

1 The Honorable Robert Brutinel
2 Presiding Judge
3 Superior Court in Yavapai County
4 Chair Committee on Juvenile Courts
5 c/o Legal Services Office
6 1501 W. Washington, Suite 414
7 Phoenix, Arizona 85007-3231
8 602-452-3283

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

10 In the Matter of:)
11) Supreme Court No. R-06-0036
12 PETITION TO AMEND RULES OF)
13 PROCEDURE FOR THE JUVENILE COURT) PETITION FOR AMENDMENT
14 PROVIDING FOR NOTICE OF PROCEEDINGS) PURSUANT TO RULE 28,
15) RULES OF THE SUPREME
16) COURT **(AMENDED)**
17)
18) **(Emergency or expedited**
19) **adoption requested)**

20 Pursuant to Rule 28, Rules of the Supreme Court, Petitioner asks the Court to consider
21 the following amendment to the Rules of Procedure for the Juvenile Court providing for notice
22 of proceedings. The proposed amendments are attached. Petitioner respectfully requests
23 emergency or expedited adoption pursuant to Rule 28(G).

24 **I. INTRODUCTION**

25 On July 3, 2006, HR 5403 the "Safe and Timely Interstate Placement of Foster Children
Act of 2006" was signed into law as Public Law 109-239. The provisions have an effective date
of October 1, 2006 and will affect the funding cycle that commences after that date. That act
amends the Social Security Act (42 U.S.C. 629h)¹ and requires: "In order to be eligible to
receive a grant under this section, a highest State court shall have in effect a rule requiring State
courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in

¹ The original petition cited 42 U.S.C. 638(b). That citation was found in the Public Law. Upon consultation with West Publishing Company, it was determined that the cited statute had been repealed and the citation in the Public Law was a typographical error. It was further determined that the correct citation is 42 U.S.C. 629(h).

1 foster care under the responsibility of the State are notified of any proceeding to be held with
2 respect to the child." This provision directly impacts court improvement funding beginning with
3 the fiscal year commencing October 1, 2007.

4 The concept and issues surrounding this Rule Petition were addressed at the September
5 22, 2006 meeting of the Committee on Juvenile Courts. A workgroup composed of the
6 following individuals: Judge Eileen Willett, Judge Patricia Escher, Beth Rosenberg, Chris
7 Swenson-Smith, Jakki Hillis, Janice Mickens, Steve Sparks, Nina Preston, John Barrett, Bob
8 Lynch, Jim Warner, Connie Neeley Greg Pulcipher, Pat Trebesch, Eileen Bond, Melody Tinsley,
9 Caroline Lutt-Owens and Rob Shelley was established to propose draft language for
10 consideration at the next COJC Meeting. Due to the fact that the next COJC Meeting was
11 scheduled for November 17, 2006 and the deadline for filing Rule Petitions was November 1,
12 2006, it was necessary to file this petition before the final input was obtained from the
13 Committee on Juvenile Courts. The Committee on Juvenile Courts will provide any additional
14 input to this Rule Petition via Comment.

15 In February 2007, further communications from the United States Department of Health
16 and Human Services, Administration for Children, Youth and Families (ACYF) as well as
17 communications with the Arizona Department of Economic Security (ADES) underscored the
18 need for further amendments to the Rules of Procedure for the Juvenile Court. The petition filed
19 on November 1, 2006 has been amended to address additional requirements regarding interstate
20 placements and procedural safeguards to assure consultation with the child. The amended
21 petition was reviewed by the Committee on Juvenile Courts prior to filing.

22 **II. SUMMARY OF MAJOR PROPOSED AMENDMENTS**

23 The proposed amendments add provision 41(I) and require notice to foster parents, pre-
24 adoptive parents and relative caregivers of a child in foster care under the responsibility of the
25 state for any proceeding regarding a child. The proposed amendments also add a provision to the
end of Rule 47.1(C) to include consideration of in-state and out-of-state placements. Provisions
are also added to Rule 60(D), Procedure, to assure age appropriate consultation with the child.

1 Lastly, provisions are added to Rule 60 (E)(6) requiring consideration of continued
2 appropriateness of out-of-state foster care placement if the child is in an out-of-state placement at
3 the time of the permanency hearing.

4 **III. JUSTIFICATION FOR EMERGENCY ADOPTION**

5 The Dependent Children's Services Division (DCSD) of the Administrative Office of the
6 Courts (AOC) has obtained direction from the federal authorities administering Court
7 Improvements Grants. The required rules must be in place, rather than in progress, at the time of
8 the grant application. Grant applications for the fiscal year commencing October 1, 2007 are due
9 no later than June 29, 2007. The Supreme Court has ordered that comments on the underlying
10 petition are due May 21, 2007. Emergency adoption is necessary to meet federal funding
11 requirements.

11 **IV. CONCLUSION**

12 Petitioner respectfully requests that the Supreme Court adopt the proposed amendment,
13 attached as Appendix A, prior to circulation for public comment as the requested changes require
14 emergency adoption and implementation.

15 Respectfully submitted this 20th day of April, 2007.

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APPENDIX “A”

1 Rule 41. (I)

2 The petitioner shall notify the foster parents, pre-adoptive parents or relative caregivers
3 of a child in foster care, under the responsibility of the State, of the date, time and location of the
4 first proceeding to be held with respect to the child.

5 Thereafter, at each proceeding, the Court shall enter appropriate orders to ensure that
6 foster parents, pre-adoptive parents or relative caregivers are notified of any future proceeding
7 with respect to the child.

8 The foster parents, pre-adoptive parents or relative caregivers shall be afforded the right
9 to be heard in any proceeding to be held with respect to the child. This right shall not be
10 construed to require that any foster parents, pre-adoptive parents or relative caregivers be made a
11 party to such proceeding solely on the basis of such notice and a right to be heard.

12 Nothing in this rule shall be construed to limit the periodic review hearing notice
13 requirements of A.R.S. §8-847(B).

14 Rule 47.1.(C)

15 Within twelve months after the child is removed from the child's home, and once every
16 twelve months thereafter, whether reasonable efforts have been made to finalize the existing
17 permanency plan, **including consideration of both in-state and out-of-state placements.**

18 Rule 60.(D)

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

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1 **Rule 60. (E)(6)**

2 **If a child is in an out-of-state placement the court shall make a finding as to whether the**
3 **placement continues to be appropriate and in the child's best interest.**

4 **Rule 60. (E)(6)(7)**

5 Make findings and enter any other orders as maybe appropriate or required by law.

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