Mark Brnovich
Attorney General
Firm Bar Number 14000

Dawn R. Williams (Bar No. 20730)
Assistant Attorney General
3939 S. Park Ave., Suite 180
Tucson, AZ 85714
Telephone: (520) 746-4443
juvappeals@azag.gov

**ARIZONA SUPREME COURT**

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| PETITION TO AMEND RULE 44, ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT | Arizona Supreme Court No. R-15-_____ |

Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Department of Child Safety ("DCS" or "the Department") petitions this Court to amend Rule 44, Arizona Rules of Procedure for the Juvenile Court, to address unreasonable and unworkable time limits for disclosure in juvenile dependency, termination, and guardianship cases, to bring the rule into conformity with other rules and practice considerations, and to clarify disclosure responsibilities and limit litigation of disclosure disputes. (*See* Appendices.) The basis for DCS's Petition is set forth more fully below.

## I. Background and Purpose of Proposed Amendments.

Rule 44 of the Arizona Rules of Procedure for the Juvenile Court governs disclosure and discovery in dependency, termination, and guardianship proceedings. It is a broad rule, reflecting the need for prompt and thorough disclosure in child welfare cases, without the burden of standard civil discovery procedures (unless elected by the parties or ordered by the court).

Child welfare cases are civil in nature. *See* *Ariz. State Dep't of Pub. Welf. v. Barlow*, 80 Ariz. 249, 252, 296 P.2d 298, 300 (1956) ("a proceeding involving a dependent or delinquent juvenile is neither criminal nor penal in character and . . . the objective there is . . . the protection . . . of the child."); *Denise H. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 257, 259, 972 P.2d 241, 243 (App. 1988) ("A severance proceeding . . . is clearly civil in nature."); Ariz. R.P. Juv. Ct. 55(D) ("The presentation of evidence at the dependency adjudication hearing shall . . . generally proceed in a manner similar to the trial of a civil action before the court without a jury."). Despite their civil nature, however, juvenile matters are governed by the Rules of Procedure for the Juvenile Court, rather than the Rules of Civil Procedure, except in cases where the juvenile rules are silent and it is appropriate to resort to a readily adaptable civil rule, *S.S. v. Super. Court*, 178 Ariz. 423, 424, 874 P.2d 980, 981 (App. 1994), or the parties elect or are ordered to comply with civil discovery

rules, Rule 44(E) (*see* Appendix C for the text of the current Rule 44, Ariz. R.P. Juv. Ct.).

In terms of disclosure, Rule 44 provides a specific mechanism for the exchange of information in child welfare matters. The Department's primary concerns with the Rule as written are the unrealistic timelines for disclosure, the requirement of disclosure statements on a timeline that often does not coincide with the timeline for trial, considerations regarding electronic disclosure and service, and the need for good-faith efforts to resolve disclosure disagreements without court involvement. To address those concerns, DCS's proposed amendments clarify the types of information to be disclosed, provide reasonable timeframes for initial and ongoing disclosure, make disclosure statements conform to trial dates rather than initial service dates, allow for amendment of disclosure statements closer to trial, and require proof of good-faith efforts to resolve disputes before seeking court orders to compel disclosure or sanction a party.

The proposed amendments (attached hereto as Appendices A [showing amendments] and B [proposed new rule]), and the reasons for them, are explored more fully below.

## II. The Department's Interest.

As the party most often initiating dependency, guardianship, and termination proceedings, and as the agency responsible for investigating allegations of abuse

and neglect, providing appropriate reunification services, and protecting children in state care (A.R.S. § 8-451), DCS possesses or is the conduit for the vast majority of the information that is disclosed in child welfare proceedings. As case loads continue to rise—at the time of the filing of this Petition, more than 17,000 Arizona children are in out-of-home care (Affidavit, attached as Appendix D, at item 2)—achieving disclosure within the current one- or five-day limit is daunting, and takes child safety workers away from other duties essential to achieving safety, reunification, or permanency for children.

The Department's disclosure efforts are further complicated by the need to produce information stored in its Children's Information and Library Data Source ("CHILDS"), an antiquated database developed jointly with the federal government to comply with federal auditing requirements pertaining to funding and compliance with federal laws regarding the provision of services to families and to children in state custody. (*See* Affidavit, attached as Appendix D, at item 3.) The CHILDS database was never intended to be a means for providing disclosure, but rather a tool for DCS and its predecessor (and now sister agency), the Department of Economic Security ("DES"), to ensure compliance with various laws and regulations and to keep track of the ever-growing population of individuals receiving various forms of aid from DCS and DES. (*Id.* at items 3-8.) Moreover, CHILDS is not a static interface, but rather a dynamic and changing

system of programs that is constantly being updated, both from a programming standpoint and in terms of ongoing user data input. (*See* Affidavit at items 4-5, 8.) Changes in federal and state reporting requirements and internal DES and DCS data needs have led to program updates that rendered certain portions of CHILDS obsolete or difficult to access. (*Id.* at items 7-8.) Thus obtaining and disclosing information from CHILDS is challenging, at best.

