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**ARIZONA SUPREME COURT**

In the matter of : )  
 )  
PETITION TO AMEND RULES 38, ) Supreme Court No. R-\_\_\_\_\_  
40, 47.1, 50, 52, AND 56, RULES OF ) (Emergency or Expedited  
PROCEDURE OF THE JUVENILE ) Adoption Requested)  
COURT )  
\_\_\_\_\_ )

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

In the Second Regular Session of the Forty-ninth Legislature (2010), the Legislature passed Senate Bill 1035 and House Bill 2419. The statutes amended have an impact upon the Rules of Procedure for the Juvenile Court, Part III, Dependency, Guardianship and Termination of Parental Rights. Senate Bill 1035 was signed by the governor on May 7, 2010 and has an effective date of July 29, 2010. House Bill 2419 was signed by the Governor on May 3, 2010 and has an effective date of July 29, 2010.

Senate Bill 1035 (Chapter 267) establishes meeting requirements for a juvenile’s guardian ad litem (GAL) or attorney in dependency cases. The bill requires a juvenile’s GAL or attorney to meet with the juvenile before the preliminary protective hearing, or if that is not possible, within 14 days after the preliminary protective hearing and before each substantive hearing. The bill also allows a judge to modify this requirement for any substantive hearing upon a showing of extraordinary circumstances.

House Bill 2419 (Chapter 214) requires the Department of Economic Security (DES) to make reasonable efforts to place a child in out-of-home care, guardianship or adoptive placement with siblings or “to maintain frequent visitation or other ongoing contact between siblings except in certain circumstances as determined by the court. This legislation requires the court to make new determinations at various court proceedings in the dependency process with respect to placement or contact with siblings based upon specified considerations. The statute also provides for best interests, safety and well-being determinations.

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

The proposed new rules include :

### **Rule 38. Assignment, Appointment of Counsel**

The proposed amendments to this rule provide that an attorney for a child shall meet with the child before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The attorney is also to meet with the child before all substantive hearings. A judge may modify this requirement upon a showing of extraordinary circumstances, for any substantive hearing.

### **Rule 40 Appointment of Guardian Ad Litem**

The proposed amendments to this rule provide that a guardian ad litem shall meet with the child before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The Guardian Ad Litem is also to meet with the child before all substantive hearings. A judge may modify this requirement upon a showing of extraordinary circumstances, for any substantive hearing.

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

The proposed amendments require the court at the initial dependency hearing to determine that the department is attempting to identify and assess placement of the child with the child's siblings if this is possible and in the child's best interests.

The proposed amendments also require the court, at the permanency hearing, to determine what efforts have been made in the permanency plan to place the child with the child's siblings or to provide frequent visitation or contact. These determinations are to be made unless the court had already determined that placement with all or any siblings or visitation or contact is not possible or would be contrary to the child's or a sibling's safety or well-being.

### **Rule 50. Preliminary Protective Hearing**

The proposed amendments make conforming technical wording changes to the rule.

### **Rule 52. Initial Dependency Hearing**

The proposed amendments make conforming technical wording changes to the rule.

### **Rule 56. Disposition Hearing**

The proposed amendments make conforming technical wording changes to the rule.

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

Comments could not be obtained due to the need to file the petitions by June 14, 2010 in order to allow for the court to consider the petition on June 29, 2010. The early consideration was necessary in order to have the rules in place by July 29, 2010, the effective date of the statutes.

## **IV. Effective Date of the Proposed New Rule**

Petitioner respectfully requests that the proposed new rules be adopted on an expedited basis upursuant to Rule 28(G) effective on and after July 29, 2010, 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 \_\_\_\_\_ 2010.

