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

8 In the Matter of:)
9)
10 PETITION TO AMEND RULES OF) Supreme Court No. R- _____
11 PROCEDURE FOR THE JUVENILE COURT)
12 RULE 48, RULE 52, RULE 54, RULE 64,)
13 RULE 65, RULE 66, RULE 66.1 AND FORMS,) PETITION FOR AMENDMENT
14 REMOVAL OF PROCEDURES FOR AND) PURSUANT TO RULE 28, RULES
15 REFERENCES TO JURY TRIALS) OF THE SUPREME COURT
16) **(EMERGENCY OR EXPEDITED**
17) **ADOPTION REQUESTED)**
18 _____)

19 Pursuant to Rule 28, Rules of the Supreme Court, Petitioner asks the Court to consider
20 the following amendment to the Rules of Procedure for the Juvenile Court. The proposed
21 amendments are attached. Petitioner respectfully requests emergency or expedited adoption
22 pursuant to Rule 28(G) so that changes can be made effective from and after December 31,
23 2006.

24 **I. INTRODUCTION**

25 On October 14, 2003, the Governor convened the Second Special Session of the Forty-
Sixth Legislature to amend the definition and mission of Child Protective Services to focus on
its primary purposes of protecting children by investigating allegations of abuse and neglect,
promoting the well-being of a child in permanent home coordinating services to strengthen the
family and prevent abuse or neglect. House Bill 2024 was passed which incorporated statutes
that directly affect the adjudication of dependency cases by the juvenile court. An in-home
intervention hearing option was created in order to maintain children in their homes safely,
while the parents participate in services with judicial oversight to provide incentive for parental
compliance. The statute gave parents the right, upon request, to have their dependency hearings

1 open to the public. In addition, parents were provided the right to request a jury trial for a
2 termination of parental rights adjudication hearing by enactment of A.R.S. § 8-223. House Bill
3 2024 also provided for delayed repeal of this provision from and after December 31, 2006.

4 House Bill 2559 was introduced during the Forty-Seventh Legislature – Second Regular
5 Session. Along with several provisions, the Bill would have continued the jury trial option for
6 termination of parental rights. The Bill passed both the House and Senate, with modifications,
7 but was vetoed by the Governor on June 28, 2006. The Rules of the Juvenile Court must now be
8 amended, consistent with the repeal of A.R.S. § 8-223 and related statutory changes.

9 Respectfully submitted this ____ day of _____, 2006.

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13 _____
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1 **Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process.**

2 A. Petition. A dependency petition invokes the authority of the court to act on behalf of a child
3 who is alleged to be a dependent child. A petition on behalf of a dependent child shall be
4 generally in the form and contain the information required by law. The action shall be captioned,
5 "In the Matter of _____ a person under the age of 18 years," may be based upon
6 information and belief and shall state whether the child is an Indian child as defined by the
Indian Child Welfare Act. The petitioner shall indicate a request for in-home intervention by
including the words "In-home intervention requested" in parentheses below the words
"Dependency Petition."

7 B. Temporary orders and findings. When the interests of the child require immediate action,
8 upon the filing of a petition under oath, the court may enter an order making the child a
9 temporary ward of the court pending the hearing, which shall be scheduled at that time. Upon
10 the filing of a petition, the court may issue temporary orders necessary to provide for the safety
and welfare of the child, shall make determinations required by Rule 47.1 and shall make
findings as required by law.

11 C. Notice of hearing [S]. In addition to information required by law, the notice of hearing shall
12 advise the parent, guardian or Indian custodian that failure to appear, without good cause shown,
13 may result in a finding that the parent, guardian or Indian custodian has waived legal rights and
14 is deemed to have admitted the allegations in the petition. The notice shall state that the hearings
15 may go forward in the absence of the parent, guardian or Indian custodian and may result in an
16 adjudication of dependency, ~~the waiver of a right to trial to a jury and the termination of parental~~
17 rights or the establishment of a permanent guardianship based upon the record and evidence
18 presented. The notice of hearing shall also advise of the right to make a request, or motion prior
19 to any hearing that the hearing be open to the public.

20 D. Service of petition. The petitioner shall serve a copy of the petition, notice of hearing and
21 temporary orders upon those persons as required by law. The petitioner shall provide any parent,
22 guardian or Indian custodian appearing at the preliminary protective hearing with a copy of the
23 petition, notice of hearing and temporary orders which shall constitute service, as provided by
24 law. Otherwise, the petition, notice of hearing and temporary orders shall be served in the
25 manner provided for in Rules 4.1 or 4.2, Arizona Rules of Civil Procedure. Except for service of
process that occurs at the preliminary protective hearing or the execution of an acceptance of
service and waiver, service of process shall be completed no less than five (5) days prior to the
court hearing. In dependency proceedings:

1. References to service of summons are inapplicable since no summons is issued;
2. Reference to plaintiff shall mean the petitioner;
3. Reference to defendant shall mean the respondent or respondents;

