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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND THE RULES)
OF PROCEDURE FOR THE)
JUVENILE COURT [R. 19, 23, 37,)
40.1, 41, 45, 48.1, 50, 60–61, 63.1–64,)
68, 77, 78, 79, 82, 84, 85, 95–96, 98,)
100, 102, 103], THE RULES OF)
FAMILY LAW PROCEDURE [R. 49,)
95, AND FORM 7], LOCAL RULES)
OF PRACTICE SUPERIOR COURT,)
PIMA COUNTY [FORM 2], THE)
RULES OF THE SUPREME COURT)
[R. 31], AND THE RULES OF CIVIL)
APPELLATE PROCEDURE [R. 30])
TO CONFORM TO LEGISLATION)

Supreme Court No. R-14-_____

**Petition to Amend Various
Rules Due to Creation of
Department of Child Safety**

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules and forms presented in the Appendix. In response to Senate Bill 1001 (Laws 2014, Chapter 1), the court rules in which “Child Protective Services” or “CPS” and “Department of Economic Security” or

“DES” occur in relation to child welfare must be changed to say “Department of Child Safety” instead. Similarly, references to case workers or case managers must be changed to child safety workers or investigators. The attached Appendix indicates the proposed amendments and the manner of the changes.

I. Background and Purpose of the Proposed Rule Amendment

In January, Governor Brewer issued Executive Order 2014-01 which, in addition to establishing a new “Cabinet-Level Child Safety and Family Services Division,” abolished the Division of Children, Youth and Families (DCYF).¹ The director of the new division would oversee all administrative functions of its predecessor and all of its programs, including Child Protective Services (CPS). However, the Governor and the director of the new division were also to develop a permanent and separate agency, in the place of the new division and apart from DES, to manage all programs and services related to child welfare.²

On May 29, 2014 the Senate passed S.B. 1001 which detailed the structure of this new and separate agency and named it the Department of Child Safety (DCS).³ Primarily created for the protection of children, DCS will be in charge of investigating child abuse and neglect reports, promoting child safety, providing a

¹ Ariz. Exec. Order No. 2014-01 (Jan. 13, 2014), http://azgovernor.gov/dms/upload/EO_011314_2014-01.pdf

² *Id.*

³ S.B. 1001, 51st Leg., 2d Spec. Sess. (Ariz. 2014).

stable family environment for children, and other related child welfare activities which DCYF previously handled.

Consequently, creating DCS and shifting the authority over child welfare from DES to DCS makes it necessary to amend all of the current court rules which name DES as the department responsible for child welfare. Thus, “Department of Economic Security”, “DES”, “Child Protective Services”, or “CPS” should be changed to “Department of Child Safety,” and the former CPS “case worker” and “case manager” should be changed to “child safety worker” or “child safety investigator” to conform to S.B. 1001.

II. Contents of the Proposed Rule Amendment

Please refer to the attached Appendix below which shows the changes to all of the rules and forms with strikethroughs and underlines.

III. Pre-Petition Comments

This petition was reviewed by the Attorney General’s office representing the Department of Child Safety and the Department of Economic Security.

IV. Effective Date of the Proposed Rule Amendments

The new department was immediately effective upon the Governor's signature of SB 1001 on May 29, 2014. Given the nature of the proposed amendments, the Court may decide to make the changes effective either on September 1, 2014, or on the regular effective date of January 1, 2015.

RESPECTFULLY SUBMITTED this _____ day of _____ 2014.

By _____
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APPENDIX

(The ~~strikethrough~~ indicates the text to be removed, and the underlined text is to be added)

I. Rules of Procedure for the Juvenile Court

Rule 19. Records and Proceedings

A. Contents of Juvenile Court Files.

1. [No change]

2. **Social File.** The social file shall be maintain by the probation department and may consist of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, ~~child protective services~~ Department of Child Safety records, police reports, predisposition reports, detention records, and records and reports or work product of the probation department for use by the court in formulating and implementing a rehabilitation plan for the juvenile and his or her family. The social file of the juvenile shall be confidential and withheld from public inspection except upon order of the court.

B.–C. [No Change]

Rule 23. Detention and Probable Cause Hearing

A.–B. [No Change]

C. Length of Detention. No juvenile shall be held in detention for more than twenty-four (24) hours unless a petition alleging incorrigible or delinquent conduct or a criminal complaint has been filed. No juvenile shall be held longer than twenty four (24) hours after the filing of a petition unless so ordered by the court after a hearing. If a hearing is not held within twenty-four (24) hours of the time of filing of the petition, the juvenile shall be released from the detention facility to a parent, guardian, custodian or other responsible person. If no parent, guardian, custodian or other responsible person can be located, the court shall release the juvenile to the Department of ~~Economic Security~~ Child Safety.

