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IN THE ARIZONA SUPREME COURT

In the Matter of PETITION TO  
AMEND RULES 19, 30, 45, AND 47,  
RULES OF PROCEDURE FOR THE  
JUVENILE COURT

R-16-0025

COMMENT ON PETITION

The Department of Child Safety (“DCS” or “the Department”), under Rule 28(D), Arizona Rules of the Supreme Court, offers its comment to the proposed amendment to Rule 45, Arizona Rules of Procedure for the Juvenile Court. The Department objects to the proposed rule amendment because it confuses, rather than clarifies, the processes for considering and admitting DCS reports at dependency hearings.

**I. Introduction.**

Petitioner, the Administrative Office of the Courts, seeks to amend the Rules of Procedure for the Juvenile Court to “clarify what records are filed, where records are filed, and where records are kept.” (Amended Petition at 1.) The

stated reasons for the amendments are “to achieve uniformity, clarity, and standardization.” (*Id.*) The proposed amendments to Rules 19 and 30, Arizona Rules of Procedure for the Juvenile Court, address matters arising out of or filed in delinquency proceedings, and thus do not directly affect DCS’s interests. And the proposed amendment to Rule 47 merely corrects citations to authority that has moved within Title 8, A.R.S. The Department, therefore, provides comments only regarding the proposed amendments to Rule 45, Arizona Rules of Procedure for the Juvenile Court.

**II. The Proposed Amendments to Rule 45(C) Unnecessarily Exceed the Scope of the Amendments’ Stated Purpose and Confuse, Rather than Clarify, the Consideration, Admission, and Retention of Court Reports.**

**A. The Rule’s History and Current Practice.**

The procedural rule addressing the consideration and admission of DCS (then Department of Economic Security/Child Protective Services) reports was originally found at Rule 16.1(f), Arizona Rules of Procedure for the Juvenile Court. It was amended in 1993 to read:

(f) **Evidence.** Prior to any dependency hearing, the court may examine the Department of Economic Security's written reports and make the same available to all parties and their counsel prior to the hearing. At any dependency hearing, the court *shall* admit the Department of Economic Security's written reports into evidence as long as the reports have been provided to all parties at least 30 days

prior to the hearing and the caseworker who prepared the report is available to be cross-examined.

Ariz. R.P. Juv. Ct. 16.1(f) (West 1993). Notes on the 1993 amendments clarified that the purpose of that subsection was to clarify

whether Rule 16(a) constituted an exception to the hearsay rule or only a rule of procedure. The amendment clarifies that the rule is both. The report may be examined by the court pursuant to the statute and, if the matter is contested, it will be taken into evidence only if appropriate notice is given and an opportunity to cross examine the author of the report and to subpoena the persons whose statements are reported in the report is provided.

Ariz. R.P. Juv. Ct. 16.1, Note to 1993 Amendment (West 1993). As the court of appeals recognized, requiring that a party have notice of the contents of the report and that the author of the report be available for cross-examination protects the party's due process rights and thus the mandatory admission of reports that met those criteria was "a 'reasonable and workable' supplement to the Rules of Evidence." *Maricopa Cty. Juv. Action No. JD-6123*, 191 Ariz. 384, 389, 391 (App. 1997) (quoting *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)). Further, the rule furthered the "compelling state interest in ensuring that all children in Arizona are provided with appropriate care and are free from parental abuse or neglect" because "[t]he introduction of C.P.S. caseworker reports . . . is necessary to the adjudication of a dependency

proceeding” since the “reports provide helpful information not only for C.P.S., but also for the juvenile court and for the parents” while offering necessary procedural safeguards for the parent’s due process rights. *Id.* at 392. Court reports are essential to the juvenile court’s ability “to review D[C]S's placement, case planning, and services.” *Maricopa Cty. Juv. Action No. JD-6236*, 178 Ariz. 449, 451 (App. 1994).

The current version of Rule 45 has been in effect in substantially the same form since 2000 (although it was amended in 2014 to change “child protective services worker” to “child safety worker” pursuant to the legislation establishing DCS). *See* Ariz. R.P. Juv. Ct. 45; Order filed 9/2/14 in R-14-0025). Like former Rule 16.1, the rule currently allows the court to review reports prepared by DCS workers prior to “any dependency hearing.” Ariz. R.P. Juv. Ct. 45(C). The court *shall* admit the report into evidence if two qualifications are met: the report was timely disclosed, and the worker who prepared the report is available for cross-examination. *Id.* The current rule thus parallels the rule established by this Court to protect the best interests of dependent children while ensuring that the parties’ due process rights were also protected.

The Department is required to prepare reports to the juvenile court in conformity with Rule 45(B), Arizona Rules of Procedure for the Juvenile Court. It

is the Department's policy to "provide the court with accurate, thorough and timely reports." (See DCS Policy and Procedure Manual, Chapter 7, Section 11.<sup>1</sup>) Under Rule 45(B), the Department has an obligation to provide a written report to the juvenile court setting forth information under several broad categories (e.g., the reason for the child's removal, services provided to effectuate a case plan goal, and compliance with case plan goals). Other statutes and rules prescribe alternate or additional information to be included in court reports. (See A.R.S. § 8-824(H), A.R.S. § 8-516(E), Ariz. R.P. Juv. Ct. 58(C), 59(C).)