1 4. No responsive pleading to the petition is required. A party served shall appear and answer at
2 the time and place indicated on the notice of hearing and temporary orders served with the
petition;

3 5. Service of process within Arizona by mail shall be as follows: When the address of a person
4 who resides outside the county is known, the person may be served by depositing a copy of the
5 petition, notice of hearing and temporary order in the post office, postage prepaid, to be sent to
6 the person to be served by any form of mail requiring a signed and returned receipt. Service by
mail pursuant to this section and the return may be made by the party procuring service or by
7 that party's attorney. Upon receipt through the post office of the signed receipt, the serving party
shall file an affidavit with the court stating:

8 a. The circumstances warranting the utilization of service by mail;

9 b. That copies of the petition, notice of hearing and temporary orders were dispatched to the
person being served;

10 c. That the copies were in fact received by the person to be served as evidenced by the receipt, a
11 copy of which shall be attached to the affidavit; and

12 d. The date of receipt by the party being served and the date the receipt was received by the
sender.

13 The affidavit shall be prima facie evidence of personal service of the petition, notice of hearing
14 and temporary orders, and service shall be deemed complete from the date of receipt by the
15 party being served, provided that such completion is no less than five (5) days prior to the
16 hearing and that the affidavit required by this section has been filed prior to or at the time of
hearing.

17 6. Otherwise, service of process within Arizona shall be pursuant to Rule 4.1, Ariz. R. Civ. P.,
18 paragraphs (d) Service of Summons Upon Individuals, (g) Service of Summons Upon
19 Incompetent Person, (m) Alternative or Substituted Service or (n) Service by Publication and
Return;

20 7. Service upon conservator for a minor. If a conservator has been appointed for the child, the
conservator shall be served pursuant to Rule 4.1, Ariz. R. Civ. P.;

21 8. Service of process outside the state shall be pursuant to Rule 4.2, Arizona Rules of Civil
22 Procedure paragraphs (a) Extraterritorial Jurisdiction and Personal Service Out of State, (b)
23 Direct Service, (c) Service by Mail and Return, (f) Service by Publication and Return, (i)
24 Service Upon Individuals in a Foreign Country or (j) Service Upon Minors and Incompetent
Persons in a Foreign country; and

25 9. If the petition alleges or the court has reason to believe the child at issue is an Indian child as
defined by the Indian Child Welfare Act, in addition to service of process as required by these
rules, notification shall be given to the parent, Indian custodian and child's tribe. Notice shall be

1 provided by registered mail with return receipt requested. If the identity or location of the parent
2 or Indian custodian cannot be determined, notice shall be given to the Secretary of the Interior
3 by registered mail and the Secretary of the Interior shall have fifteen (15) days after receipt to
4 provide the requisite notice to the parent or Indian custodian and the tribe. The notice shall
5 advise the parent or Indian custodian and the tribe of their right to intervene. No hearing shall be
6 held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the
7 tribe or the Secretary. The court shall grant up to twenty (20) additional days to prepare for the
8 hearing if a request is made by the parent or Indian custodian or the tribe.

9 10. The parent, Indian custodian or the child's tribe may waive the ten (10) day notice
10 requirement, pursuant to the Indian Child Welfare Act, for purposes of proceeding with the
11 preliminary protective hearing within the time limit as provided by state law.

12 E. Amended petitions. A petition may be amended by the petitioner upon order of the court not
13 less than thirty (30) days prior to trial unless good cause is shown. A motion to amend shall
14 accompany the amended petition and the amended petition shall be served pursuant to paragraph
15 (D) of this rule. Petitions amended to add allegations against a parent not set forth in the original
16 petition shall be served pursuant to Rule 5(c) Ariz. R. Civ. P.

17 **Rule 52. Initial dependency hearing.**

18 A. Purpose. At the initial dependency hearing, the court shall determine whether service has
19 been completed and whether the parent, guardian or Indian custodian admits, denies or does not
20 contest the allegations contained in the dependency petition.

21 B. Time limits. The initial hearing shall be held at the time of the preliminary protective hearing
22 if the parent, guardian or Indian custodian appears or within twenty-one (21) days of the filing
23 of the petition. If service by publication is required, the initial hearing shall be held no sooner
24 than ten (10) days following the completion of service.

25 C. Procedure. At the initial hearing the court shall:

1. Inquire if any party has reason to believe that the child at issue is subject to the Indian Child
Welfare Act;

2. Appoint counsel pursuant to Rule 38(B);

3. Determine whether service of process has been completed pursuant to Rule 48 or waived as to
each party;

4. Advise the parent, guardian or Indian custodian of their rights as follows:

a. The right to counsel, including court appointed counsel if the parent, guardian or Indian
custodian is indigent;

1 b. The right to cross examine all witnesses who are called to testify against the parent, guardian
or Indian custodian;

2 c. The right to trial by the court on the allegations in the dependency petition;

3 d. The right to use the process of the court to compel the attendance of witnesses; and

4 ~~e. The right to request trial to a jury in a proceeding to terminate parental rights; and~~

5 ~~f. e.~~ The right to request prior to the hearing that any hearing be open to the public.

