitions in Juvenile Rule 102, which may otherwise cause cross-references to become incorrect.

2. Subpart (b) establishes the information that is required to be in the petition and tracks A.R.S. § 8-547(B) and (C). Subpart (b) additionally provides the court with guidance on how to proceed when a petition is incomplete or ineligible for filing. Specifically, an incomplete petition must be dismissed, and a petition ineligible for filing must be denied.

3. Subpart (c) requires service of the petition on specified persons and in a manner prescribed by Juvenile Rule 106.

4. Subpart (d) establishes the actions the court must take when a complete and eligible petition is filed, which includes appointing an attorney or guardian ad litem, or both, for the child and providing the appointed person(s) with a copy of the petition; setting a preliminary review hearing within 45 days of the petition filing date to ensure that certain requirements have been met and to determine whether there are any objections to the petition; and if DCS is not the petitioner, ordering DCS to complete the assessment required under A.R.S. § 8-547(D) and submit a report to the court.

5. Subpart (e) establishes the procedures for the preliminary review hearing, so that the court can determine whether all prerequisites have been met, such as service and the DCS assessment, and whether to proceed with scheduling an initial restoration hearing under subpart (f). The preliminary review hearing will also allow the court to determine whether there is any objection to the petition.

6. Subpart (f) establishes the procedures for the initial restoration hearing at which the court will determine whether restoration of the parent-child relationship is in the best interests of the child and whether the return of the child to the terminated parent would create a substantial risk of harm to the child's physical, social, mental, or emotional health or safety, the standard for doing so, and based on this determination, whether the petition must be denied or a trial in-home placement of the child with the terminated parent must be ordered.

7. Subparts (g) and (h) establish the requirements regarding the trial in-home placement process, including timeframes, notifications, continuation, evaluations and updated evaluations, and termination.

8. Subpart (i) establishes the requirements for the hearing the court must hold after the trial in-home placement to determine whether the petition should be granted or denied.

9. Subpart (j) requires the court's findings under proposed Juvenile Rule 354 to be in a signed minute entry or order.

10. Subpart (k) requires the court to enter an order granting or denying the petition and provides for other orders that a court may make if it orders the parent-child relationship restored. Accordingly, subpart (k)(1) which applies if a relationship is ordered restored, uses the term "restored parent" rather than "terminated parent."

C. Juvenile Rules, Part 5 Title

Part 5 of the juvenile rules is titled "Proceedings for Termination of Parental Rights." Since proposed Juvenile Rule 354 will be placed in Part 5 but does not actually deal with terminating a parent's rights, Petitioner proposes a slight amendment to Part 5's title to change "for" to "Regarding," so that the title reads "Proceedings Regarding Termination of Parental Rights" and better encompasses the subject matter contemplated by proposed Juvenile Rule 354.

II. Technical Amendment to Juvenile Rule 349

The first sentence of Juvenile Rule 349(c) currently reads, “The petitioner must provide a serve of the petition to the child's parents and the permanent guardian under Rule 106.” The word “serve” as used in this sentence appears to be a typo. Petitioner therefore proposes replacing the word “serve” with the word “copy,” so that the sentence instead reads, “The petitioner must provide a copy of the petition to the child's parents and the permanent guardian under Rule 106.” The proposed amendment is set forth in Appendix A.

III. Preliminary Comments.

This petition was circulated to ten juvenile court judges for pre-filing comments, which have been incorporated into the proposed amendments set forth in Appendix A.

IV. Request for Expedited Consideration and Emergency Adoption.

HB 2486 will become effective on September 14, 2024. Therefore, as permitted by Supreme Court Rule 28(h), Petitioner respectfully requests that this Court expedite its consideration of this petition for inclusion on its August 2024 Rules Agenda, consider adoption of the proposed amendments as set forth in Appendix A on an emergency basis at that Agenda with an effective date of September 14, 2024 for proposed Juvenile Rule 354 and an immediate effective date for the technical amendment to Juvenile Rule 349, open the petition for comment,

and consider adopting the proposed amendments on a permanent basis at this Court's December 2024 Rules Agenda.

