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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-25-

10 **PETITION TO AMEND RULES**
11 **47(a) AND 47.2(a) OF THE**
12 **ARIZONA RULES OF FAMILY**
13 **LAW PROCEDURE**

PETITION

14 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby petitions the Court to amend Rules 47(a) and
16 47.2(a) of the Arizona Rules of Family Law Procedure.

17 After study by the State Bar’s Family Practice and Procedure Committee, the
18 State Bar proposes the amendments set forth herein to provide a legal mechanism
19 for temporary orders to be issued in cases involving third party rights.

20 Rules 47 and 47.2 allow a party to seek pre-decree or post-decree temporary
21 orders, respectively, for legal decision-making, parenting time, and/or child support
22 by filing a separate verified motion. The Rule does *not* specify that a party who files
23 for third party placement or visitation may file temporary orders. Pursuant to A.R.S.
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1 § 25-409, a third party, under specific circumstances, may petition for placement,
2 decision-making authority, or visitation for a child. While the Courts often issue such
3 temporary orders in third party cases, there is no specific rule or explicit authority
4 permitting such orders to be entered, and they have been met with objections on this
5 basis.
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7 As an initial matter, the rule, as read and construed strictly, would allow a
8 third party to petition for temporary legal decision-making rights and child support,
9 but not for placement or visitation. Third parties do not have “parenting time” rights
10 and are not able to qualify, under a strict reading of the rule, to seek temporary
11 placement or visitation. Only a rare and unique case would allow a third party to
12 qualify for decision-making rights but not placement (or even visitation).
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15 In cases where third party placement rights for a child are sought, the petition
16 must establish, *inter alia*, that the petitioner stands *in loco parentis* to the child and
17 that “it would be significantly detrimental to the child to remain or be placed in the
18 care of either legal parent who wishes to keep or acquire legal decision-making.”
19 A.R.S. §25-409(A)(2). In these cases, there is no fit parent for the child. The lack
20 of authority for a person who is already *in loco parentis* to obtain immediate rights
21 to the child places the child at risk of DCS involvement and being placed in foster
22 case. The ability to obtain immediate temporary orders in appropriate third-party
23 cases avoids unnecessary state involvement and serves the child’s best interest by
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1 allowing a third party, with whom they already share a bond, to care for them and
2 meet their needs.

3 Importantly, the lack of an avenue to seek and obtain temporary orders would
4 likely moot the ability to *ever* obtain third party rights, thereby rendering the statute
5 to be without effect. If a party who petitions for third party placement cannot obtain
6 or seek to obtain temporary orders, then either the parent or DCS may cease contact
7 between the child and the third party. By the time of a trial, the petitioner may no
8 longer stand *in loco parentis* to the child because the circumstances have changed
9 that relationship.
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11 Similarly, where a third party seeks visitation rights, such rights will be
12 mooted by the lack of temporary orders. Pursuant to A.R.S. §25-409(C), “a person
13 other than a legal parent may petition the superior court for visitation with a child.”
14 In the absence of an ability to obtain temporary orders, a parent or parents who do
15 not wish for the third party to obtain visitation can simply withhold the child from
16 the third party, which may, in turn, damage that relationship. By the time of a trial,
17 it may be difficult to make an adequate showing that it is in the child’s best interest
18 for the third party, whom they have not seen or spoken to over a period of time, re-
19 establish a close relationship. The lack of a process to protect these rights and the
20 child’s best interest on a temporary basis essentially renders the statute meaningless.
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Appendix

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rule 47. Motions for Temporary Orders.

(a) Motions for Pre-Decree Temporary Orders. A party seeking temporary orders for legal decision-making, parenting time, placement, visitation, child support, or spousal maintenance, or concerning property, debt, or attorney fees, must file a separate verified motion that states the motion's legal and jurisdictional basis and the specific relief requested. The motion must be filed either after or concurrently with the initial petition. The motion must include the following information and documentation, if relevant:

(1) – (4) [No change.]

(b) – (k) [No change.]

Rule 47.1. Simplified Child Support Orders

(a) – (c) [No change.]

Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making, Parenting Time or Child Support Orders

(a) Generally. A party requesting temporary legal decision-making, parenting time, placement, visitation, or child support after entry of a decree must file a verified motion stating the legal and jurisdictional bases for the motion, and the specific relief requested. The motion must include a proposed parenting plan containing the legal decision-making and parenting time requested for both parties. If the motion requests child support, the party requesting child support must comply with Rule 91.1. The motion must incorporate by reference the relevant allegations of the pending post-decree petition and not separately repeat them.

(b) – (e) [No change.]