6 5. Determine whether paternity has been established as to any father and take testimony from
7 the mother concerning the identity and location of any potential father; and

8 6. Inquire of the parent, guardian or Indian custodian whether they wish to admit, deny or not
9 contest the allegations contained in the dependency petition.

10 a. Admission/No contest. If the parent, guardian or Indian custodian admits or does not contest
11 the allegations in the petition, the court shall proceed with the dependency adjudication hearing
pursuant to Rule 55 and set or conduct a disposition hearing pursuant to Rule 56.

12 b. Denial. If the parent, guardian or Indian custodian denies the allegations contained in the
13 petition, the court shall set a settlement conference, pretrial conference or mediation and
continue the child as a temporary ward of the court pending adjudication.

14 c. Failure to appear. If the parent, guardian or Indian custodian fails to appear at the initial
15 hearing without good cause shown, and the court finds the parent, guardian or Indian custodian
16 had notice of the hearing, was properly served pursuant to Rule 48, and that the notice of
17 hearing advised the parent, guardian or Indian custodian regarding the consequences of failure
18 to appear, including a warning that the hearing could go forward in the absence of the parent,
19 guardian or Indian custodian, and that failure to appear may constitute a waiver of rights and an
admission to the allegation contained in the dependency petition, the court may adjudicate the
child dependent if the petitioner has established grounds upon which to adjudicate the child
dependent, based upon the record and evidence presented. The court shall enter findings and
orders pursuant to Rule 55.

20 D. Findings and Orders. All findings and orders shall be in the form of a signed order or
21 contained in a minute entry. At the conclusion of the initial hearing the court shall:

22 1. Enter findings as to notification and service upon the parties and the court's jurisdiction over
the subject matter and persons before the court;

23 2. Order the petitioner to effectuate service by publication if the requirements of Rules 4.1(n) or
24 4.2(f), Ariz. R. Civ. P. are established, and it appears that the party cannot reasonably be
located;

- 1 3. Order the petitioner to obtain verification of the child's Indian status from the child's Indian
2 tribe or from the United States Department of Interior, Bureau of Indian Affairs, if there is
3 reason to believe the child is an Indian child;
- 3 4. Order that paternity be established, through paternity testing or authorize the execution of
4 affidavits of paternity, as to any alleged father;
- 5 5. Set a continued initial hearing as to any party who was not served and did not appear;
- 6 6. Affirm prior orders making the child a temporary ward of the court;
- 7 7. Set a settlement conference, a pretrial conference or order the parties to attend mediation;
- 8 8. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian
9 or Indian custodian that failure to attend the pretrial conference, the settlement conference or the
10 dependency adjudication hearing, without good cause shown, may result in a finding that the
11 parent, guardian or Indian custodian has waived legal rights and is deemed to have admitted the
12 allegations in the dependency petition. The court shall advise the parent, guardian or Indian
13 custodian that the hearings may go forward in the absence of the parent, guardian or Indian
14 custodian and may result in a finding of dependency based upon the record and evidence
15 presented. The party shall also be advised that failure to participate in reunification services may
16 result in the termination of parental rights or the establishment of a permanent guardianship of
17 the child. The court shall make specific findings that it advised the parent, guardian or Indian
18 custodian of the consequences of failure to attend subsequent proceedings and participate in
19 reunification services;
- 15 9. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the
16 standards and burdens of proof as required by the Act, including whether placement of the
17 Indian child is in accordance with Section 1915 of the Act or whether there is good cause to
18 deviate from the preferences; and
- 18 10. Make findings and enter any other orders as may be appropriate or required by law,
19 including the preparation of a disposition report as required in Rule 56.

19 E. Continuance. The court may continue the initial dependency hearing, upon a showing of good
20 cause, for reasons which may include:

- 21 1. Service of process and/or notification pursuant to the Indian Child Welfare Act has not been
22 completed as to the parties;
- 23 2. Additional time is requested by the child's tribe or if additional time is required to comply
24 with the requirements of the Indian Child Welfare Act; or
- 25 3. Additional time is required to obtain and/or consult with counsel and the best interests of the
child would not be adversely affected.

1 **Rule 54. Pretrial conference.**

2 A. Purpose. A pretrial conference may be held prior to the dependency adjudication hearing to
3 determine whether the parties are prepared and intend to proceed to trial or whether resolution of
4 remaining issues in a non-adversarial manner is possible and to address any issues raised by the
5 parties. Counsel shall meet with their clients prior to the conference.

