

In the Matter of) Arizona Supreme Court
) No. R-24-0051
RULES 349 AND 354, RULES OF)
PROCEDURE OF THE JUVENILE COURT)
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) **FILED 12/03/2024**

On July 19, 2024, David K. Byers, Administrative Director of the Administrative Office of the Courts ("AOC"), filed a rule petition on AOC's behalf proposing the adoption, on an emergency basis, of a new Rule 354 of the Rules of Procedure for the Juvenile Court and to make a technical amendment to Rule 349 of those same rules. On July 22, 2024, the Court granted Petitioner's request for expedited consideration and opened the petition for public comment until October 1, 2024.

Following the August 2024 Rules Agenda, the Court entered an order on August 22, 2024, adopting the rule amendments, with modifications, on an emergency basis under Rule 28(h)(2) of the Rules of the Supreme Court of Arizona, effective September 14, 2024. The order also provided that during the December 2024 Rules Agenda, the Court would consider whether to adopt the amendments on a permanent basis.

Petitioner has also notified the Court that Rule 104(d)(5) of the Rules of Procedure for the Juvenile Court contains a technical error and an incorrect cross-reference to Rule 351 rather than Rule 353 of the same rules. Thus, Petitioner requests that the Court amend Rule 104(d)(5) to correct this error and incorrect cross-reference.

As the Court has not received any comments and as the Court remains convinced that the rule amendments are appropriate,

IT IS ORDERED that the amendments to Rule 349 and the title of Section 5 of Part III of the Rules of Procedure for the Juvenile Court, which the Court adopted on an emergency basis on August 22, 2024, are adopted permanently in accordance with the attachment to this order, effective January 1, 2025. The amendments shown in the attachment are the same as the amendments shown in the amendments in the attachment to the Court's August 22, 2024, order.

IT IS FURTHER ORDERED that proposed Rule 354 of the Rules of Procedure for the Juvenile Court is adopted permanently in accordance with the attachment to this order, effective January 1, 2025. The adopted rule shown in the attachment is the same as the rule shown in the attachment to the Court's August 22, 2024, order.

IT IS FURTHER ORDERED that Rule 104 of the Rules of Procedure for the Juvenile Court is amended in accordance with the attachment to this order, effective January 1, 2025.

DATED this 3rd day of December, 2024.

_____/s/_____
ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution
David K Byers

ATTACHMENT¹

RULES OF PROCEDURE FOR THE JUVENILE COURT

Part I. General Provisions

* * *

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

(a) – (c) [No change]

(d) Admissibility of Reports.

(1) – (4) [No change]

(5) *Social Study*. In a termination adjudication hearing, a social study prepared under Rule ~~354~~ 353, under A.R.S. § 8-536, or by court order is 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) admit the social study into evidence after redacting those portions to which objections were sustained and

(B) allow the petitioner a reasonable opportunity to call additional witnesses to testify regarding the redacted portions of the social study.

(6) – (11) [No change]

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Part III. Child Dependency and Guardianship, Termination of Parental Rights

* * *

4. Guardianship Proceedings

* * *

Rule 349. Revocation of a Permanent Guardianship

(a)–(b) [No change]

¹ Additions to the text of the rules are shown by underscoring, and deletions are shown by ~~strike-through~~.

(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)–(i) [No change]

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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, then DCS, the child, an Indian child's tribe, the child's attorney or GAL, 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 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) Generally. 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 before 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 if 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) *Noncompliance.* A petition that does not include all the information required by (b)(1) and (b)(2) must be dismissed. A petition that is not eligible to be filed as provided in 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 in 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 filed 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:

(A) 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;

(B) continue the preliminary review hearing to allow DCS to complete its responsibilities under (d)(3); or

(C) order the GAL to prepare a report to the court and provide a copy of the report to the parties, and continue the preliminary review hearing pending completion of those actions.

(3) Scheduling. 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 either:

(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; or

(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), it must order a date by which DCS must provide it with an evaluation of the trial in-home placement. The evaluation due date must be at least 3 months after but not more than 6 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; or

(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:

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

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

or

(iii) 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.