By \_\_\_\_\_  
David K. Byers, Administrative Director

**“EXHIBIT A”**

## APPENDIX A

### Rule 38. Assignment, Appointment of Counsel

**A. Assignment of Counsel.** Counsel shall be assigned to represent those persons entitled to counsel as provided by law and the Indian Child Welfare Act, from the filing of a dependency petition through the preliminary protective hearing until the court formally appoints counsel or otherwise relieves assigned counsel. ~~Counsel is required to meet with the client prior to the preliminary protective hearing.~~ Assigned counsel is not counsel of record for purposes of accepting service of process for a parent, guardian or Indian custodian who does not appear for the preliminary protective hearing.

**B. [No Change]**

**C.** The attorney for a child shall meet with the child before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The attorney for the child also shall meet with the child before all substantive hearings. Upon showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

~~**C.**~~ **D. Manner of Appointment.** If the court enters an order appointing or denying counsel, a copy of the order or minute entry shall be provided to the parties.

### Rule 40. Appointment of Guardian Ad Litem

**A. [No Change]**

**B. [No Change]**

**C.** The Guardian Ad Litem for a child shall meet with the child before the preliminary protective hearing, if possible, or within fourteen days after the preliminary protective hearing. The Guardian Ad Litem for the child also shall meet with the child before all substantive hearings. Upon showing of extraordinary circumstances, the judge may modify this requirement for any substantive hearing.

~~**C.**~~ **D.** If the court has reason to believe a parent, guardian or Indian custodian may be incompetent, the court shall appoint a guardian ad litem to conduct an investigation and report to the court as to whether the parent, guardian or Indian custodian may be incompetent and in need of protection. The court shall conduct hearings and enter orders as determined to be necessary to protect the interests of the parent, guardian or Indian custodian.

### 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. [No Change]**

**C. At the initial dependency hearing, the court shall determine that the department is attempting to identify and assess placement of the child with the child's siblings if this is possible and is in the child's best interests.**

~~**C.**~~ **D.** 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.

~~**D.**~~ **E.** Within sixty days after the child is removed from the child's home, whether reasonable efforts have been made to prevent removal of the child or whether it was reasonable to make no efforts to prevent removal of the child. This determination may be made at any hearing held within the sixty day time requirement.

~~**E.**~~ **F.** If the child is not placed with a grandparent or another member of the child's extended family including a person who has a significant relationship with the child within sixty days after the child is removed from the child's home, why such placement is not in the best interests of the child. The petitioner has the burden of presenting evidence that such placement is not in the child's best interests at the first court hearing thereafter.

~~**F.**~~ **G.** Within twelve months after the child is removed from the child's home, and once every twelve months thereafter, whether reasonable efforts have been made to finalize the existing permanency plan, including consideration of both in-state and out-of-state placements.

**H. Unless the court has determined that placement, visitation, or contact with all or any siblings is not possible, or would be contrary to the child's or a sibling's safety or well-being, at the permanency hearing the court shall determine what efforts have been made in the permanency plan to place the child with the child's siblings or to provide frequent visitation or contact.**

**G. I.** If the child is under three years of age, within six months after the child is removed from the child's home, whether reasonable efforts have been made to provide reunification services to the parent and whether a parent of a child who is under three years of age has substantially neglected or willfully refused to participate in reunification services offered by the department.

## **Rule 50. Preliminary Protective Hearing**

**A. [No Change]**

**B. [No Change]**

**C. Findings and orders.** All findings and orders, including any agreements reached by the parties shall be in the form of a signed order or contained in a minute entry, and shall be provided to the parties at the conclusion of the hearing. The court shall:

1. Make findings and enter orders regarding temporary custody as required by law and Rule 51;

2. Make findings and enter orders as required by Rule 52(D);

3. Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if the court has reason to believe the child is an Indian child;

4. Make findings and enter orders regarding services for the child and family, including visitation, as required by law;

5. Address the parent, guardian, or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to attend the pretrial conference, the settlement conference or the dependency adjudication hearing, 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 dependency petition. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in a finding of dependency based upon the record and evidence presented. The court shall also inform the parent that substantially neglecting or willfully refusing to remedy the circumstances that cause the child to be in an out-of-home placement, including refusing to participate in reunification services, is grounds for termination of parental rights to a child. The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent, guardian or Indian custodian with a copy of Form 1, request that the parent, guardian or Indian custodian sign and return a copy of the Form, and note on the record that the Form was provided;

6. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act, including whether placement of the Indian child is in accordance with Section 1915 of the Act or whether there is good cause to deviate from the preferences; and

7. Order the parent or guardian to provide the court with the names, the type of relationship and all available information necessary to locate persons who are 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.