6 B. Procedure.

7 1. If the parties wish to discuss possible settlement, the court shall conduct a settlement
8 conference pursuant to Rule 53; or

9 2. If the parties advise the court that the matter will proceed to trial, the parties and the court
10 shall confer to determine:

11 a. Whether disclosure has been made pursuant to Rule 44(B)(2);

12 b. The time needed for trial;

13 c. The scheduling of witnesses;

14 d. Any other issues raised by the parties as may be appropriate; and

15 e. Whether the trial will be open to the public.

16 C. Findings and Orders. All findings and orders shall be in the form of a signed order or
17 contained in a minute entry. At the conclusion of the pretrial conference, the court may:

18 1. Adjudicate the child dependent and enter its findings and orders pursuant to Rule 55 and set or
19 conduct a disposition hearing pursuant to Rule 56 if the court finds the parent, guardian or
20 Indian custodian admits or does not contest that the child is dependent;

21 2. Adjudicate the child dependent and enter findings and orders pursuant to Rule 55 and set or
22 conduct a disposition hearing pursuant to Rule 56 if the court finds that the parent, guardian or
23 Indian custodian failed to appear at the pretrial conference without good cause shown, had
24 notice of the hearing, was properly served pursuant to Rule 48 and had been previously
25 admonished regarding the consequences of failure to appear, including a warning that the
hearing could go forward in the absence of the parent, guardian or Indian custodian and that
failure to appear may constitute a waiver of rights and an admission to the allegations contained
in the dependency petition. The court may adjudicate the child dependent based upon the record
and evidence presented if the petitioner has established grounds upon which to adjudicate the
child dependent;

a. Set a dependency adjudication hearing date if the parties are unable to reach agreement. The
court may order the parties to submit individual or joint pretrial statements to each other and the

1 court prior to trial and/or submit proposed findings of fact and conclusions of law. The pretrial
2 statement shall contain the information set forth in Rule 44(B)(2)(a-e).

3 b. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian
4 or Indian custodian that failure to attend the dependency adjudication hearing, without good
5 cause shown, may result in a finding that the parent, guardian or Indian custodian has waived
6 legal rights and is deemed to have admitted the allegations in the dependency petition. The court
7 shall advise the parent, guardian or Indian custodian that the hearing may go forward in the
8 absence of the parent, guardian or Indian custodian and may result in a finding of dependency
based upon the record and evidence presented. The party shall also be advised that failure to
participate in reunification services may result in the termination of parental rights or the
establishment of a permanent guardianship of the child. The court shall make specific findings
that it advised the parent, guardian or Indian custodian of the consequences of failure to attend
subsequent proceedings and participate in reunification services;

9 c. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the
10 standards and burdens of proof as required by the Act, including whether placement of the
11 Indian child is in accordance with Section 1915 of the Act or whether there is good cause to
deviate from the preferences; and

12 d. Make findings and enter any other orders as may be appropriate or required by law, including
13 limiting the issues to be litigated at the dependency adjudication hearing and ordering the
preparation of a disposition report as required in Rule 56.

14 **Rule 64. Motion, Petition, Notice of Hearing and Service of Process and Orders.**

15 A. Motion for Termination of Parental Rights. If the court determines that termination of
16 parental rights is in the best interests of a dependent child, the court shall order that a motion for
17 termination of parental rights be filed by the Department of Economic Security or the child's
18 attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall
allege the grounds for termination of parental rights as provided by law and shall state whether
the child is an Indian child as defined by the Indian Child Welfare Act.

19 B. Petition for Termination of Parental Rights. If the child at issue is not a dependent child or is
20 a dependent child who was the subject of a dependency petition filed prior to July 1, 1998, the
petitioner shall file a petition for termination of parental rights, pursuant to A.R.S. 8-534 and
21 shall state whether the child is an Indian child as defined by the Indian Child Welfare Act.
22 Nothing in this rule shall preclude the filing of a petition in those cases where the child was the
subject of a dependency petition filed after July 1, 1998.

23 C. Notice of Hearing. A notice of hearing shall accompany the motion or petition for
24 termination of parental rights and shall advise the parent, guardian or Indian custodian of the
location, date and time of the initial termination hearing. In addition to the information required
25 by law, the notice of hearing shall advise the parent, guardian or Indian custodian that failure to
appear at the initial hearing, pretrial conference, status conference or termination adjudication
hearing, without good cause, may result in a finding that the parent, guardian or Indian

1 custodian has waived legal rights, ~~including the right to trial to a jury~~, and is deemed to have
2 admitted the allegations in the motion or petition for termination. The notice shall advise the
3 parent, guardian or Indian custodian that the hearings may go forward in the absence of the
4 parent, guardian or Indian custodian and may result in the termination of parental rights based
5 upon the record and evidence presented.

6 D. Service. If the motion or petition alleges or the court has reason to believe the child at issue is
7 an Indian child as defined by the Indian Child Welfare Act, in addition to service of process as
8 required by this rule, notification shall be given to the parent, Indian custodian and the child's
9 tribe. Notice shall be provided by registered mail with return receipt requested. If the identity or
10 location of the parent or Indian custodian cannot be determined, notice shall be given to the
11 Secretary of the Interior by registered mail and the Secretary of the Interior shall have fifteen
12 (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the
13 tribe.