D.–J. [No Change]

Rule 37. Definitions

- A. Parties.** Reference to a party to the action means a child, parent, guardian, the Department of ~~Economic Security~~ Child Safety or petitioner, and any person or entity who has been permitted to intervene pursuant to Rule 24, Ariz. R. Civ. P., or the Indian Child Welfare Act.
- B.–C.** [No Change]

Rule 40.1. Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem.

- A.–B.** [No Change]
- C.** Attorneys and guardians ad litem shall participate in discovery and file pleadings when appropriate and attorneys must develop the child’s position for each hearing. The duties of the attorney and the guardian ad litem may include identifying appropriate family and professional resources for the child, as well as subpoenaing witnesses, and the attorney and guardian ad litem shall inquire of the child regarding potential placements and communicate this information to ~~Child Protective Services~~ the Department of Child Safety as appropriate.
- D.** [No Change]
- E.** Attorneys and guardians ad litem shall also maintain contact with caretakers, ~~case managers~~ child safety investigators and workers, service providers, childcare providers, CASAs, relatives and any other significant person in the child’s life as appropriate in order to meet the obligations of informed representation of the child.
- F.** To the extent possible, attorneys and guardians ad litem should attend or provide input to ~~Child Protective Services~~ Department of Child Safety staffings, Foster Care Review Board reviews and Child and Family Team meetings.
- G.–J.** [No Change]

Rule 41. Attendance at hearings

A.–G. [No Change]

H. If a proceeding has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public. In ruling on this request, the court shall reconsider the factors prescribed in Section E of this rule. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may request a transcript be made of any previously closed proceeding. The person who requested the transcript shall pay the cost of the transcript. In ruling on this request, the court shall consider the factors prescribed in Section E of this rule. If the court grants a request for a transcript of any closed proceeding, the court shall redact from a transcript any information that:

1. [No Change]

2. Protects the identity and safety of a person who reports child abuse or neglect and to protect any other person if the court believes that disclosure of the ~~CPS~~ Department of Child Safety information would be likely to endanger the life or safety of any person.

3. [No Change]

I. Notice in cases with regard to children in foster care.

(A) If the Department of ~~Economic Security~~ Child Safety (the Department) is a party, it shall notify the foster parents, pre-adoptive parents, relative caregivers or relative who has been identified as a possible placement for a child in foster care under the responsibility of the State of the date, time, and location of all proceedings to be held with respect to the child. Foster parents, pre-adoptive parents, or relative caregivers of a child in foster care under the responsibility of the State shall have a continuing duty to provide the Department with a current and correct mailing address, including addresses identified as protected by court order.

(B)–(C) [No Change]

Rule 45. Admissibility of evidence.

A. [No Change]

B. **Definition of report.** For purposes of this rule, a written report by a ~~protective services~~ child safety worker shall mean a narrative report setting forth, as appropriate to the hearing, the following:

1. -9. [No Change]

The report may include any appendices or reports prepared by persons other than the ~~protective services~~ child safety worker. The term report does not include a social study prepared pursuant to A.R.S. 8-536 or by order of the court in termination proceedings, or the report required by A.R.S. 8-872(E) and Rule 61(D).

C. **Admissibility of reports.** Prior to any dependency hearing, the court may review reports prepared by the ~~protective services~~ child safety worker and shall admit those reports into evidence if the worker who prepared the report is available for cross-examination and the report was disclosed to the parties no later than:

1.- 2. [No Change]

D.-E. [No Change].

Rule 48.1. In-home Intervention Hearings

A. **Purpose.** Subject to criteria established by law, in-home intervention allows the child to stay in the home under supervision of the ~~department~~ Department of economic security-Child Safety and the court after the filing of a dependency petition.

B.-C. [No Change]

Rule 50. Preliminary Protective Hearing

A. [No Change]

B. **Procedure.** At the preliminary protective hearing, the court shall:

1.-8. [No Change]

9. Determine whether the Department of ~~Economic Security~~ Child Safety has made arrangements for the assembly of the medical records of the child, a medical assessment of the child, the implementation of referrals and the communication of recommendations and results, as provide by law;

10.-12. [No Change]

C. [No Change]

Rule 60. Permanency Hearing

A.–C. [No Change]

D. Procedure. At the permanency hearing the court shall consider evidence from the parties, in the form of testimony or documents admitted into evidence, which may include hearsay, in whole or in part, and age-appropriate consultation with the child, in order to determine what permanent legal status is appropriate for the child. The court shall consider the final plan prepared by the Department of ~~Economic Security~~ Child Safety, pursuant to prior order of the court.