And CHILDS and other DCS disclosure is replete with information that is privileged (including attorney-client privileged communications or attorney work product protected by A.R.S. §§ 8-805(B), 12-2234, 13-4062, and Ariz. R. Evid. 502) or confidential (such as reporting source information or information that would cause a specific material harm to an ongoing DCS or law-enforcement investigation protected under A.R.S. §§ 8-807(L), 8-471(E)(8) and criminal history information protected under A.R.S. § 41-1750(Q)(3) and 28 C.F.R. §§ 50.12(b), 20.1, and 20.33).

Although DCS has set up a Central Records Coordination Unit to make the necessary redactions prior to disclosing CHILDS and other information, doing so still must be done by hand, page by page, and is therefore incredibly time-consuming. (Affidavit, Appendix D, at item 9.) And because DCS does not have the equipment necessary to redact confidential and privileged information from audio and video recordings, they must be sent to a transcription agency before the

transcript can be redacted and then disclosed. (*Id.* at item 10.) Consequently, DCS struggles to meet the burdens imposed by Rule 44. This has spurred a great deal of extraneous litigation, further delaying permanency for children.

## III. Substantive Changes to Rule 44.

The Department has proposed some changes that are less substantive in nature, such as reorganizing or moving some of the information. This Section, however, will focus on the substantive changes proposed. All changes are reflected in the attached Appendix A.

### A. Introductory Statement.

The revised rule contains a new introductory statement, partially taken from elsewhere in the current rule. It clarifies that a party is responsible for disclosing documents or information that have not previously been disclosed; are within the party's knowledge, possession, or control; are potentially relevant to the pending action; and are not privileged or confidential. Clarifying the disclosure obligations of the parties should help eliminate some of the litigation regarding whether a party has met its obligations. Taken from the current rule, the revised introduction also defines "least burdensome and most cost effective manner" to include inspection of materials with or without copying.

### B. Subsection A – Scope of Disclosure.

This subsection sets out a clear list of categories of documents or information that are presumptively required for disclosure. The categories correspond to those already included in the current Rule.

### C. Subsection B – Initial Disclosure in Dependency Proceedings.

The proposed new rule differentiates between a party's initial disclosure obligation and its ongoing disclosure obligation (discussed in subsection H of the new rule, Section III.H, *infra*). For the preliminary protective hearing, the parties are required to provide any of the documents, materials, or information listed in subsection A of the new rule, and DCS must also provide a copy of its initial court report prepared by the child safety investigator. This helps to ensure that all parties, not just DCS, are on notice of the need to provide relevant material in their possession. Often parents, in particular, will have information necessary to assist the court in determining, for example, whether DCS's continued custody of the child is clearly necessary to prevent abuse or neglect. *See* A.R.S. § 8-825(C), Ariz. R.P. Juv. Ct. 51.

The Department has removed the current rule's subsection requiring disclosure of this information twenty-four hours prior to the preliminary protective hearing and all other disclosure within five days of receipt or preparation. Because DCS's initial disclosure may be voluminous, depending on the length of the

investigation or the nature of the allegations, providing that disclosure twenty-four hours prior to the preliminary protective hearing is often impractical. And requiring a turnaround of five days for ongoing disclosure is unworkable, given both the volume of information present in child welfare cases, as well as the realities of attorneys obtaining information from their clients in a timely manner or the need to review the information to ensure that it is free of confidential or privileged information prior to disclosure. The ongoing disclosure obligations are discussed more fully in Section III.H, *infra.*

The Department does not intend for these rules to affect the court's and parties' ability to make informed decisions in child welfare cases. On the contrary, this rule and others will ensure that the court and parties receive timely information in a way that ensures that the children's and families' needs are met. The court and parties will still have access to the most important information at every hearing: Rule 45, Arizona Rules of Procedure for the Juvenile Court, still requires disclosure of reports prepared by DCS's child safety workers at least one day prior to the preliminary protective hearing and ten days prior to any other hearing for those reports' mandatory admission in evidence. *See* Ariz. R.P. Juv. Ct. 45(C). Because those reports summarize the other disclosure that the revised Rule 44 requires be produced on an ongoing basis, the parties and the court will still have the up-to-date information necessary for conducting hearings as they occur.

### D. Subsection C – Disclosure Statement Prior to Dependency Adjudication Hearing.

The new subsection C modifies the timing of the requirement for a disclosure statement prior to a contested dependency adjudication hearing. Currently, Rule 44 mandates that the parties exchange disclosure statements within sixty days after the preliminary protective hearing or service of the petition on a party. Ariz. R.P. Juv. Ct. 44(B)(2). Although dependency adjudication hearings must be held within ninety days of service of the dependency petition on a party, the reality of the practice is that congested court calendars and other intervening matters often require that dependency adjudication hearings take place well beyond the mandatory time limit. *See* Ariz. R.P. Juv. Ct. 55(B); A.R.S. § 8-842(C); *Joshua J. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 417, 422-23, 286 P.3d 166, 171-72 (App. 2012).