14 The notice shall advise the parent or Indian custodian and the tribe of their right to intervene. No
15 hearing shall be held until at least ten (10) days after receipt of notice by the parent or Indian
16 custodian and the tribe or the Secretary. The court shall grant up to twenty (20) additional days
17 to prepare for the hearing if a request is made by the parent or Indian custodian or the tribe.

18 *1. Waiver.* The parent, Indian custodian or the child's tribe may waive the ten (10) day notice
19 requirement for purposes of proceeding with the initial termination hearing within the time limit
20 as provided by state law.

21 *2. Motion.* The motion for termination and notice of hearing shall be served by the moving party
22 upon the parties and any other person as provided by law, pursuant to Rule 5(c), Ariz. R. Civ. P.
23 at least ten (10) days prior to the initial termination hearing.

24 *3. Petition.* The petition for termination of parental rights and notice of hearing shall be served
25 by the petitioner upon the parties and any other person as provided by law, pursuant to A.R.S. 8-
535, in the manner provided for in Rules 4.1 or 4.2, Ariz. R. Civ. P.

E. Orders. The court may enter orders, pending the hearing, as the court determines to be in the
best interests of the child.

Rule 65. Initial Termination Hearing.

A. Purpose. At the initial termination hearing, the court shall determine whether service has
been completed and whether the parent, guardian or Indian custodian admits, denies or does not
contest the allegations contained in the motion or petition for termination of parental rights, ~~and
in the case of a denial, whether a trial to a jury has been requested.~~

B. Time Limits. If a motion for termination of parental rights is filed, the initial hearing shall be
held within thirty (30) days of the permanency hearing. If a petition for termination is filed, the
hearing shall be held no sooner than ten (10) days following the completion of service. ~~In order
to receive a trial to a jury at the adjudication hearing, a written request, signed personally by the~~

1 ~~parent or by counsel of record, must be filed prior to or at the initial hearing or, if counsel is~~
2 ~~appointed at the initial termination hearing, within twenty days of appointment of counsel for~~
3 ~~the initial termination hearing. If the written request for jury trial is signed by counsel of record,~~
4 ~~the counsel must avow that the request for jury trial has been made by the parent.~~

4 C. Procedure. At the initial hearing the court shall:

5 1. Inquire if any party has reason to believe that the child at issue is subject to the Indian Child
6 Welfare Act;

7 2. Appoint counsel pursuant to Rule 38(B); unless counsel had previously been appointed;

8 3. Appoint counsel for the child if a guardian ad litem has not been appointed;

9 4. Determine whether service of process has been completed, pursuant to Rule 64 or waived as
10 to each party;

11 5. Advise the parent, guardian or Indian custodian of their rights as follows:

12 a. The right to counsel, including court appointed counsel if the parent, guardian or Indian
13 custodian is indigent;

14 b. The right to cross examine all witnesses who are called to testify against the parent, guardian
15 or Indian custodian;

16 c. The right to trial by the court ~~or to a jury if properly requested~~ on the termination motion or
17 petition; and

18 d. The right to use the process of the court to compel the attendance of witnesses.

19 6. Determine whether the parent, guardian or Indian custodian admits, denies or does not contest
20 the allegations contained in the motion or petition to terminate parental rights ~~and, in the case of~~
21 ~~a denial, whether a jury trial has been properly requested.~~

22 a. Admission/No contest. If the parent, guardian or Indian custodian admits or does not contest
23 the allegations, the court shall proceed with the termination hearing and enter findings and
24 orders, pursuant to Rule 66.

25 b. Denial. If a motion for termination of parental rights was filed and the parent, guardian or
Indian custodian denies the allegations, the court shall set the matter for trial within ninety (90)
days of the permanency hearing. The court may schedule a settlement conference, a pretrial
conference or mediation, if appropriate. If a petition for termination was filed, the court may
schedule mediation and shall set a pretrial conference or status conference.

c. Failure to Appear. If the parent, guardian or Indian custodian fails to appear at the initial
termination hearing without good cause shown and the court finds the parent, guardian or Indian

1 custodian had notice of the hearing, was properly served pursuant to Rule 64 and had been
2 previously admonished regarding the consequences of failure to appear, including a warning that
3 the hearing could go forward in the absence of the parent, guardian or Indian custodian and that
4 failure to appear may constitute a waiver of rights and an admission to the allegations contained
5 in the termination motion or petition, the court may proceed with the adjudication of termination
based upon the record and evidence presented if the moving party or petitioner has proven
grounds upon which to terminate parental rights. The court shall enter its findings and orders
pursuant to Rule 66.