Respectfully submitted this 19th day of July, 2024.

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APPENDIX A

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

Rules of Procedure for the Juvenile Court

Rule 349. Revocation of a Permanent Guardianship

(a) and (b) [No change]

(c) Petitioner's Duties.

(1) *Generally*. The petitioner must provide a ~~serve~~copy of the petition to the child's parents and the permanent guardian under Rule 106. The court must provide a copy of the petition to the attorney and GAL appointed for the child under subpart (d)(1).

(2) [No change]

(d) through (i) [No change]

5. Proceedings ~~for~~ Regarding Termination of Parental Rights

Rule 354. Restoration of a Parent-Child Relationship

(a) Generally. If a parent-child relationship has been terminated under Title 8, Chapter 4, Article 5, DCS, the child, an Indian child's tribe, the child's attorney or guardian ad litem, or the terminated parent may file a petition to have the parent-child relationship restored if the requirements of A.R.S. § 8-547(A) have been met. "Terminated parent" under this rule means the natural father or mother whose parental rights have been terminated as to the child who is the subject of the petition to restore the parent-child relationship.

(b) Petition Contents.

(1) The petition must be verified and include the following information:

(A) Whether the child is in the care or custody of DCS;

(B) Whether permanency has been achieved;

(C) If permanency has not been achieved, whether it is likely to be achieved and if not, a statement explaining why the child is unlikely to obtain a permanent placement unless the parent-child relationship is restored;

(D) Whether at least two years have passed since the parent-child relationship was terminated and if not, a statement explaining why good cause exists for filing early;

(E) Whether the dependency adjudication finding included, or the parent-child relationship was terminated because, the terminated parent committed or was found to have failed to protect the child from any act listed in A.R.S. § 8-547(A)(4);

(F) The child's position, if it can be obtained prior to filing, on the restoration of the parent-child relationship;

(G) The consent of the terminated parent to the restoration of the parent-child relationship; and

(H) An explanation of how the terminated parent has demonstrated the necessary remediation for restoration of the parent-child relationship, including the ability and willingness to properly care for the child.

(2) Additional Requirements When DCS is the Petitioner. If DCS is the petitioner, the petition must also include:

(A) a report of an assessment conducted by DCS indicating whether the restoration of the parent-child relationship is in the best interests of the child; and

(B) documentation of diligent efforts made by DCS to locate a permanent placement for the child.

(3) A petition that does not include all the information required by this subpart must be dismissed. A petition that is not eligible to be filed as provided by A.R.S. § 8-547(A) must be denied.

(c) Service of the Petition. The petitioner must serve a copy of the petition according to Rule 106 to DCS, the terminated parent, the child's attorney, GAL, and Indian tribe if applicable.

(d) Court's Duty Upon Receiving a Petition. Upon the filing of a petition that contains all the information required by (b) and is eligible for filing as provided by A.R.S. § 8-547(A), the court must:

(1) appoint an attorney or GAL, or both, for the child if one is not already appointed and provide them with a copy of the petition;

(2) set a preliminary review hearing no later than 45 days after the filing of the petition and notify the terminated parent, the child's attorney, GAL, and Indian tribe if applicable, of the hearing date; and

(3) if DCS is not the petitioner, order DCS to conduct an assessment and submit a report no later than 30 days after the order is entered that includes:

(A) whether the restoration of the parent-child relationship is in the best interests of the child; and

(B) a description of the diligent efforts made by DCS to locate a permanent placement for the child.

(e) Preliminary Review Hearing.

(1) Required Determinations. At the preliminary review hearing, the court must determine whether:

(A) the petition was served as required by (c);

(B) DCS conducted its assessment and provided its report to the court; and

(C) DCS, the terminated parent, the child's attorney, GAL, or Indian tribe objects to the petition.