By moving the deadline for disclosure statements to thirty days prior to an adjudicatory hearing—rather than a set period of time after an earlier service or hearing—the parties will be assured of the most up-to-date disclosure at the time of trial. It further ensures that a party does not incur the needless expense and time of preparing a disclosure statement if the matter is settled closer to the trial date, or of having to prepare a supplemental disclosure statement for a late-set trial.

Recognizing this Court's move toward electronic filing and disclosure, the new rule also allows for electronic service of the disclosure statement on the other

parties. (*See* Appendix A at 44(C)(1).) And it requires the parties to provide "contact information" rather than "telephone numbers" for listed witnesses, to ensure that those witnesses or attorneys who prefer contact via e-mail or other means can accomplish that. In those circumstances where a witness's testimony is proposed to be offered in the form of an affidavit, that information must also be provided in the disclosure statement, ensuring that all parties have sufficient time to object to proceeding in that manner. And finally, in addition to copies of exhibits that a party intends to use at trial, the disclosure statement must also include a list of all other information listed in subsection A of the rule that has not yet been disclosed.

The new rule also consolidates the process for objecting to witnesses and exhibits in one place, whereas the current rule sets out different methods for objecting to witnesses versus exhibits. (*See* current Ariz. R.P. Juv. Ct. 44(B)(2)(d) and (e).)

### E. Subsections D and E – Disclosure Statements Prior to Guardianship and Termination Adjudication Hearings.

These rules mirror the changes made to subsection C (current subsection (B)(2)), and refer back to subsection (C)(2) for the procedures necessary to object to witnesses and exhibits.

### F. Subsection F – Methods of Discovery.

Like the current rule, the proposed revisions allow for parties to use civil discovery rules upon consent or court order. The final sentence of the current subsection E has been moved to the following section, however.

### G. Subsection G – Conclusion of Pretrial Disclosure.

The proposed rule change shortens the time before trial in which a party may supplement its list of witnesses and exhibits to five days prior to the contested hearing, rather than the ten days provided under current Rule 44(F). It also incorporates the provision formerly in the prior section that failure to complete discovery prior to the date set for a trial or a hearing does not constitute good cause or extraordinary circumstances for purposes of continuing the hearing or trial.

### H. Subsection H – Supplemental Disclosure and Continuing Duty to Disclose.

The proposed new subsection H clarifies that disclosure is an ongoing duty. However, rather than requiring disclosure within five days of receipt or preparation of documents in a party's possession—as is the case in current Rule 44(B)(1)—the new rule allows for disclosure within thirty days of the date a party obtains or discovers new information, materials, or documents. And, given the realities attendant on redacting documents, particularly when the disclosure is voluminous or difficult to produce (*see* Section II of this Petition, *supra*), the new rule allows for an additional fifteen days for disclosure of information requiring redaction.

Nevertheless, to ensure that parties have access to information in a timely manner, unless the information cannot be redacted within that time limit, all disclosures must be made at least five days prior to any hearing that occurs before the expiration of the disclosure period.

**I. Subsection I – Motion to Compel Disclosure and Sanctions.**

Although the new rule keeps the current rule's provision for sanctions for nondisclosure, it requires that any party seeking to compel disclosure or order sanctions demonstrate personal consultation with the party that failed to provide disclosure and good faith efforts to resolve the disclosure dispute prior to resorting to litigation. This incorporates a valuable requirement from the civil and family law rules, as well as various local rules of procedure. *See* Ariz. R. Civ. P. 26(g), 37(a)(2)(C); Ariz. R. Fam. Law P. 51(F), 65(A)(2)(c); Super. Ct. Local Prac. Rules, Pima Cnty. 29; Super. Ct. Local Prac. Rules, Pinal Cnty. 2.3(b).

The new rule also recognizes the proliferation of electronically stored information, such that a party should not be penalized for failing to disclose information if that information was inadvertently lost or became unavailable despite the good-faith use of an electronic information system.

**III. Effective Date of Proposed Amendments.**

Rule 28(G), Arizona Rules of the Supreme Court, allows this Court to expedite adoption of a rule. Although DCS's proposed amendments do not reflect

an emergency necessitating immediate action, because the changes reflect a means to ensure prompt and thorough disclosure without excess litigation in an already overburdened child welfare system, DCS requests that this Court expedite comments on and consideration of this Petition. If this Court finds the usual consideration calendar adequate, DCS requests that this Court—if it adopts the proposed amendments—make the new rule effective immediately upon adoption, rather than waiting until January 1. Doing so will assist the newly created DCS and other juvenile court practitioners in understanding and meeting their disclosure obligations, to the benefit of the children and families of Arizona.

## IV. Conclusion.

For all of the foregoing reasons, the Department of Child Safety respectfully requests that this Court order the adoption of the proposed amendments to Rule 44, Arizona Rules of Procedure for the Juvenile Court, attached hereto as Appendix A.

Dated this 9th day of January, 2015.