6 D. Findings and Orders. All findings and orders shall be in the form of a signed order or
7 contained in a minute entry. At the conclusion of the hearing, the court shall:

8 1. Enter findings as to notification and service upon the parties and the court's jurisdiction over
the subject matter and persons before the court;

9 2. Set a continued initial termination hearing as to any party who was not served and did not
10 appear;

11 3. Address the parent, guardian or Indian custodian in open court and advise the parent, guardian
12 or Indian custodian that failure to appear at the pretrial conference, status conference or
13 termination adjudication hearing, without good cause shown, may result in a finding that parent,
14 guardian or Indian custodian has waived legal rights ~~including the right to trial to a jury~~, and is
15 deemed to have admitted the allegations in the motion or petition for termination. The court
16 shall advise the parent, guardian or Indian custodian that the hearings may go forward in the
absence of the parent, guardian or Indian custodian and may result in the termination of parental
rights based upon the record and evidence presented. The court shall make specific findings that
it advised the parent, guardian or Indian custodian of the consequences of failure to attend
subsequent proceedings;

17 4. If the Indian Child Welfare Act applies, the court shall make findings pursuant to the
18 standards and burdens of proof as required by the Act, including whether placement of the
19 Indian child is in accordance with Section 1915 of the Act or whether there is good cause to
20 deviate from the preferences; and

21 5. Make findings and enter any other orders as may be appropriate or required by law.

22 **Rule 66. Termination Adjudication Hearing.**

23 A. Purpose. The court shall conduct an adjudicatory hearing in which the court ~~or the jury, if
24 one is properly requested,~~ determines whether the moving party or petitioner has met the burden
25 of proving grounds upon which to terminate parental rights and whether termination is in the
best interests of the child.

B. Time Limits. If a motion for termination of parental rights was filed, the termination
adjudication hearing shall be held no later than ninety (90) days after the permanency hearing.
The court may continue the hearing beyond the ninety (90) day time limit for a period thirty (30)

1 days if it finds that the continuance is necessary for the full, fair and proper presentation of
2 evidence, and the best interests of the child would not be adversely affected. Any continuance
3 beyond thirty (30) days shall only be granted upon a finding of extraordinary circumstances.
4 Extraordinary circumstances include, but are not limited to, acts or omissions that are unforeseen
5 [FN1] or unavoidable. Any party requesting a continuance shall file a motion for extension of
6 time, setting forth the reasons why extraordinary circumstances exist. The motion shall be filed
7 within five (5) days of the discovery that extraordinary circumstances exist. The court's finding
8 of extraordinary circumstances shall be in writing and shall set forth the factual basis for the
9 continuance.

10 C. Burden of Proof. The moving party or petitioner has the burden of proving the allegations
11 contained in the motion or petition by clear and convincing evidence or, in the case of an Indian
12 child, beyond a reasonable doubt. In addition, if the child is an Indian child, the moving party or
13 petitioner must also prove, beyond a reasonable doubt, including testimony from a qualified
14 expert witness, that continued custody of the child by the parent or Indian custodian is likely to
15 result in serious emotional or physical damage to the child. The petitioner must prove beyond a
16 reasonable doubt that active efforts have been made to provide remedial services and
17 rehabilitative programs designed to prevent the breakup of the Indian family and that those
18 efforts have proven unsuccessful.

19 D. Procedure. The presentation of evidence at the termination adjudication hearing shall be as
20 informal as the requirements of due process and fairness permit and shall generally proceed in a
21 manner similar to the trial of a civil action before the court without a jury.

22 1. Admission/No contest. The parent, guardian or Indian custodian may waive the right to trial,
23 ~~including the right to trial to a jury,~~ on the allegations contained in the motion or petition for
24 termination of parental rights by admitting or not contesting the allegations. An admission or
25 plea of no contest may be oral or in writing. In accepting an admission or plea of no contest, the
court shall:

a. Determine whether the party understands the rights being waived;

b. Determine whether the admission or plea of no contest is knowingly, intelligently and
voluntarily made;

c. Determine whether a factual basis exists to support the termination of parental rights; and

d. Proceed with entering the findings and orders as set forth in subsection (B) of this rule.

2. Failure to Appear. If the court finds the parent, guardian or Indian custodian failed to appear
at the termination adjudication hearing without good cause shown, had notice of the hearing,
was properly served pursuant to Rule 64 and had been previously admonished regarding the
consequences of failure to appear, including a warning that the hearing could go forward in the
absence of the parent, guardian or Indian custodian and that failure to appear may constitute a
waiver of rights, ~~including the right to a trial to a jury,~~ and an admission to the allegation
contained in the motion or petition for termination, the court may terminate parental rights based
upon the record and evidence presented if the moving party or petitioner has proven grounds

1 upon which to terminate parental rights. The court shall enter its findings and orders pursuant to
2 subsection (E) of this rule.

