

Rosemarie Pena-Lynch
Bar No 023400
Mcpa. Cnty. Ofc. of Public Defense Svc.
620 W. Jackson, Suite 3076
Phoenix, AZ 85003
(602) 506-7228
Rosemarie.Pena-Lynch@maricopa.gov

Lina G. Garcia
Bar No. 025997
Mcpa. Cnty. Public Defenders Ofc.
620 W. Jackson, Suite 4015
Phoenix, AZ 85003
(602) 506-7711
Lina.Garcia@maricopa.gov

Steve Koestner
Bar No. 011566
Mcpa. Cnty. Ofc. of Legal Advocate
222 N. Central, Suite 154
Phoenix, AZ 85004
(602) 506-4111
Steve.Koestner@maricopa.gov

Shannon L. Burns
Bar No. 015976
Mcpa. Cnty. Ofc. of Public Advocate
106 E. Baseline Rd.
Mesa, AZ 85210
(602) 372-2815
Shannon.Burns@maricopa.gov

Michael C. Jones
Bar No. 031736
Mcpa. Cnty. Ofc. of Legal Defender
222 N. Central, Suite 8100
Phoenix, AZ 85004
(602) 506-8800
Michael.Jones@maricopa.gov

ARIZONA SUPREME COURT

In the Matter of:

Petition to Adopt R. Pro. Jv. Ct. 326.1

Supreme Court No. R-26-_____

Joint Petition by the Directors of the
Maricopa County Indigent Defense
Agencies

The Maricopa County indigent representation offices (IR) collectively handle most cases filed in Maricopa County in which there has been a finding of indigency. The Office of Public Defense Services (OPDS) provides administrative and financial oversight to the staffed offices and the Office of Contract Counsel (OCC). The staffed offices are

comprised of the Office of the Public Defender (OPD), the Office of the Legal Advocate (OLA), the Office of the Legal Defender (OLD), and the Office of the Public Advocate (OPA).

I. Background.

We propose amending Rules of Procedure for the Juvenile Court (R. Pro. Jv. Ct.) to adopt Rule 326.1 for Subpoenas. Currently, there is no rule that addresses subpoena power for dependency, severance and guardianship proceedings. Prior to July of 2022, parties to a Juvenile Court proceeding could refer to the Arizona Rules of Civil Procedure for guidance when the Juvenile rules were silent. “In some instances, it may be appropriate to resort to civil rules of procedure where juvenile rules are silent and where civil rules are readily adaptable and necessary to dependency proceedings.” *SS. v. Superior Court*, 178 Ariz. 423, 424, 874 P.2d 980, 981 (App. 1994). The new rules prohibit such ad hoc incorporation (R. Pro. Jv. Ct. 103), and there is no reference to Rule 45 of the Arizona Rules of Civil Procedure for subpoenas.

II. Discussion of Rule Changes.

Subpoenas are authorized by statute, and referenced in the Forms 1-4, regarding a parent’s rights in these proceedings. A.R.S. § 8-222. Clarity on process of the issuance of subpoenas, service, process for objection(s), and obligations on a subpoenaed party are needed to facilitate diligent litigation.

To wit, the current practice in dependency, severance, and guardianship proceedings relies heavily on subpoena duces tecum to establish whether a parent is engaged in services; however, there is no legal authorization for a subpoena duces tecum to be issued.

Furthermore, at this time, when providers object to subpoenas due to financial burden or deterioration of the client-provider relationship, there is no current legal mechanism to allow for objections or guide the court in review of those objections.

This proposed rule change simply codifies and authorizes the current necessary practice of subpoenas and provides necessary guidance for the full, fair administration of justice.

It is respectfully requested that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in the Appendix.

Respectfully submitted this xx day of December 2025.

By /s/ Rosemarie Pena-Lynch
Rosemarie Pena-Lynch, Director
Mcpa. Cnty. Ofc. of Public Defense Svc.

By /s/ Lina G. Garcia
Lina G. Garcia, Interim Director
Mcpa. Cnty. Public Defenders Ofc.

By /s/ Steve Koestner
Steve Koestner, Director
Mcpa. Cnty. Ofc. of Legal Advocate

By /s/ Shannon L. Burns
Shannon L. Burns, Director
Mcpa. Cnty. Ofc. of Public Advocate

By /s/ Michael C. Jones
Michael C. Jones, Director
Mcpa. Cnty. Ofc. of Legal Defender

APPENDIX

(new language is underlined)

Rules of Procedure for the Juvenile Court

Rule 326.1 Subpoenas

(a) Generally.

(1) Requirements--Generally. Every subpoena must:

(A) state the name of the Arizona court from which it issued;

(B) state the title of the action, the name of the court in which it is pending, and its case number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and testify at a hearing or trial; or

(ii) produce and permit inspection of designated documents in that person's possession, custody, or control;

(D) be substantially in the form set forth in Rule of Civil Procedure 84, Form 9.

(2) Issuance by Clerk. The clerk must issue a signed but otherwise blank subpoena to a party requesting it. That party must complete the subpoena before service.

(b) Subpoena for Hearing or Trial; Duties; Objections.