Mark Brnovich
Attorney General

by _____/s/_____
Dawn R. Williams,
Assistant Attorney General,
Attorneys for Department of Child Safety

Original of the foregoing and appendices (in PDF and Word formats) were electronically filed this 9th day of January, 2015, with:

Arizona Supreme Court
Court Rules Forum

By __/s/_____
Dawn R. Williams, AAG
HDM# 4279789

# APPENDIX A

# PROPOSED AMENDMENTS TO RULE 44, ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT

(Text to be removed is indicated by ~~strikethrough~~; text to be added is underlined.)

**Rule 44. Disclosure and Discovery**

A party shall disclose, in the least burdensome and most cost effective manner, documents and information that (1) have not been previously disclosed: (2) are within the party's knowledge, possession, or control; (3) are potentially relevant to the pending action; and (4) are not privileged or confidential. For purposes of disclosure, the "least burdensome and most cost effective manner" may include the inspection of materials with or without copying.

**A. Scope of Disclosure.** ~~All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying. Disclosure shall include, but is not limited to t~~The following categories of documents and information are presumptively required for disclosure:

1. All original and supplemental ~~R~~reports connected or related to any party that have been prepared by or at the request of ~~any party;~~

   a. ~~2. Reports of any~~ a social service provider~~;~~,

   b. a law enforcement agency,

   c. a probation department,

   d. a health care provider,

   e. a mental health provider,

   f. ~~3.~~ the Foster Care Review Board, or

   g. ~~and~~ the Court Appointed Special Advocate ~~reports;~~

2. Transcripts of interviews of any party or witness ~~and prior testimony~~;

~~5. Probation reports;~~

3. ~~6.~~ Photographs;

4. ~~7.~~ Physical evidence;

5. ~~8.~~ Records of prior criminal convictions;

6. ~~9.~~ Medical and psychological records of a party ~~and reports~~;

7. ~~10.~~ Results of medical or other diagnostic tests of a party; and

8. ~~11.~~ Any other information requested by a party that is relevant to the proceedings.

**B. ~~Time Limits for~~ Initial Disclosure in Dependency Proceedings.** Unless otherwise ordered by the court, at the preliminary protective hearing each party shall make available to all other parties (1) an initial court report prepared by the Department of Child Safety, and (2) all documents, materials, and information listed in subsection (A) of this rule that are not privileged or confidential and that are in the possession of the attorney or unrepresented party at the time of the hearing.

~~1. **Documentary Evidence.** Within twenty-four (24) hours prior to the preliminary protective hearing, the parties shall provide to each other all documents within their possession which may be subject to disclosure. Unless otherwise authorized by the court, any document received by or prepared by the party thereafter shall be disclosed within five (5) days of receipt or preparation. If a hearing is scheduled prior to the expiration of the five (5) days, disclosure shall be made prior to the hearing~~

**C. ~~2.~~ Disclosure Statement ~~Prior to~~ Before a ~~Contested~~ Dependency Adjudication Hearing.**

1. Unless otherwise ordered by the court, at least 30 days before a dependency adjudication hearing, the parties shall disclose to each other, in the form of a disclosure statement to be served electronically or by other method if agreed upon by all parties, the following information ~~within sixty (60) days after the preliminary protective hearing or service of the petition upon a party not appearing at the preliminary protective hearing if the matter is set for a contested adjudication hearing~~:

a. The uncontested facts deemed material;

b. The contested issues of fact and law ~~which~~ that may be material or applicable;

c. A statement of other issues of fact or law ~~which~~ that the party believes to be material;

d. A list of the witnesses the party intends to call at trial, which shall include the names, addresses, e-mail addresses, and telephone numbers of the witnesses in addition to a description of the substance of the witness's expected testimony. ~~No witness shall be called at trial other than those disclosed in accordance with this rule, except for good cause shown.~~ Witnesses whose testimony will be offered in the form of a deposition or affidavit shall be noted; and

e. A list of and copies of all exhibits ~~which~~ that the party intends to use at trial, as well as any documents, materials, witnesses, and information listed in subsection (A) of this rule that have not already been disclosed.

**2. Objections to Disclosure.** If a party objects to the admission of an exhibit or to a witness listed in a disclosure statement, the party shall file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court within ~~ten (~~10~~)~~ days of receipt of the ~~list of exhibits~~ disclosure statement. Specific objections or grounds not identified in the notice of objection shall be deemed waived, unless otherwise ordered by the court. No witnesses or exhibits shall be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

**D. ~~C. Time Limits for~~ Disclosure Statement Before a ~~in~~ Guardianship Adjudication Hearing ~~Proceedings~~.**

~~**1. Documentary Evidence.** Any document received by or prepared by the party shall be disclosed within five (5) days of receipt. If a hearing is scheduled prior to the expiration of the five (5) days, disclosure shall be made prior to the hearing.~~

~~**2. Disclosure Statement Prior to Guardianship Adjudication Hearing.**~~ Unless otherwise ordered by the court, at least 30 days before the guardianship adjudication hearing, the parties shall disclose to each other, in

the form of a disclosure statement, the information identified in subsection ~~(B)(2)(a-e)~~ (C)(1) of this rule, ~~and~~ the report required by A.R.S. 8-872(E), and Rule 61(D) information ~~within thirty (30) days of the initial hearing~~. The provisions of subsection ~~(B)(2)(e)~~ (C)(2) of this rule shall govern objections to the admissibility of witnesses and exhibits.