3 E. Termination Social Study. A social study prepared pursuant to A.R.S. 8- 536 or by order of
4 the court is admissible as evidence unless a party has filed a notice of objection as required by
5 Rule 44 (B)(2)(e) and (D)(2). If the court sustains any objections, the court may:

6 1. Admit the social study into evidence after redacting those portions to which objections were
7 sustained; and

8 2. Allow the petitioner a reasonable opportunity to call additional witnesses to testify regarding
9 the redacted portions of the social study.

10 ~~F. Jury trial. When a trial to a jury has been timely requested, the court shall conduct the hearing
11 as provided in Rule 66.1. The jury shall be instructed to render a general verdict as to whether or
12 not parental rights are terminated. A proper verdict form will be presented based on the ground
13 or grounds for termination stated in the petition and whether termination is in the best interest of
14 the child.~~

15 ~~G. F.~~ Findings and Orders by the court. All findings and orders shall be in the form of a signed
16 order or set forth in a signed minute entry. At the conclusion of the hearing the court shall:

17 1. Enter findings as to the court's jurisdiction over the subject matter and persons before the
18 court;

19 2. If the moving party or petitioner has met its burden of proof, ~~as determined by the finder of
20 fact,~~ the court shall:

21 a. ~~If the court is the finder of fact,~~ Make specific findings of fact in support of the termination of
22 parental rights and grant the motion or petition for termination;

23 b. ~~If a jury is the finder of fact, enter the verdict of the jury;~~

24 e. ~~b.~~ Appoint a guardian for the child or appoint a guardian for the child and vest legal custody
25 in another person or authorized agency;

~~d. c.~~ Enter orders for financial support of the child;

e. ~~d.~~ Set or reaffirm the dependency review hearing; and

26 f. ~~e.~~ If the Indian Child Welfare Act applies, the court shall make findings pursuant to the
27 standards and burdens of proof as required by the Act, including whether placement of the
28 Indian child is in accordance with Section 1915 of the Act or whether there is good cause to
29 deviate from the preferences.

30 3. ~~Deny the termination motion or petition if~~ If the finder of fact determined that the moving
31 party or petitioner did not meet its burden of proof, ~~enter the verdict if applicable, deny the~~

1 ~~termination motion or petition~~, and order the parties to submit a revised case plan prior to the
2 dependency review hearing.

3 **Rule 66.1. Jury Trials**

4 ~~A. Right. As provided by law, following a timely request, a parent shall have the right to a trial
5 to a jury in a hearing to terminate parental rights.~~

6 ~~B. Request. The request for a trial to a jury shall be signed personally by the parent or by
7 counsel of record, filed and served on the petitioner prior to the initial termination hearing
8 provided by Rule 65 of these rules or, if counsel is appointed at the initial termination hearing,
9 within twenty days of appointment of counsel. If the written request for jury trial is signed by
10 counsel of record, the counsel must avow that the request for jury trial has been made by the
11 parent. Failure to file and serve the request in a timely manner constitutes a waiver of the right
12 to a trial to a jury. Failure to appear at the initial termination hearing or the termination
13 adjudication hearing shall be deemed a rescission of any request for a trial to a jury.~~

14 ~~C. Selection. Jurors shall be impaneled as provided in Rule 47 of the Rules of Civil Procedure.~~

15 ~~D. Procedure. The court shall conduct the trial to the jury as provided in Rules 39(a) through 39
16 (i), 39(o), 39 (p), 47(g), 48 and 51 of the Rules of Civil Procedure.~~

17 ~~E. Verdict. The jury shall return its verdict as provided in Rule 49 of the Rules of Civil
18 Procedure, as applicable.~~

19 ~~F. Judgment. The court shall render judgment as provided in Rule 66(g)(2)(b) of these rules and
20 Rules 50 of the Rules of Civil Procedure.~~

1 **Form IV. Notice to Parent in Dependency Action (Effective until January 1, 2007)**

2 ~~(To be given to parent at each dependency hearing prior to adjudication and noted on the~~
3 ~~record)~~

4 You are a party in a dependency case. If the court determines that your child is dependent, then
5 this Court will make decisions about the care and custody of your child until you demonstrate
6 that you are able to do so.

7 If you cannot be re-united with your child within legal time frames, your parental rights may be
8 terminated and your child may be adopted, or a permanent guardian may be appointed for your
9 child.

10 As a parent or Indian custodian in a dependency case, your legal rights include:

- 11 1. The right to counsel, including court appointed counsel if you are indigent;
12 2. The right to cross-examine witnesses who are called to testify against you;
13 3. The right to trial by the court on the allegations in the dependency petition; and
14 4. The right to use the process of the court to compel the attendance of witnesses.

15 As part of this case, there will be several court hearings. You are required to appear for all court
16 hearings. If you cannot attend a court hearing, you must prove to the court that you did not
17 appear for good cause. If you fail to appear without good cause for the Pre-trial Conference,
18 Settlement Conference or Dependency Adjudication, the court may determine that you have
19 waived your legal rights, admitted the allegations of dependency in the petition and may rule
20 that your child is dependent based on the record and evidence presented. If this action results in
21 the filing of a termination of parental rights proceeding you have the right to request a trial to a
22 jury.