E. [No Change]

Rule 61. Motion, Notice of Hearing, Service of Process and Orders for Permanent Guardianship

A. Motion. If the court determines that the establishment of a permanent guardianship is in the best interests of a dependent child, the court shall order that a motion for guardianship be filed by the Department of ~~Economic Security~~ Child Safety or by the child's attorney or guardian ad litem within ten (10) days of the permanency hearing. The motion shall contain all information required by law.

B.–C. [No Change]

D. Orders. Upon the filing of a motion for guardianship, the court shall order ~~that the Arizona~~ Department of ~~Economic Security~~ Child Safety, an agency or a person designated as an officer of the court to conduct an investigation and prepare a report addressing whether the prospective guardian is a fit and proper person to become guardian of the child and whether it is in the best interests of the child to grant the guardianship. If the child is an Indian child, the report shall address whether the prospective guardian falls within the placement preferences as required by the Act or whether good cause exists to deviate from the placement preferences. A copy of the report shall be provided to the parties and the court ten (10) days prior to the initial guardianship hearing. The court may enter any other orders, pending the hearing, as the court determines to be in the best interests of the child.

Rule 63.1. Motion, Notice of Hearing, Service of Process and Orders for Successor Permanent Guardianship

- A. Motion.** If a permanent guardian appointed pursuant to A.R.S. § 8-872 is unable or unwilling to continue to serve as permanent guardian, the permanent guardian, the Department of ~~Economic Security~~ Child Safety or any interested party may file a motion for appointment of a successor permanent guardian. The motion shall be verified by the person filing the motion and shall contain all information required by law, including the name, sex, address and date and place of birth of each child who is the subject of the motion; the name and address of the permanent guardian; the reason why the permanent guardian is no longer able or willing to serve as permanent guardian of the child; and the name and address of the proposed successor permanent guardian, if any.
- B.** [No Change]
- C. Notice.** The court shall order the person filing the motion to give notice of the hearing and to provide a copy of the motion together with the court's temporary orders to the permanent guardian, the Department of ~~Economic Security~~ Child Safety, the child's attorney, the child's parents and any other interested person as ordered by the court. The person filing the motion shall provide notice by first class mail unless the court orders that notice be given by other means. If the child is subject to the Indian Child Welfare Act of 1978, the person filing the motion shall provide notice pursuant to 25 U.S.C. § 1912, to the Indian parent, the Indian custodian and the child's tribe. If the identity or location of the Indian child's parent cannot be determined, the person filing the motion shall provide notice to the U.S. Secretary of the Interior pursuant to 25 U.S.C. § 1912.
- D. Procedures and Orders.** Upon the filing of a motion for successor permanent guardianship, the court shall:
- 1.-3. [No Change]
 4. Enter any appropriate temporary orders which may include:
 - a. Placing the child in the temporary custody of an individual, agency or the Department of ~~Economic Security~~ Child Safety and directing the Department of ~~Economic Security~~ Child Safety to provide services necessary for the safety and well-being of the child;
 - b. Directing the Department of ~~Economic Security~~ Child Safety to complete a criminal records check and home study to determine the suitability of the proposed successor permanent guardian to serve as the permanent guardian of the child;
 - c. Directing the Department of ~~Economic Security~~ Child Safety to conduct an investigation to determine whether dependency proceedings should be initiated.

Rule 63.2. Initial Successor Permanent Guardianship Hearing

A.–D. [No Change]

E. Findings and Orders. At the hearing, if the court finds that the movant has met its burden of proof that the proposed successor permanent guardian is suitable to assume the responsibilities of permanent guardian and that appointment would be in the child's best interests, the court shall grant the motion, terminate the appointment of the current permanent guardian and appoint the proposed successor permanent guardian as permanent guardian of the child. At the hearing, the court may enter any orders as may be necessary for the safety and well-being of the child, including:

1. [No Change]

2. Directing the Department of ~~Economic Security~~ Child Safety to monitor the placement during the period of provisional appointment and to provide necessary services to support the provisional placement, including assisting the provisional permanent guardian to make an application for guardianship subsidy and other available benefits;

3. If the court enters an order appointing a successor permanent guardian, the court shall set a review hearing within one year after the appointment and may order the Department of ~~Economic Security~~ Child Safety or an agency to conduct an investigation and submit a written report before the hearing;

4. [No Change]

5. If the motion to appoint a successor permanent guardian does not comply with law, or if the court does not appoint a provisional or permanent successor permanent guardian, the court may order the Department of ~~Economic Security~~ Child Safety or the child's attorney to file a dependency petition regarding the child and may enter temporary orders that are necessary for the safety and well-being of the child. In that case, the court may direct the Department of ~~Economic Security~~ Child Safety not to provide reunification services to the child's parents unless the court finds by clear and convincing evidence that it would be in the child's best interests and shall provide direction unless such services are required.