**E. ~~D. Time Limits for~~ Disclosure Statements Before a ~~in~~ Termination Adjudication Hearing ~~Proceedings~~.**

1. ~~**Documentary Evidence.** Any document received by or prepared by the party thereafter shall be disclosed within five (5) days of receipt. If a hearing is scheduled prior to the expiration of the five (5) days, disclosure shall be made prior to the hearing.~~

2. ~~**Disclosure Statement Prior to Termination Adjudication Hearing.**~~ Unless otherwise ordered by the court, at least 30 days before trial, the parties shall disclose to each other, in the form of a disclosure statement, the information identified in subsection ~~(B)(2)(a-e)~~ (C)(1) of this rule, and any social study prepared pursuant to A.R.S. § 8-536 ~~or by order of the court within thirty (30) days after the initial hearing~~. The provisions of subsection ~~(B)(2)(e)~~ (C)(2) shall govern admissibility of witnesses and exhibits.

**F. ~~E.~~ Methods of Discovery.** The parties may utilize methods of discovery as set forth in Rules 26-37, Ariz. R. Civ. P., upon the agreement of the parties. Absent such agreement, the party seeking to utilize such methods of discovery shall file a motion with the court requesting authorization to proceed and shall set forth the reasons why such methods are necessary. ~~Failure to complete discovery prior to the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances for purposes of Rule 55(B).~~

**G. ~~F.~~ Conclusion of ~~Discovery.~~ Pretrial Disclosure.** Unless otherwise ordered by the court, the parties may supplement the list of witnesses and exhibits to be used at ~~the~~ an adjudication hearing no later than 5 ~~ten (10)~~ days ~~prior to~~ before the hearing. Failure to complete disclosure before the date set for trial or hearing does not constitute good cause or extraordinary circumstances for purposes of Rules 55(B), 63(B), and 66(B).

**H. Supplemental Disclosure and Continuing Duty to Disclose.** The duty described in this rule shall be a continuing duty, and each party shall make additional or amended disclosures not more than 30 days after new or different information, materials, or documents are obtained, revealed to, or discovered by a party. If an item contains privileged or statutorily defined confidential information that requires redaction, a party shall have an additional 15 days to produce the item. If a hearing of any nature, contested or uncontested, is scheduled before the expiration of the disclosure period, the party shall make disclosure no less than 5 days before the hearing unless necessary redactions cannot be made in that time frame, in which case the disclosure shall be made within 45 days of a party's receipt or discovery of the information.

**I. Motion to Compel Disclosure and Sanctions.** If a party fails to make a disclosure required by this rule, any other party may move to compel disclosure and for appropriate sanctions.

1. No motion brought under this rule will be considered, and no hearing will be scheduled thereon, unless the moving party includes a sworn statement certifying that after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve the matter.

2. Upon motion of a party or the court's own motion, the court may impose sanctions upon a party who fails to disclose information in its possession ~~which~~ that is subject to disclosure or fails to disclose such information in a timely manner as required by this rule. Sanctions may include precluding the evidence, granting a continuance or entering any order against a party as deemed appropriate. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost or unavailable as a result of routine, good-faith operation of an electronic information system. Any sanction imposed should be in accordance with the intent of these rules, as set forth in Rule 36.

# APPENDIX B

# CLEAN COPY OF AMENDED RULE 44, ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT

**Rule 44. Disclosure and Discovery**

A party shall disclose, in the least burdensome and most cost effective manner, documents and information that (1) have not been previously disclosed: (2) are within the party's knowledge, possession, or control; (3) are potentially relevant to the pending action; and (4) are not privileged or confidential. For purposes of disclosure, the "least burdensome and most cost effective manner" may include the inspection of materials with or without copying.

**A. Scope of Disclosure.** The following categories of documents and information are presumptively required for disclosure:

1. All original and supplemental reports connected or related to any party that have been prepared by or at the request of

   a. a social service provider,

   b. a law enforcement agency,

   c. a probation department,

   d. a health care provider,

   e. a mental health provider,

   f. the Foster Care Review Board, or

   g. the Court Appointed Special Advocate

2.-Transcripts of interviews of any party or witness;

3. Photographs;

4. Physical evidence;

5. Records of prior criminal convictions;

6. Medical and psychological records of a party;

7. Results of medical or other diagnostic tests; and

8. Any other information requested by a party that is relevant to the proceedings.

**B. Initial Disclosure in Dependency Proceedings.** Unless otherwise ordered by the court, at the preliminary protective hearing each party shall make available to all other parties (1) an initial court report prepared by the Department of Child Safety, and (2) all documents, materials, and information listed in subsection (A) of this rule that are not privileged or confidential and that are in the possession of the attorney or unrepresented party at the time of the hearing.

