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Office of the Arizona Attorney General

ARIZONA SUPREME COURT

In the Matter of PETITION TO ADOPT
RULE 323.1, RULES OF
PROCEDURE FOR THE JUVENILE
COURT

R-25-0051

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 new Rule 323.1, Arizona Rules of Procedure for the Juvenile Court. The Office opposes the rule as written for the reasons set forth below.

I. Introduction.

The directors of various Maricopa County indigent defense agencies ask this Court to adopt a new Juvenile Rule addressing orders to show cause. (Petition at

2.) Petitioners note that no Juvenile Rule addresses such matters and that reference to the Civil Rules for guidance is inappropriate. (*Id.*) (citing [Ariz. R.P. Juv. Ct. 103](#) and [Ariz. R. Civ. P. 7.3](#) [addressing orders to show cause]). Petitioners therefore propose a new Juvenile Rule to “[f]ormaliz[e] the process,” “provide[] guidance to the courts and parties,” and “create[] parity in expectations and implementation of the [s]uperior [c]ourt’s contempt power.” (*Id.*)

But the proposed rule departs significantly from the Civil Rule on which it was modeled. Although Petitioners claim that the proposed rule will expedite proceedings “by not requiring written responses and allowing the proceedings to utilize avowals when appropriate” (*id.*), they otherwise do not provide the reasons for departing from the Civil Rule (*see id.* at 2-3). The rule also eliminates due process protections for alleged contemnors and otherwise does not expedite the proceedings. Accordingly, the Office does not support adopting the rule as written.

II. Contempt Powers in General.

The Legislature granted the superior court authority to “proceed[] against” a person for criminal contempt if that person “wilfully disobeys a lawful writ, process, order or judgment” and “the act or thing done also constitutes a criminal offense.” [A.R.S. § 12-861](#). Similarly, the superior court may punish “[c]ontempts committed in the presence of the court or so near thereto as to obstruct the administration of justice,” contempts “committed by failure to obey a lawful writ,

process, order, judgment of the court, and all other contempts not specifically embraced within [Article 4] in conformity to the practice and usage of common law.” [A.R.S. § 12-864](#). This Court has recognized that “the power to punish for contempt is inherent in the courts.” *Phoenix Newspapers, Inc. v. Superior Court*, [101 Ariz. 257](#), 258 (1966). The court of appeals noted that “[w]here the welfare of minor children is involved it is imperative that the courts have [the contempt] power regardless of any action of the parties.” *Herzog v. Reinhardt*, [2 Ariz. App. 103](#), 105 (1965).

The Rules of Civil Procedure provide that a court may issue a show-cause order upon “application supported by affidavit showing sufficient cause,” after which the court must designate a date for a response and may set a hearing. [Ariz. R. Civ. P. 7.3\(a\)](#). An order to show cause must be served according to Civil Rules 4, 4.1, 4.2, or 5, depending on the circumstances. [Ariz. R. Civ. P. 7.3\(b\)](#). Under the Criminal Rules, the court also may hold a person in contempt in a summary manner “if the person commits a criminal contempt in the court’s presence.” [Ariz. R. Crim. P. 32.5\(a\)](#). For contempts committed outside of the court’s presence, the individual is entitled to additional due process considerations, including an elevated burden of proof, a hearing (including by a jury, if requested), and time to prepare a defense. See [Ariz. R. Crim. P. 35.3, 35.4](#); *State v. Cohen*, [15 Ariz. App. 436](#), 439 (1971). Direct and constructive contempts, on the other hand, “are

handled under the common law in a summary manner.” *Cohen*, 15 Ariz. App. at 439. “[I]t is generally the rule that criminal contempts are acts which obstruct the administration of justice or tend to bring the court into disrepute, as distinguished from civil contempt which consists of failing to do something which the contemnor is ordered by the court to do for the benefit or advantage of another party to the proceeding.” *Id.* at 440 (citing *Ong Hing v. Thurston*, 101 Ariz. 92 (1966)). Thus, the procedures for addressing criminal and civil contempts differ, both under statute and common law.

III. The Juvenile Court’s Contempt Authority.

Under [A.R.S. § 8-247](#), “[t]he juvenile court may punish a person for contempt of court for wilfully violating, neglecting or refusing to obey or perform any lawful order of the juvenile court or for obstructing or interfering with the proceedings of the juvenile court or the enforcement of its orders subject to the laws relating to the procedures therefor and the limitations thereon.” The Legislature has further clarified that the juvenile court may “invoke its contempt powers pursuant to § 8-247 to enforce any treatment, counseling, education or other restraining or protective order that applies to” parties to a juvenile court proceeding, legal custodians or agencies that are ordered to provide services, or family members or any party named in a dispositional order.