8. Make findings and enter any other orders as may be appropriate or required by law, including the preparation of a disposition report as required in Rule 56.

## **Rule 52. Initial Dependency Hearing**

**A. [No Change]**

**B. [No Change]**

**C. [No Change]**

**D. Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the initial hearing the court shall:

1. Enter findings as to notification and service upon the parties and the court's jurisdiction over the subject matter and persons before the court;

2. Order the petitioner to effectuate service by publication if the requirements of Rules 4.1(n) or 4.2(f), Ariz. R. Civ. P. are established, and it appears that the party cannot reasonably be located;

3. Order the petitioner to obtain verification of the child's Indian status from the child's Indian tribe or from the United States Department of Interior, Bureau of Indian Affairs, if there is reason to believe the child is an Indian child;

4. Order that paternity be established, through paternity testing or authorize the execution of affidavits of paternity, as to any alleged father;

5. Set a continued initial hearing as to any party who was not served and did not appear;

6. Affirm prior orders making the child a temporary ward of the court;

7. Set a settlement conference, a pretrial conference or order the parties to attend mediation;

8. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to attend the pretrial conference, the settlement conference or the dependency adjudication hearing, 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 dependency petition. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian and may result in a finding of dependency based upon the record and evidence presented. The party shall also be advised that failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child. The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent, guardian or Indian custodian with a copy of Form 1, request that the parent, guardian or Indian custodian sign and return a copy of the Form, and note on the record that the Form was provided;

9. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act, including whether placement of the Indian child is in accordance with Section 1915 of the Act or whether there is good cause to deviate from the preferences; and

10. Order the parent or guardian to provide the court with the names, the type of relationship and all available information necessary to locate persons who are 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.

11. Make findings and enter any other orders as may be appropriate or required by law, including the preparation of a disposition report as required in Rule 56.

**E. [No Change]**

### **Rule 56. Disposition Hearing**

**A. [No Change]**

**B. [No Change]**

**C. [No Change]**

**D. [No Change]**

**E. Findings and Orders.** All findings and orders shall be in the form of a signed order or contained in a minute entry. The court shall determine the appropriate case plan and shall:

1. Enter orders concerning appropriate services required to achieve the case plan;
2. Enter orders concerning the placement and custody of the child;
3. Set a review hearing within six (6) months and set the permanency planning hearing;
4. Order concurrent planning if appropriate;

5. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian or Indian custodian that failure to attend further proceedings without good cause shown and failure to participate in reunification services may result in the termination of parental rights or the establishment of a permanent guardianship of the child, based upon the record and evidence presented. The court shall advise the parent, guardian or Indian custodian that the hearings may go forward in the absence of the parent, guardian or Indian custodian. The court shall make specific findings that it advised the parent, guardian or Indian custodian of the consequences of failure to attend subsequent proceedings and participate in reunification services. The court may provide the parent, guardian or Indian custodian with a copy of Form 1, request that the parent, guardian or Indian custodian sign and return a copy of the Form, and note on the record that the Form was provided;

6. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the standards and burdens of proof as required by the Act, including whether placement of the Indian child is in accordance with Section 1915 of the Act or whether there is good cause to deviate from the preferences; and

7. Make any determinations required by Rule § 47.1 and make any other findings and enter any other orders as may be appropriate or required by law.

8. Advise the parties present at the hearing and identified in Rule 58(B)(1) of their right to participate in periodic review hearings.