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ARIZONA SUPREME COURT

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|---------------------------|---|-----------------------------|
| In the matter of : |) | |
| |) | |
| PETITION TO AMEND |) | Supreme Court No. R-16-0025 |
| RULES 19, 30, 45, AND 47, |) | |
| RULES OF PROCEDURE FOR |) | AMENDED PETITON |
| THE JUVENILE COURT |) | |
| _____ |) | |

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully files this amended petition to adopt the attached proposed amendments to Rules 19, 45, and 47, Rules of Procedure for the Juvenile Court. [See Appendix] This appendix replaces the appendix previously filed on January 11, 2016. These proposed rule amendments are intended to clarify what records are filed, where records are filed, and where records are kept. The intent of the initial petition and this amended petition is to achieve uniformity, clarity, and standardization. Petitioner requested and was granted a modified comment period due to the fact that this petition had not been widely circulated prior to filing due to time constraints. Petitioner wished to encourage comments from those impacted by these proposed amendments and was

granted a modified comment period to accommodate filing an amended petition after an initial round of public comments.

The first series of comments were due on March 1, 2016. It appears that attorney, Christina Phillis filed the only comment. Her comments focused on the need to clearly designate the disposition report as confidential and also articulated serious concerns about Rule 45. Petitioner has incorporated Ms. Phillis' recommendations as to the disposition report, but will take no position on the comments to Rule 45.

While no additional comments appear on the Rules Forum, Petitioner has received informal comments from the Committee on Juvenile Courts (COJC), the Office of the Arizona Attorney General, Clerks of Superior Court, and other court staff. Both the filed comment and the informal comments emphasized the need to clarify that the disposition report is confidential. In this Amended Petition, Petitioner has suggested a change in the wording of Rule 30 to clearly designate the disposition report as confidential.

I. Background and Purpose of the Proposed Amended Petition

The COJC discussed this petition at their meeting on February 11, 2016. During the discussion, it became clear that amendments were necessary to clarify that the disposition report is confidential. Additional language of the proposed rule

amendments addresses that issue. This change is also consistent with the recommendations made by Christina Phillis.

II. Contents of the Amended, Proposed New Rules

Petitioner has added language that provides the disposition report and any social file records provided with the disposition report are confidential and closed from public view. [See Rule 30(A)] Petitioner revised the provision requiring probation officers to mark social file records confidential when they include them with the disposition report. Petitioner also withdraws the recommendation to amend Rule 104 at this time.

III. Pre-Petition Comments

Petitioner transmitted a draft of the proposed amended rules electronically to the Presiding Juvenile Court Judges in Maricopa, Pima, Yavapai, Coconino, and Pinal Counties on March 4, 2016. Petitioner also sent a copy of this Amended Petition to these Presiding Juvenile Court Judges electronically on the day of filing.

Respectfully submitted this ____ day of _____, 2016.

By _____
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APPENDIX

RULE 19. Records and Proceedings

A. Contents of Juvenile Court Files.

1. Legal File. The legal file of the juvenile court shall consist of all pleadings, motions, minute entries, orders, or other documents ~~as the court may order as provided by rule or ordered by the court.~~ Within the legal file, the clerk shall file and segregate confidential documents, including any records from the social file submitted to the court as provided in Rule 30(A)(6). In addition, the court may close all or part of the legal file upon a finding of a need to protect the welfare of the victim or another person or a clear public interest in confidentiality. With the exception of the portions of the file marked confidential, or ordered closed by the judge, ~~the legal file shall be open to public inspection without order of the court, except upon a finding by the court of a need to protect the welfare of the victim, another party or a clear public interest in confidentiality.~~ The court shall state its reasons for withholding the legal file, or portions thereof, from public inspection.

2. Social File. The social file shall be maintained by the probation department and may consist of all social records, including diagnostic evaluations, psychiatric and psychological reports, treatment records, medical reports, social studies, 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.

RULE 30. Disposition

A. Disposition~~al~~ Investigation and Report. Prior to the disposition hearing, the court shall order the juvenile probation officer to conduct an investigation and submit a written report to the court with recommendations regarding the disposition of the juvenile. The disposition report shall be confidential and withheld from public inspection except upon order of the court.

1. The disposition report shall:

- a. Be submitted to the court three (3) days prior to the disposition hearing;
- b. Be made available three (3) days prior to the hearing to counsel for the parties or to the parties if unrepresented by counsel;
- c. Include a written victim impact statement as required by law;
- d. Provide the court with information regarding restitution if restitution is requested; and
- e. Make recommendations as to the most appropriate disposition for the juvenile.
- f. Include and mark as confidential any Rule 19 (A)(2) social file records relevant to the recommendations;

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6. Filing of Social File Information and Records in Legal File. The clerk shall file disposition reports and any rule 19(A)(2) social file records provided with the report and marked confidential in a segregated portion of the legal file.

RULE 45. Admissibility of Evidence.

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

1. One (1) day prior to the preliminary protective hearing; ~~or~~
2. Ten (10) days prior to any other hearing; or
3. Another date set by the court.

The court shall file a report in the dependency file maintained by the clerk when it is considered by the court. Unless a party objects, a report used in an evidentiary hearing shall be admitted into evidence. If the child safety worker who prepared

the report is available for cross-examination at the time the report is being offered, the report may be admitted into evidence over a party's objection.

RULE 47 Release of Information.

A. – B. [No change]

C. If the court grants the request for inspection of court records, the court shall redact any information subject to the requirements of A.R.S. § 8-525(B)(1) ~~and through (6)~~ and A.R.S. § ~~8-807(F)(2)~~ 8-807.01(A)(1).