**C. Disclosure Statement Before a Dependency Adjudication Hearing.**

1. Unless otherwise ordered by the court, at least 30 days before a dependency adjudication hearing, the parties shall disclose to each other, in the form of a disclosure statement to be served electronically or by other method if agreed upon by all parties, the following information:

a. The uncontested facts deemed material;

b. The contested issues of fact and law that may be material or applicable;

c. A statement of other issues of fact or law that the party believes to be material;

d. A list of the witnesses the party intends to call at trial, which shall include the names, addresses, e-mail addresses, and telephone numbers of the witnesses in addition to a description of the substance of the witness's expected testimony. Witnesses whose testimony will be offered in the form of a deposition or affidavit shall be noted; and

e. A list of and copies of all exhibits that the party intends to use at trial, as well as any documents, materials, witnesses, and information listed in subsection (A) of this rule that have not already been disclosed.

**2. Objections to Disclosure.** If a party objects to the admission of an exhibit or to a witness listed in a disclosure statement, the party shall file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court within 10 days of receipt of the

disclosure statement. Specific objections or grounds not identified in the notice of objection shall be deemed waived, unless otherwise ordered by the court. No witnesses or exhibits shall be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

**D. Disclosure Statement Before a Guardianship Adjudication Hearing.**

Unless otherwise ordered by the court, at least 30 days before the guardianship adjudication hearing, the parties shall disclose to each other, in the form of a disclosure statement, the information identified in subsection (C)(1) of this rule, the report required by A.R.S. 8-872(E), and Rule 61(D) information. The provisions of subsection (C)(2) of this rule shall govern objections to the admissibility of witnesses and exhibits.

**E. Disclosure Statements Before a Termination Adjudication Hearing.**

Unless otherwise ordered by the court, at least 30 days before trial, the parties shall disclose to each other, in the form of a disclosure statement, the information identified in subsection (C)(1) of this rule, and any social study prepared pursuant to A.R.S.§ 8-536. The provisions of subsection (C)(2) shall govern admissibility of witnesses and exhibits.

**F. Methods of Discovery.** The parties may utilize methods of discovery as set forth in Rules 26-37, Ariz. R. Civ. P., upon the agreement of the parties. Absent such agreement, the party seeking to utilize such methods of discovery shall file a motion with the court requesting authorization to proceed and shall set forth the reasons why such methods are necessary.

**G. Conclusion of Pretrial Disclosure.** Unless otherwise ordered by the court, the parties may supplement the list of witnesses and exhibits to be used at an adjudication hearing no later than 5 days before the hearing. Failure to complete disclosure before the date set for trial or hearing does not constitute good cause or extraordinary circumstances for purposes of Rules 55(B), 63(B), and 66(B).

**H. Supplemental Disclosure and Continuing Duty to Disclose.** The duty described in this rule shall be a continuing duty, and each party shall make additional or amended disclosures not more than 30 days after new or different information, materials, or documents are obtained, revealed to, or discovered by a party. If an item contains privileged or statutorily defined

confidential information that requires redaction, a party shall have an additional 15 days to produce the item. If a hearing of any nature, contested or uncontested, is scheduled before the expiration of the disclosure period, the party shall make disclosure no less than 5 days before the hearing unless necessary redactions cannot be made in that time frame, in which case the disclosure shall be made within 45 days of a party's receipt or discovery of the information.

**I. Motion to Compel Disclosure and Sanctions.** If a party fails to make a disclosure required by this rule, any other party may move to compel disclosure and for appropriate sanctions.

1. No motion brought under this rule will be considered, and no hearing will be scheduled thereon, unless the moving party includes a sworn statement certifying that after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve the matter.

2. Upon motion of a party or the court's own motion, the court may impose sanctions upon a party who fails to disclose information in its possession that is subject to disclosure or fails to disclose such information in a timely manner as required by this rule. Sanctions may include precluding the evidence, granting a continuance or entering any order against a party as deemed appropriate. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost or unavailable as a result of routine, good-faith operation of an electronic information system. Any sanction imposed should be in accordance with the intent of these rules, as set forth in Rule 36.

# APPENDIX C

# CURRENT RULE 44,
# ARIZONA RULES OF PROCEDURE
# FOR THE JUVENILE COURT

**Rule 44. Disclosure and Discovery.**

**A. Scope of Disclosure.** All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;

2. Reports of any social service provider;

3. Foster Care Review Board and Court Appointed Special Advocate reports;

4. Transcripts of interviews and prior testimony;

5. Probation reports;

6. Photographs;

7. Physical evidence;

8. Records of prior criminal convictions;

9. Medical and psychological records and reports;

10. Results of medical or other diagnostic tests; and

11. Any other information relevant to the proceedings.

**B. Time Limits for Disclosure in Dependency Proceedings.**

**1. Documentary Evidence.** Within twenty-four (24) hours prior to the preliminary protective hearing, the parties shall provide to each other all documents within their possession which may be subject to disclosure. Unless otherwise authorized by the court, any document received by or prepared by the party thereafter shall be disclosed within five (5) days of receipt or preparation. If a hearing is scheduled prior to the expiration of the five (5) days, disclosure shall be made prior to the hearing.

