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ARIZONA SUPREME COURT

In the Matter of PETITION TO
AMEND RULE 324, RULES OF
PROCEDURE FOR THE JUVENILE
COURT

R-25-0056

COMMENT ON PETITION

The Arizona Attorney General’s Office offers its comment under [Rule 28\(e\)](#), Arizona Rules of the Supreme Court, to the proposed amendments to Rule 324, Arizona Rules of Procedure for the Juvenile Court. The Office opposes the adoption of a portion of the “Emergency removal” section of the proposed amendments as written for the reasons set forth below.

I. Introduction.

The directors of various Maricopa County indigent defense agencies ask this Court to amend Juvenile Rule 324, which currently imposes notice requirements on the Department of Child Safety when changing a child's placement. Petitioners propose amending the rule to "address the process for requesting the move of a child from one placement to another and the need for court oversight." (Petition at 2.) Petitioners further state their underlying opinion that "whenever a child is placed in the 'physical custody of the DCS' (foster home), DCS has total discretion to disrupt these placements as often as they want with impunity and without oversight." (*Id.*)

But the Department is required to consider a variety of factors when making placement decisions for children. For example, DCS is statutorily obligated to seek placement with relatives and kin. *See* A.R.S. §§ 8-514(B), -529(A)(3). The Department is also obligated to make efforts to place siblings together. *See* A.R.S. §§ 8-529(A)(4), -824(G). Oftentimes, placements are not immediately available upon removal but become available later in the case. Balancing the needs of the children in its custody, along with the statutorily imposed obligations, can sometimes lead to changes in placement. The Department does not "disrupt these placements" with "impunity." It must weigh all the competing factors in making a placement and act in accordance with the law. That is what it does in every case.

Petitioners here rely on inflammatory statements to support their proposed amendments without acknowledging the complex challenges DCS faces when making placement determinations.

Those issues aside, the proposed amended rule appears to reflect the current change of physical custody motion practice, but one portion of the proposed amended rule requires comment and should not be adopted as written.

II. Emergency Removal.

The first paragraph of the “emergency removal” portion of the proposed rule reads as follows:

- (1) *Emergency removal.* In the event exigent circumstances, pursuant to A.R.S. § 8-821(E), DCS is permitted to immediately take temporary custody of the child and place the child prior to the motion and order. However, DCS must provide notice while it awaits ruling on the motion for change of physical placement.

(Petition at 5.)

First, the proposed paragraph appears to be missing a word in the first sentence. This Comment assumes the drafters meant to say, “In the event exigent circumstances *exist*, pursuant to A.R.S. § 8-821(E), DCS is permitted to immediately take temporary custody of the child and place the child prior to the motion and order.”

Second, the proposed amendment’s reliance on A.R.S. § 8-821 in the context of placement decisions is misplaced. Section 8-821 encompasses DCS’s actions

before filing a dependency petition, when DCS is not the child’s court-ordered legal custodian. This section provides methods by which DCS obtains custody of a child who is not already in DCS’s custody. Once DCS becomes the child’s legal custodian as defined by A.R.S. § 8-201(9), which generally occurs after the court signs temporary orders on the filing of a dependency petition, DCS is no longer subject to A.R.S. § 8-821. *See Alexander M. v. Abrams*, 235 Ariz. 104, 106, ¶ 11 (2014) (recognizing that under Title 8’s statutory scheme, the Department “is the Children’s custodian”). The rights and responsibilities of a legal custodian are outlined under A.R.S. § 8-531(5). Those include the right to have physical possession of the child. *See* A.R.S. § 8-531(5)(a). Given that amended Rule 324 would apply after the court issues temporary orders, DCS would be the legal custodian, with the rights and responsibilities listed in A.R.S. § 8-531(5), and would not be subject to § 8-821.

Moreover, the amended rule should not use the term “exigent circumstances.” The amended rule should use the term used in the current version of Rule 324(c), “necessary to protect the child.” Therefore, amended Rule 324(a)(1) would read as follows:

- (1) **Emergency removal.** In the event ~~exigent circumstances, pursuant to A.R.S. § 8-821(E), it is necessary to protect the child, DCS is permitted to immediately take temporary custody of the child and~~ *may* place the child prior to the motion and order. However, DCS must provide notice while it awaits ruling on the motion for change of physical placement.

III. Conclusion.

The amended rule as drafted is problematic for its reference to A.R.S. § 8-821 and the fact that it does not appear to recognize that DCS is the legal custodian at the time of any change of placement. Therefore, the proposed amendment to Rule 324 should be altered as outlined herein or denied in its entirety.

Respectfully submitted this 27th day of April, 2026.

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/s/ Carey S. Turner

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