Specific to dependency matters, if a hearing is open to the public, the juvenile court must “[a]dmonish all attendees” that they may not disclose any identifying information relating to the child, the child’s family or caregivers, or anyone else whose identity is disclosed during the proceedings. [A.R.S. § 8-525\(D\)\(1\)](#). Further, the court must explain what “contempt of court” means and the possible consequences of violating a court order and may find a person in contempt of court if the person elects to remain present after the admonition and then violates the court’s order. [A.R.S. § 8-525\(D\)\(2\), \(E\)](#).

In a delinquency matter, when an allegedly delinquent or incorrigible child’s parent, legal guardian, or custodian fails to appear and the court does not find good cause for the failure to appear or waive that appearance, “the court shall issue an order to show cause to the parent, legal guardian or custodian as to why that person shall not be held in contempt of court.” [A.R.S. § 8-308\(B\)](#); *see also* [A.R.S. § 8-323\(D\), \(E\)](#) (authorizing a juvenile hearing officer to similarly issue an order to show cause against a parent, guardian, or custodian who fails to appear without good cause at a hearing held before the hearing officer).

Arizona’s courts have recognized that in addition to the contempt power conferred by [A.R.S. § 8-247](#), the juvenile court has “inherent” contempt powers just like any other division of the superior court, such that the provisions of A.R.S.

§§ 12-861 and 12-864 and Criminal Rule 35 also apply to juvenile court matters.

Matter of Juv. Action No. JT-295003, 126 Ariz. 409, 411-12 (App. 1980).

IV. The Proposed Rule Differs Significantly from Civil Rule 7.3, Eliminates Due Process Protections, and Otherwise Does Not Expedite the Process for Contempt in Juvenile Court Proceedings.

To begin, the proposed rule does not address what must be included in an application for a show-cause hearing. The fact that a hearing “may proceed by avowal or with testimony and exhibits” (Petition at 4) suggests that nothing is required in the application beyond a suggestion that a party is in contempt. In contrast, Civil Rule 7.3 requires that the application be “supported by affidavit showing sufficient cause.” Ariz. R. Civ. P. 7.3(a). Notably, the proposed rule also refers only to contempt proceedings against “a party,” whereas Civil Rule 7.3, as well as statutory and common-law authority, provide for contempt proceedings against nonparties as well. *See id.* (providing that the court may issue an order requiring “a person” to show cause why the party applying for the order should not have the relief requested). Petitioners fail to provide an explanation for either variation from Civil Rule 7.3. (*See* Petition.)

What is more, the proposed rule eliminates important due process protections. A person or entity accused of indirect contempt has a due process right to notice of the basis for the allegation and an opportunity to be heard. *See Ong Hing*, 101 Ariz. at 99 (“[A]n indirect contempt requires that the alleged

contemnor be given advance notice of the charge, an opportunity to be heard, and present testimony in his own behalf. The party is entitled to his day in court.”). At a minimum, the proposed rule should require the party applying for a contempt finding to make some sort of showing that a show-cause hearing is warranted, as Civil Rule 7.3 does. *See* [Ariz. R. Civ. P. 7.3\(a\)](#) (requiring an application for an order to show cause to be “supported by affidavit showing sufficient cause”).

The proposed rule also eliminates the requirement that the court provide the alleged contemnor with an opportunity to respond and provides that the hearing, which must be set “as soon as necessary,” may proceed solely by avowal. (*See* Petition at 4.) The proposed rule thus deprives an alleged contemnor of notice, a reasonable opportunity to be heard on the contempt allegations, and the time to prepare a defense to them.

Further, aside from the elimination of these due process protections, nothing in the proposed rule actually expedites the proceedings. Indeed, the proposed rule still requires service of the show-cause order “in accordance with [Rule 106](#).” (*See* Petition at 4.) Moreover, the proposed rule does not explicitly exempt applications for an order to show cause from Juvenile [Rule 316](#)’s provisions requiring motions to be in writing and providing for a five-day window for any ordered response. And the proposed rule does not mention anything about the timing of the issuance of any resulting contempt order or otherwise address Petitioner’s stated concern

that some placement opportunities might be available only for a short time and might be gone before the placement can be made.

And finally, the proposed rule is placed among the rules governing dependency, guardianship, and termination actions even though contempt proceedings also arise from delinquency, adoption, or emancipation proceedings, which are also governed by the Juvenile Rules.

V. Conclusion.

The Office recognizes that no current Juvenile Rule sets forth procedures for contempt proceedings arising out of juvenile court matters. But the proposed rule differs significantly from the corresponding Civil Rule without explanation, lacks adequate due process protections for alleged contemnors, does not otherwise expedite the proceedings, and is placed among the rules governing dependency, guardianship, and termination actions when contempt proceedings also arise from delinquency, adoption, and emancipation proceedings. Accordingly, the Office does not support adopting the proposed rule.

Respectfully submitted this 27th day of April, 2026.

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