**2. Disclosure Statement Prior to Contested Adjudication Hearing.** Unless otherwise ordered by the court, the parties shall disclose to each other, in the form of a disclosure statement, the following information

within sixty (60) days after the preliminary protective hearing or service of the petition upon a party not appearing at the preliminary protective hearing if the matter is set for a contested adjudication hearing:

a. The uncontested facts deemed material;

b. The contested issues of fact and law which may be material or applicable;

c. A statement of other issues of fact or law which the party believes to be material;

d. A list of the witnesses the party intends to call at trial, which shall include the names, addresses and telephone numbers of the witnesses in addition to a description of the substance of the witness' expected testimony. No witness shall be called at trial other than those disclosed in accordance with this rule, except for good cause shown. Witnesses whose testimony will be offered in the form of a deposition shall be noted; and

e. A list of and copies of all exhibits which the party intends to use at trial. If a party objects to the admission of an exhibit, the party shall file a notice of objection and the specific grounds for each objection and provide a copy of the notice to all parties and the court within ten (10) days of receipt of the list of exhibits. Specific objections or grounds not identified in the notice of objection shall be deemed waived, unless otherwise ordered by the court. No exhibits shall be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

**C. Time Limits for Disclosure in Guardianship Proceedings.**

**1. Documentary Evidence.** Any document received by or prepared by the party shall be disclosed within five (5) days of receipt. If a hearing is scheduled prior to the expiration of the five (5) days, disclosure shall be made prior to the hearing.

**2. Disclosure Statement Prior to Guardianship Adjudication Hearing.** Unless otherwise ordered by the court, the parties shall disclose to each other the information identified in subsection (B)(2)(a-e) of this rule and the report required by A.R.S. 8-872(E) and Rule 61(D) within thirty (30) days of the initial hearing. The provisions of subsection (B)(2)(e) shall govern objections to the admissibility of exhibits.

**D. Time Limits for Disclosure in Termination Proceedings.**

**1. Documentary Evidence.** Any document received by or prepared by the party thereafter shall be disclosed within five (5) days of receipt. If a hearing is scheduled prior to the expiration of the five (5) days, disclosure shall be made prior to the hearing.

**2. Disclosure Statement Prior to Termination Adjudication Hearing.** Unless otherwise ordered by the court, the parties shall disclose to each other the information identified in subsection (B)(2)(a-e) of this rule, and any social study prepared pursuant to A.R.S. 8-536 or by order of the court within thirty (30) days after the initial hearing. The provisions of subsection (B)(2)(e) shall govern admissibility of exhibits.

**E. Methods of Discovery.** The parties may utilize methods of discovery as set forth in Rules 26-37, Ariz. R. Civ. P., upon the agreement of the parties. Absent such agreement, the party seeking to utilize such methods of discovery shall file a motion with the court requesting authorization to proceed and shall set forth the reasons why such methods are necessary. Failure to complete discovery prior to the date set for the dependency adjudication hearing does not constitute good cause or extraordinary circumstances for purposes of Rule 55(B).

**F. Conclusion of Discovery.** Unless otherwise ordered by the court, the parties may supplement the list of witnesses and exhibits to be used at the adjudication hearing no later than ten (10) days prior to the hearing.

**G. Sanctions.** Upon motion of a party or the court's own motion, the court may impose sanctions upon a party who fails to disclose information in its possession which is subject to disclosure or fails to disclose such information in a timely manner as required by this rule. Sanctions may include precluding the evidence, granting a continuance or entering any order against a party as deemed appropriate. Any sanction imposed should be in accordance with the intent of these rules, as set forth in Rule 36.

# APPENDIX D

# AFFIDAVIT OF DCS

THOMAS C. HORNE
Attorney General

DAWN R. WILLIAMS
Assistant Attorney General
State Bar No. 020730
CFP/PSS
3939 S. Park Ave. Ste. 180
Tucson, AZ 85714
(520) 746-4443
juvappeals@azag.gov

Attorneys for the Department of Child Safety

IN THE ARIZONA SUPREME COURT

| | |
|---|---|
| In the Matter of:<br><br>PETITION TO AMEND RULE 44, ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT | No. R-14-_____<br><br>**AFFIDAVIT OF DCS** |

I declare under oath that the following statements are true:

1. That I am employed as Data and Technology Administrator with the Department of Child Safety (DCS or the Department) and am authorized to make this Affidavit on its behalf. I have been employed in this capacity since 2011 and have 15 years of experience in state service. I have dedicated my career exclusively to building and supporting of information systems for child welfare. Through the course of my employment I have been made personally aware of the information contained in this Affidavit.

2. As of December 2014, there were approximately 17,448 children in DCS's custody pursuant to orders of the juvenile court.

3. In 1996 and 1997, the Department (then part of the Department of Economic Security, or "DES") developed a system to comply with federal criteria for a Statewide Automated Child Welfare Information System (SACWIS). The SACWIS criteria incorporated the requirements for both the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS). The project also provided a single case management, provider management, and provider payment system. The resulting database is called the Children's Information Library and Data Source ("CHILDS"). CHILDS was designed with multiple purposes in mind—to facilitate reporting to the Federal Government as required by federal law, to provide the Department with the ability to have a single system to manage case-related data, to perform billing functions to contractors and other payees, and to manage information about the contracted provider network.