(1) Issuing Court. A subpoena commanding attendance at a hearing or trial must issue from the superior court in the county where the hearing or trial is to be held.

(2) A subpoena to produce documents must be set out in a separate subpoena.

(3) Trial or Hearing Subpoena. Subject to Rule 326.1(e)(2)(B), a subpoena commanding attendance at a trial may require the subpoenaed person to travel from anywhere within the state.

(4) Objections: Appearance Required. Objections to a subpoena commanding attendance at a hearing or trial, must be made by timely motion under Rule 326.1(e)(2). Unless excused from doing so by the party or attorney serving a

subpoena, by a court order, or by any other provision of this Rule 326.1, a person who is properly served with a subpoena must attend and testify at the date, time, and place specified in the subpoena.

(c) Subpoena to Produce Documents

(1) Issuing Court. A subpoena commanding a person to produce designated documents must issue from the superior court in the county where the production or inspection is to be made.

(2) Appearance Not Required. A person commanded to produce or permit inspection of documents need not appear in person at the place of production or inspection unless the subpoena also commands attendance at a hearing or trial.

(3) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or organize and label them to correspond with the categories in the demand.

(4) Claiming Privilege or Protection.

(A) If information produced in response to a subpoena is subject to a claim of privilege or of protection as work-product material, the person making the claim and the receiving parties must timely file an objection pursuant to Rule 326.1(c)(5).

(B) There is no obligation to create a privilege log unless the superior court has authorized use of Rule(s) 26(b)(6)(A) or 26(b)(6)(B) of the Rules of Civil Procedure pursuant to Rule 315(e).

(5) Objection Procedures; Duty to Confer.

(A) Form and Time for Objection.

(i) A person commanded to produce or permit inspection of documents may serve a written objection to producing or permitting inspection of any or all of the materials. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(B) Procedure After Objecting.

(i) A person objecting to a subpoena to produce or permit inspection of documents need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court. The objecting person also may move for a protective order or to modify or quash the subpoena.

(ii) The party serving the subpoena may move under Rule 37(a) of the Civil Rules of Procedure to compel compliance with the subpoena. The motion must comply with Rule 37(a)(1) of the Civil Rules of Procedure, and must be served on the subpoenaed person and all other parties under Rule 106.

(iii) Any order to compel entered by the court must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(C) Duty to Confer. Before bringing any motion to compel, motion to quash, or motion for protective order regarding compliance with a subpoena, the movant must attempt to resolve the dispute by good faith consultation with the opposing party or person.

(d) Service

(1) General Requirements. A subpoena may be served by any person who is not a party and is at least 18 years old.

(A) Named, individual person. Service is complete after delivering a copy of the subpoena to the named person, or that person's attorney, if they are represented by an attorney in these proceedings.

(B) Corporate Entity. Service is complete after delivering a copy of the subpoena to corporate entity's agent or email or fax number if so designated by the corporate entity.

(2) Notice to, and Service on Other Parties. A copy of every subpoena and any proof of service must be served on every other party in accordance with Rule 106.

(3) Service Within the State. A subpoena may be served anywhere within the state.

(4) Proof of Service. Proof of service should be filed except in accordance with Rule 106.

(e) Motion to Quash or Modify

(1) Avoiding Undue Burden or Expense; Sanctions.

(A) Generally. A party or an attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. Absent good cause, a subpoena may not seek production of materials that have already been produced in the action or that are available from parties to the action.

(B) Subpoena to Produce or Permit Inspection of Documents. Unless otherwise ordered by the court for good cause, the party seeking discovery must pay the reasonable expenses incurred by the subpoenaed person in responding to a subpoena seeking the production of documents, electronically stored information, tangible things, or an inspection of premises. A subpoenaed person seeking payment of expenses other than routine clerical and per-page copying costs as allowed by statute must object on the grounds that the expenses will cause an undue burden without payment by the subpoenaing party, and must provide an advance estimate of those expenses. The procedures in Rule 326.1(c)(5) govern any such objection. On any dispute, the court may quash or modify the subpoena or may, in the alternative, specify conditions that include the payment of such additional expenses by the subpoenaing party and the payment of expenses in advance.

(2) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court in the county where the case is pending or from which a subpoena was issued must quash or modify a subpoena if it:

(i) fails to allow a reasonable time to comply;

(ii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iii) subjects a person to undue burden or expense.

(B) When Permitted. On timely motion, the superior court in the county where the case is pending or from which a subpoena was issued may quash or modify a subpoena if:

(i) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(ii) justice so requires.

(C) Virtual Appearances. In the circumstances described in Rule 326.1(e)(2)(B), the court may permit virtual attendance at the hearing or trial pursuant to Rule 110.

(D) Time for Motion. A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) Service of Motion. Any motion to quash or modify a subpoena must be served on the party or the attorney serving the subpoena. The party or attorney who served the subpoena must serve a copy of any such motion on all other parties.

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(g) Rule 315(e) Discovery Methods. When a superior court has authorized methods of discovery through Rules of Civil Procedure 26 through 37, Rule 45 of the Rules of Civil Procedure shall govern subpoenas.