(2) Continuing the Preliminary Review Hearing. The court may continue the preliminary review hearing to allow the petitioner to complete their responsibilities under (c) or obtain the child's position on the restoration of the parent-child relationship if it was not available at the time the petition was filed, to allow DCS to complete their responsibilities under (d)(3), or may order the GAL to prepare a report to the court and provide a copy of the report to the parties, and continue the initial hearing pending completion of those actions.

(3) Upon the requirements in (e)(1)(A) through (C) being met, the court must schedule an initial restoration hearing and proceed according to (f).

(f) Initial Restoration Hearing. At the initial restoration hearing, the court must determine whether restoration of the parent-child relationship is in the best interests of the child and whether the return of the child to the terminated parent would create a substantial risk of harm to the child's physical, social, mental, or emotional health or safety. The court must:

(1) deny the petition if it does not find by clear and convincing evidence that the restoration of the parent-child relationship is in the best interests of the child or finds that the return of the child would create a substantial risk of harm to the child's physical, social, mental, or emotional health or safety.

(2) order DCS to conduct a trial in-home placement of the child with the terminated parent if it finds by clear and convincing evidence that:

(A) the restoration of the parent-child relationship is in the best interests of the child, and

(B) the return of the child would not create a substantial risk of harm to the child's physical, social, mental, or emotional health or safety.

(g) Trial In-Home Placement Evaluation. If the court orders DCS to conduct a trial in-home placement under (f)(2), the court must order a date by which DCS must provide the court with an evaluation of the trial in-home placement. The evaluation due date must be at least three months after but not more than six months after the trial in-home placement start date. Upon receipt of the evaluation, the court must either:

(1) set a hearing, provide notice of the hearing date to all parties, and proceed according to (i). The hearing must be held within 30 days of the date the evaluation is received by the court.

(2) order DCS to continue the trial in-home placement for a specified timeframe. The entire length of the trial in-home placement cannot exceed one year. The court must order DCS to provide the court with an updated evaluation at least 30 days before the trial in-home placement end date. Upon

receipt of the updated evaluation, the court must set a hearing, provide notice of the hearing date to all parties, and proceed according to (i). The hearing must be held within 30 days of the date the updated evaluation is received by the court.

(h) Termination of Trial In-Home Placement. If DCS terminates the trial in-home placement ordered under (f)(2), DCS must immediately notify the court, the child's attorney, GAL, and Indian tribe if applicable. Upon receiving notification that DCS has terminated the trial in-home placement, the court must set a hearing as soon as possible, provide notice of the hearing date to all parties, and proceed according to (i).

(i) Hearing After Trial In-Home Placement. After receipt of the trial in-home placement evaluation under (g)(1), an updated evaluation under (g)(2), or notification that DCS has terminated the trial in-home placement, the court must hold a hearing to make a determination on the petition.

(1) Granting the Petition. The court may grant the petition only if it finds by clear and convincing evidence that:

(A) the terminated parent has demonstrated the remediation necessary for the restoration of the parent-child relationship;

(B) the terminated parent is able and willing to properly care for the child; and

(C) restoration of the parent-child relationship is in the best interests of the child after considering the child's position and any other relevant factors.

(2) Denying the Petition. The court must deny the petition if:

(A) it does not find by clear and convincing evidence that:

(1) the terminated parent has demonstrated the remediation necessary for the restoration of the parent-child relationship;

(2) the terminated parent is able and willing to properly care for the child; or

(3) restoration of the parent-child relationship is in the best interests of the child after considering the child's position and any other relevant factors.

(B) DCS terminated the trial in-home placement, and the court finds that the termination was necessary to protect the health, safety, or well-being of the child.

(j) Findings and Orders. The court's findings under this rule must be contained in a signed minute entry or order.

(k) Orders. The court must enter an order granting or denying the petition for restoration of the parent-child relationship. Upon ordering a parent-child relationship restored, the court may:

- (1) order the child returned to the legal and physical custody of the restored parent, and
- (2) enter other orders that may be appropriate.