23 You must also actively participate in reunification services if they are offered to you. If you do
24 not participate in reunification services, your parental rights may be terminated or a permanent
25 guardian may be appointed for your child.

It will be presumed that you understand the contents of this notice unless you tell the court at
today's hearing that you do not understand this notice.

Next hearing type: _____,

Date: _____, Time: _____,

Judicial Officer: _____,

Address of court facility: _____

1 **Form V. Notice to Parent in Termination Action (Effective until January 1, 2007)**

2 **(To be given to parent at permanency hearing if termination is ordered and each**
3 **subsequent hearing until termination adjudication and noted on the record)**

4 If you cannot be re-united with your child within legal time frames, your parental rights may be
5 terminated and your child may be adopted, or a permanent guardian may be appointed for your
6 child.

6 As a parent or Indian custodian, your legal rights include:

- 7 1. The right to counsel, including court appointed counsel if you are indigent;
8 2. The right to cross-examine witnesses who are called to testify against you;
9 3. The right to trial by the court or to a jury on the allegations in the termination motion/petition;
10 and
11 4. The right to use the process of the court to compel the attendance of witnesses.

10 You are required to appear for all court hearings. If you cannot attend a court hearing, you must
11 prove to the court that you did not appear for good cause. If you fail to appear without good
12 cause for the Termination Pre-trial Conference, Termination Settlement Conference or
13 Termination Adjudication, the court may determine that you have waived your legal rights
14 including the right to trial to a jury, admitted the grounds alleged in the motion/petition for
15 termination and may terminate your parental rights to your child based on the record and
16 evidence presented.

14 It will be presumed that you understand the contents of this notice unless you tell the court at
15 today's hearing that you do not understand this notice.

16 Next hearing type: _____,

17 Date: _____, Time: _____,

18 Judicial Officer: _____,

19 Address of court facility: _____
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1 **Form ~~VI~~ IV. Counsel's Certification of Diligent Search**

2 **(May be filed with the Juvenile Court when, after a diligent search, counsel cannot locate**
3 **a client and does not pursue an appeal.)**

4 1. I, _____, am counsel for [insert party's name] in the above captioned case.

5 2. On _____, the juvenile court filed a signed minute entry/signed formal order that
6 [briefly describe order]. Since that date, I have made unsuccessful but diligent efforts to contact
7 [insert party's name] for the purpose of:

- 8 _____ a) discussing the merits of an appeal.
9 _____ b) retaining his/her signature on the Notice of Appeal.

10 3. I have made the following efforts.

11 _____ a. Sent a letter with proper postage affixed to the last known address of my client
12 and:

13 _____ b. Ascertained through the Main Post Office in _____ that my client has not
14 filed a forwarding address.

15 _____ c. Telephoned my client with no response.

16 _____ d. Checked with the ___ telephone company, and there is no new telephone listing
17 on file for my client.

18 e. Undertaken the following additional inquiry into the whereabouts of my client:

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4. I am unable to determine the whereabouts of my client.

I hereby certify that the above stated facts are true and correct.

Dated this ___ day of _____, 20 ___

____ Signature.

Name, address, telephone.

Counsel for _____

1 **Form ~~VH~~ V. Sample Notice of Appeal**

2 Notice is hereby given that _____, as counsel for _____
3 hereby appeals from the final Order of this Court signed by the Honorable _____ filed
4 stamped month day year, (CHECK ONE AND INSERT PARTIES' NAMES AND RELEVANT
5 STATUTORY SECTIONS)

6 _____ terminating the parent-child relationship between _____ (parent's first name
7 and initial of last name) and _____ (child/ren's first name and initial of last name)
8 pursuant to A.R.S. § 8-533(B) ____.

9 _____ dismissing or denying a motion or petition seeking to terminate the parent-child
10 relationship between _____ (parent's first name and initial of last name) and _____
11 (child/ren's first name and initial of last name) pursuant to A.R.S. § 8-533(B) ____.

12 _____ adjudicating _____ (child/ren's first name and initial of last name) dependent
13 as to _____ (parent's first name and initial of last name).

14 _____ dismissing or denying a dependency petition seeking to adjudicate _____
15 (child/ren's first name and initial of last name) dependent as to _____ (parent's first name
16 and initial of last name).

17 The [mother/father/child, first name and initial of last name] _____, was proceeding with
18 appointed counsel in the Juvenile Court, specifically [the Office of the Public Defender/Legal
19 Defender/Legal Advocate] when the final order that is the subject of this appeal was filed.

20 By signing and filing this Notice of Appeal, undersigned counsel avows that [he/she]
21 communicated with the client after entry of the judgment being appealed, discussed the merits of
22 the appeal and obtained authorization from the client to file this Notice of Appeal.

23 Respectfully submitted this ____ day of _____, ____.

24 _____
25 signature, attorney for Appellant

Name, address, telephone.