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

A. Motion for Termination of Parental Rights. If the court determines that termination of parental rights is in the best interests of a dependent child, the court shall order that a motion for termination of parental rights be filed by the Department of ~~Economic Security~~ Child Safety or the child's 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.

B.–E. [No Change]

Rule 68. Definitions

A. Definitions

1.–2. [No Change]

3. Investigative Report. The investigative report shall include the following:

a.–b. [No Change]

c. A check of records through the ~~Child Protective Service~~ Department of Child Safety Central Registry to determine whether the applicants or any adult living in the applicant's home are listed on the registry.

B. [No Change]

Rule 77. Certification To Adopt.

A.–D. [No Change]

E. Discovery. The applicant may obtain a copy of the information contained in the court's file as prescribed by law. Prior to release of the file, the results of the criminal background check, information obtained from ~~child protective services~~ Department of Child Safety records and information provided by references, other than their names, shall be redacted.

F.–H. [No Change]

Rule 78. Temporary Custody

A. [No Change]

B. Notice of Hearing. A notice of hearing shall accompany the petition and shall set forth the location, date and time of the hearing and shall require the attendance of the prospective adoptive parent, the child, and the person, ~~division~~ department or agency responsible for preparing reports for the court if the prospective adoptive parent is not certified to adopt, unless waived by the court.

C. [No Change]

D. [No Change]

1. **Attendance.** The prospective adoptive parent, the child and any person, representative of the ~~division~~ department or agency responsible for preparing reports for the court shall attend the hearing, unless waived by the court for good cause shown.

2. **Granting of Custody.** If the court grants temporary custody, the court shall order that an application for certification to adopt be filed with the court within thirty (30) days of the granting of temporary custody of the child to the prospective adoptive parent if the person is not certified to adopt. If no person or representative of the ~~division~~ department or agency has been identified to prepare reports for the court, the court shall set a status hearing within thirty (30) days to determine the status of the certification.

E.–F. [No Change]

Rule 79. Petition to Adopt

A.–B. [No Change]

C. Service. A petition to adopt and notice of hearing shall be served by the petitioner, pursuant to Rule 76, upon the following persons:

1. [No Change]

2. The person, ~~division~~ department or agency conducting the social study;

3. Any person, ~~division~~ department or agency required by law to give consent unless consent and a waiver of notice has been filed previously with the court; and

4. [No Change]

Rule 82. Petition and Hearing to Revoke Consent.

A.–B. [No Change]

C. Service. The petition and a notice of hearing shall be served by the petitioner, pursuant to Rule 76, on the person, ~~division~~department, or agency to whom the consent was originally given. Service upon the prospective adoptive parent is not required if the original consent was given to the ~~division~~department or an agency.

D.–J. [No Change]

Rule 84. Hearing to Finalize Adoption

A.–D. [No Change]

1. Wards of the Court. If the child is a ward of the court in the county where the adoption is granted, the court shall dismiss the dependency action. If the child is a ward of the court in another county or state, the court shall direct that the ~~division~~department or agency having had legal custody of the child file a motion to dismiss in the county where the child is a ward.

Rule 85. Motion and Hearing to Set Aside Adoption

A. [No Change]

B. Appointment of Guardian ad Litem. Upon the request of a party or the court's own motion, the court may appoint a guardian ad litem to represent the child. The court may order the guardian ad litem or the ~~division~~department to conduct an investigation for the purpose of determining whether a dependency petition should be filed in the event the adoption is set aside. If appropriate, the guardian ad litem shall prepare the dependency petition for filing.

C.–G. [No Change]

Rule 95. Hearing, Service of Petition and Notice.

A.–B. [No Change]

C. Incorrect or Unknown Address.

1. [No Change]

2. If no parent or guardian can be located and the court does not grant emancipation, the court may require ~~child protective services~~the Department of Child Safety to investigate and make a written report of the investigation to the court.

Rule 96. Allegation of Abuse or Neglect.

At any time in these proceedings, if the court reasonably believes that the petition for emancipation contains an allegation of child abuse or neglect, the court shall require ~~child protective services~~ the Department of Child Safety to investigate the allegation and make a written report of the investigation to the court.

Rule 98. Proceedings and Court Orders.