4. Since February 1998, Department staff has been required to use the CHILDS/SACWIS system to document the status, demographic characteristics, location, and goal for every child who is in foster care. CHILDS supports Hotline intake, initial assessment/ investigation, case management, adoption, eligibility determination, staff management, provider management and payment processing; and includes on-line help, policy, a court document and forms directory, an alert system for key case events, and other mechanisms to monitor and maintain data accuracy. In 2009, the automation of the child welfare appeals process was included in CHILDS. The system also has several interfaces that exchange data with other systems. This system continues to evolve to meet the needs of users and new State and Federal requirements. These changes require frequent and substantial changes to the system programming, resulting in changes to the

functionality of the system and the way information is stored in and retrieved from CHILDS.

5. Because the CHILDS system was primarily designed for Federal reporting, case management, provider management and provider payment; many of the screens and information were not designed with a print capability. Numerous screens within CHILDS also contain sensitive information, *i.e.*, provider Social Security Numbers, dates of birth, and addresses. This information is necessary for making payments, but is not necessarily needed in case management activities. CHILDS also stores information entered by Hotline workers, investigators, and on-going workers, to assist them in doing their jobs, but that information may otherwise be confidential under state and federal law, such as: criminal conduct allegations; victims' identities, addresses, and phone numbers; domestic violence allegations; Central Registry findings; confidential placement information; and income and tax information of parents and placements. Additionally, other government entities, such as the Administrative Office of the Courts, utilize the CHILDS system to apply for and receive payment for Federal Title IV-E funds.

6. The CHILDS system is utilized as a case management tool. Predominately in dependency cases, the case manager inputs information into CHILDS that could be found in the hard copy file or in the course of typical case management activities in order to make information accessible in a central location. For example, there are several CHILDS screens related to Juvenile Court cases. The Docket Numbers window is a window in which the case manager can input the court docket number for a dependency or delinquency case. This number can later be pre-populated into Court Reports that are prepared by the case manager. The system also stores Case Notes—which document the

agency's communications and case management activities. Inputting data into these windows facilitates communication between case managers and agency staff when access to the hard copy file is not always immediately available. Case managers can then access this data in a central location, such as when preparing reports for the Juvenile Court.

7. There are in excess of five hundred (500) windows in the CHILDS system. A significant number of these windows (approximately 35%) would be considered functional windows. These windows do not contain information, but rather are utilized to conduct searches or data queries. There are also a number of obsolete windows (approximately 10%) in the system. The majority of these windows have been replaced by redesigned windows that better suit the needs of the user. Roughly 15% of the screens in CHILDS could contain information that is captured in a printable report. To use a printable report, a child safety worker can fill out a series of windows in which data can be formatted at a later time into a final report, such as a Medical Summary Report to list all of a foster child's medical or psychological data. Lastly, there are a number of windows (approximately 20%) that do not contain case-specific information. These would include staff information, budgetary information, and provider information. The remaining windows are those that were designed with print capability, although the information contained in those windows may also be included elsewhere in CHILDS or the hard-copy file.

8. The CHILDS project measures its success according to its ability to update the system to respond to the evolving needs of its users while maintaining SACWIS compliance, and is highly successful in this regard. This evolution has led to the creation of new windows and new pieces of the system to meet the new needs and demands of the

agency. This has resulted in some of the old windows becoming inactive or simply used as displays for older data (as further described, above, in paragraph 7). All of these changes have resulted from input and feedback from our field staff, as well as other stakeholders, including the courts. Accordingly, the system has windows that are either entirely obsolete, are now unusable, or contain only historic and outdated information. The process to implement changes in CHILDS is lengthy and comprehensive, including development of requirements and specifications, programming, and extensive testing. The Department is actively working on replacing CHILDS; it is a multi-year project which won't be completed for three to five years.

9. Currently, when CHILDS information is requested, it is taking about 8 hours on average to process information in the CHILDS screens for a single request. This is after streamlining the data gathering and production process over the last year is taken into account. The time is expanded for each additional child whose information must be produced. This includes time that it takes to manually review the data that is produced from the system and then to redact confidential and privileged information from the produced data. These requests are assigned to DCS's Central Records Coordination Unit ("CRCU"), so that the expertise in processing these requests can be housed in one location. CRCU currently receives about 50 requests a day on average.

10. The CRCU is also responsible for processing requests for disclosure of interviews (audio and video) when those interviews contain confidential or privileged information. Currently DCS does not have the capacity to redact information from recordings and must send them off for transcription—at great expense and delay—before redacting the protected information by hand.

11. I have read the foregoing and avow that the information stated herein is true and correct to the best of my knowledge and belief.

Ernest L Baca Jr
Data and Technology Administrator
Department of Child Safety

SUBSCRIBED and sworn to before me this 30TH day of DECEMBER, 2014.

Notary Public

My Commission Expires:

OFFICIAL SEAL
BEVERLY A. HILL
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires March 19, 2015