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ARIZONA SUPREME COURT

	)	
PROPOSED AMENDMENTS TO	)	R-25-0051
	)	R-25-0054
THE RULES OF PROCEDURE	)	R-25-0055
FOR THE JUVENILE COURT	)	R-25-0056
_____	)	R-25-0057

I. INTRODUCTION

Commenter, Ashley J Florian, submits this "**History and Tradition**" **Standard:** The United States Supreme Court has clarified in *NYSRPA v. Bruen* and *Dobbs v. Jackson* that "ordered liberty" is defined by those rights "deeply rooted in this Nation's history and tradition." The right of a parent to the care and custody of their child is perhaps the oldest liberty interest recognized by this Court (*Troxel v. Granville*).

Current Arizona rules that allow for "deemed admissions" (Rule 326) or "secret placements" (Rule 324) are modern administrative inventions. They find no

support in the common law or the traditional American legal framework, which required the State to prove its case through an adversarial process before a family could be dismantled. These amendments restore the **Presumption of Parental Fitness**.

Rule 323. Simultaneous Dependency and Legal
Decision-Making/Parenting Time Proceedings

~~(a) **Transfer to Juvenile Division.** If pending family law and dependency proceedings concern the same parties, the judge presiding over the juvenile case makes decisions concerning the children.~~

Amend (a): The Family Court of general jurisdiction shall maintain primary jurisdiction. Any dependency intervention must meet a strict "clear and convincing" evidentiary standard before the family court's jurisdiction is disturbed.

(b) Referral to Family Division. If the juvenile division determines that a change of legal decision-making or parenting time is appropriate, ~~it may decide those issues or~~ refer the matter to the family division for further proceedings.

~~(c) **Support Orders.** During any dependency or guardianship proceeding in the juvenile division, the juvenile division may establish, suspend, modify, or terminate a child support order. Except in Title IV-D cases, the juvenile division also may make appropriate~~

~~orders regarding any past due support or child support arrears and may direct that an income withholding order be quashed or modified. Any order regarding child support must be filed in both the family division and the juvenile division.~~

The Issue: Historically, the "History and Tradition" of the U.S. prioritized the family unit over state administrative divisions. Transferring jurisdiction to "Juvenile" (a specialized court) often bypasses the standard protections of general "Family" law.

Strike (c): ~~The juvenile division may establish, suspend, modify, or terminate a child support order.~~ (This separates money from the child's welfare, often used as a punitive tool against the family).

Rule 324. Providing Notice of a Change in a Child's Placement

(b) Notice to the Parent's/ or Attorney. DCS must notify the parent's attorney of any change in the child's placement and the type of placement. ~~The notice must not include the child's new placement address or contact information. If the parent's attorney receives the new placement address or contact information, the attorney must keep the information confidential, not disseminate the information to the parent or any other person, and promptly notify counsel for DCS of the erroneous receipt.~~

Amend (b): DCS must provide the parent and their attorney the child's new placement address immediately, unless a specific, individualized finding of "imminent physical danger" is proven to a judge in an adversarial hearing.

(c) Time and Manner of Notice. DCS must provide notice as soon as practicable before the child is relocated. If DCS is not able to provide advance notice of the child's relocation because relocation was necessary to protect the child, it must do so as soon thereafter as possible and no later than 24 hours after the change of placement, excluding weekends and holidays. DCS may provide the notice orally or electronically, including by email.

[Proposed Addition]: In any instance where notice is provided after the fact, the state must file a concurrent affidavit demonstrating that the delay and the relocation itself are consistent with the History and Tradition of the United States regarding parental rights and due process.

The Issue: History and Tradition protect the parent's right to know the location and status of their child. Withholding the child's address from a parent who hasn't been proven unfit violates the fundamental right to "direction and upbringing."

Rule 325. Mandatory Judicial Determinations

~~(a) **Priority.** The court's first priority after a child is removed from the child's home is protecting the child from abuse or neglect.~~

Amend (a): The court's first priority is the preservation of the family unit. Removal is a remedy of last resort, permissible only upon a finding of immediate "physical peril" that cannot be mitigated by services in the home.

(c) The Court's First Order.

(1) In the court's first order that authorizes the removal of a child from the home in a dependency proceeding, ~~which may be a temporary order that is entered on the filing of a dependency petition,~~ the court must determine in writing whether having the child continue to reside in the home would be contrary to the welfare of the child. The court must include a factual basis for its determination.

The Issue: Modern rules often treat "removal first" as the priority. Historically, the state could not interfere unless there was "actual harm" or "abandonment."

(Ex-parte removals without a hearing are contrary to the historical tradition of "notice and opportunity to be heard.")

Rule 326. Required Admonitions and Findings

(b) Admonition.

(1) At a preliminary protective hearing, or at an initial dependency, pretrial conference, initial guardianship, or initial termination hearing, ~~the court must advise the parent who is present that the parent will be deemed to have admitted the allegations in the petition or motion if the parent fails to attend any of the following court hearings without good cause:~~

Amend (b)(1): If a parent fails to appear, the state remains burdened by the requirement to prove all allegations by clear and convincing evidence. A parent's absence shall not be construed as an admission of unfitness.

(c) Failure to Participate in Reunification Services. At every hearing, the court must advise a parent whose rights have not been terminated that substantially neglecting or willfully refusing to remedy the circumstances that caused the parent's child to be in an out-of-home placement, including ~~refusing to participate in reunification services, may be grounds for terminating parental rights.~~

The Issue: The concept of "implied consent" or "deemed admissions" for failing to show up to a meeting is a modern administrative invention. Common law and traditional due process require the state to prove its case regardless of the parent's presence.

(The state cannot force "services" as a condition of a fundamental right unless the parent is first proven unfit).

Rule 227. Post Transfer

(a) Court Actions. Once the judicial officer finds that the juvenile should be transferred to the criminal division of the superior court, the juvenile court must:

No juvenile shall be held to answer in the criminal division without a specific finding by a jury that the juvenile possessed the capacity and intent of an adult at the time of the offense.

Propose:only after a jury has determined the juvenile's mental capacity to be tried as an adult. A juvenile retains the right to a grand jury and preliminary hearing in all felony matters, consistent with the history and tradition of due process.

~~(1) *Hold to Answer.* Designate the counts of the criminal complaint on which the juvenile will be held to answer in the criminal division and order that no preliminary hearing or grand jury occur.~~

~~(2) *Amendments.* Order that the complaint must not be amended to add additional or different charges unless the juvenile consents. The~~

complaint may be amended to correct mistakes of fact in the complaint or to remedy technical defects.

(F) determine, if the juvenile is not released, the facility that will have custody of the juvenile pursuant to A.R.S. § 8-305(C) and (D) ~~and remand the juvenile to the custody of an appropriate officer. The court's will determination and detention of the juvenile~~ must comply with Rule 7.7 of the Rules of Criminal Procedure.

Amend (f): Juveniles awaiting trial must be remanded to the custody of their parents under the least restrictive conditions possible, preserving the presumption of innocence

The Issue: Historically, children were treated with "Infancy Protections" under common law. Transferring a child to adult court without a jury's finding of "capacity" is a departure from tradition.

/s/ Ashley J Florian

February 6th, 2026