A. [No Change]

B. Mediation/Alternative Dispute Resolution.

1. [No Change]

2. [No Change]

a. [No Change]

b. The petitioner's parent or guardian is named as a perpetrator of abuse, neglect or abandonment in the ~~protective services~~ Department of Child Safety central registry.

c. [No Change]

3.-4. [No Change]

Rule 100. Time Limits and Exclusions.

A.-B. [No Change]

C. Delays caused by ~~child protective services~~ the Department of Child Safety investigation and report pursuant to Rule 96.

D. [No Change]

Rule 102. Findings, Order of Emancipation.

A. [No Change]

B. If the court finds emancipation is in the best interests of the petitioner, the court shall:

1.-3. [No Change]

4. Issue a copy of the order to the department of economic security, department of child safety, or ~~its~~ the department's agent, if the petitioner is a child in a title IV-D case.

C. [No Change]

Rule 103. Initiation of an Appeal.

A. Any aggrieved party may appeal from a final order of the juvenile court to the court of appeals. In an appeal in a delinquency, incorrigibility, or transfer matter, the notice of appeal shall be captioned using the first name and last initial of the minor child involved, as follows: “In re Abcde F.” In an appeal in an adoption, dependency, guardianship, emancipation or termination of parental rights (severance) matter, the notice of appeal shall be captioned in the names of the parties to the appeal, with the names of natural persons limited to the first name and last initial, for example: “Ghijk L., Appellant, v. ~~Arizona Department of Economic Security~~ Department of Child Safety and Mnopq R., Appellees.”

B.–F. [No Change]

II. Rules of Family Law Procedure

Rule 49. Disclosure

The requirements of this rule are minimum disclosure requirements for every family law case. Unless otherwise provided for in this rule, agreed to by the parties or ordered by the court, within forty (40) days after the filing of a response to an initial petition, each party shall disclose in writing to every other party the information set forth in this rule. The Resolution Statement described in paragraph A shall be filed with the clerk and served upon all parties. All documents and information required in paragraphs B, C, D, E, F, and G shall not be filed with the clerk but shall be served upon all parties.

A. [No Change]

B. Child Custody or Parenting Time.

1.–3. [No Change]

4. The date, description, location and documentation of any ~~Child Protective Services~~ Department of Child Safety investigation or proceeding involving any party or member of the party's household occurring within ten years of the filing of the petition.

C.–J. [No Change]

Rule 95. Other Family Law Services and Resources

A.–H. [No Change]

I. ~~Child Protective Services. Department of Child Safety.~~ The court may request or order the services of the Department of Child Safety ~~division of children and family services in the department of economic security~~ if the court believes that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

Form 7. Uniform Family Law Interrogatories

1.–9. [No Change]

10. ~~CHILD PROTECTIVE SERVICES DEPARTMENT OF CHILD SAFETY~~

Have you or has any person residing in your household ever been investigated by any agency in any state for any reason related to abuse or child? (Y/N) _____. If yes, state:

a.–d. [No Change]

11.–14. [No Change]

15. DOMESTIC VIOLENCE

a.–b. [No Change]

c. Have there ever been allegations of child abuse, neglect, abandonment or incorrigibility filed against you, your spouse, or any person residing in your household through ~~child protective services~~ the Department of Child Safety or a similar agency, by any law enforcement agency, or by any juvenile courts in any state of the United States? (Y/N) _____. If yes, provide details regarding the nature and disposition of said allegations or investigations, including specific dates, names of investigators and other person(s) involved.

16.–26 [No Change]

Local Rules of Practice Superior Court – Pima County

Form 2. General Order to Guardian for a Minor Child

1.–6. [No Change]

7. Abused or Neglected Minors

If the minor has been abused or neglected, you must immediately inform ~~Child Protective Services~~ the Department of Child Safety (1-888 SOS-CHILD, 1 888 767 2445) and/or law enforcement.

8.–10. [No Change]

III. Arizona Rules of Civil Appellate Procedure

Rule 30. Arizona Appellate Settlement Conference Program

(a)–(b) [No Change]

(c) Applicability. All appeals filed in the Arizona Court of Appeals are eligible for the Program except: (1) criminal appeals; (2) appeals involving habeas corpus petitions; (3) appeals in which a party is incarcerated; (4) appeals from juvenile court; (5) appeals from the Arizona Department of Economic Security; (6) appeals from the Department of Child Safety; ~~(6)~~(7) direct appeals from the corporation commission; and ~~(7)~~(8) special actions.

(d)–(r) [No Change]

Rules of the Supreme Court of Arizona

Rule 31. Regulation of the Practice of Law

(a)–(c) [No Change]

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2.–12. [No Change]

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14.–30. [No Change]