**B. The Proposed Amendment Removes the Certainty of the Consideration and Admission of Timely Disclosed Reports, to the Detriment of the Court and Parties.**

The proposed change is a significant departure from the current rule and longstanding practice. Until this proposed amendment, if the author of a DCS court report that was disclosed in accordance with mandatory timeframes was available at the hearing for cross-examination, the court was mandated to admit that report in evidence. See Ariz. R.P. Juv. Ct. 45(C) (requiring that the court

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<sup>1</sup> Available at [https://extranet.azdes.gov/dcyfpolicy/#07\\_Records\\_Legal\\_Quality\\_Assurance\\_Funding/Legal/court\\_reports.htm%3FTocPath%3DChapter%25207%2520%2520Records%252C%252C%25A0Legal%252C%2520Quality%2520Assurance%252C%2520and%2520Clinical%252C%25A0Supervision%2520%7C09-18%2520Legal%7C\\_\\_\\_\\_\\_3](https://extranet.azdes.gov/dcyfpolicy/#07_Records_Legal_Quality_Assurance_Funding/Legal/court_reports.htm%3FTocPath%3DChapter%25207%2520%2520Records%252C%252C%25A0Legal%252C%2520Quality%2520Assurance%252C%2520and%2520Clinical%252C%25A0Supervision%2520%7C09-18%2520Legal%7C_____3). (Last accessed 5/18/16.)

“*shall* admit” the report if conditions are met) (emphasis added). A party could not, therefore, prevent the admission of the report—which contains essential information regarding the status of the case and the child’s wellbeing—but could, however, challenge its contents through cross-examination of the report’s author.

Juvenile court proceedings are typically expedited. Review hearings last, on average, only half an hour. Requiring admission of mandatory court reports helps to streamline the proceedings to ensure that the time can be used as effectively as possible. The parents’ and children’s rights are protected by allowing them the opportunity to cross-examine the report’s author regarding its contents, as necessary. Presumably, then, the cross-examination would be limited to discrete points of information in dispute, rather than requiring litigation of the entire report. This balances the interests of the parties and the court. The court is able to more effectively manage the limited time available for a review hearing while obtaining the information necessary to ascertain a course of action that will best serve the child and family.

**C. The Proposed Amendment Is Unclear Regarding the Admission of Reports for Uncontested Hearings.**

The proposed amendment would require that the court “file a report in the dependency file when it is considered by the court” but refers to admission of “a

report used in an evidentiary hearing.” (Petition at 5-6.) This is problematic because review hearings are typically not “evidentiary hearings,” in the sense contemplated by the rule amendment. Although currently the reports may be considered (and must be admitted, under certain circumstances) at every review hearing, a party must specifically request an evidentiary hearing to address any contested issues at a review hearing. Ariz. R.P. Juv. Ct. 58(D). Because a report may be considered at an uncontested review hearing, the proposed amendment requiring that “a report used in an evidentiary hearing shall be admitted into evidence” does not address uncontested hearings where there may be disagreements about a report without a request for a full evidentiary hearing.

**D. The Proposed Amendment Precludes the Juvenile Court from Reviewing a Report Prior to the Hearing.**

The current rule provides that the court “may review reports” prior to “any dependency hearing,” but conditions their *admission into evidence* upon the report’s timely disclosure and the availability of the author for cross-examination. The proposed amendment, however, conditions the court’s *review and consideration* of the report on the report’s timely disclosure and the availability of the author.

The wording of the proposed amendment would preclude the juvenile court from reviewing or considering a court report prior to the hearing, since it mandates both timely disclosure and the presence of the author for cross-examination as prerequisites, and determining if those prerequisites can be met occurs at the hearing itself. The point of the report—and the timelines under which it is to be disclosed—is to ensure that the court and parties have necessary information about the matter going into each substantive hearing. *See JD-6236*, 178 Ariz. at 451. Preventing the court from reviewing the report prior to the hearing unnecessarily extends the time necessary for the hearings and robs the court of the opportunity to review necessary information. This is particularly true in those cases where no party objects to the court’s review, consideration, or even admission of the report. Moreover, the juvenile court has a duty to consider the child’s best interests, and to do so it has a duty “to hear all competent evidence which may be offered” to ensure that it can make an “informed decision.” *Hays v. Gama*, 205 Ariz. 99, 103 (2003) (internal quotes and citations omitted).

**E. The Department Does Not Object to an Amendment Requiring that the Court Maintain Copies of Reports that It Considers or Admits Into Evidence.**

The Department supports the goal of the amendment: to standardize and formalize the retention of documents used in juvenile court proceedings. The

proposed amendment, however, exceeds the scope of that goal by altering the procedure for admitting court reports. Ensuring that court clerks maintain copies of reports that are considered and/or admitted is clearly within the scope of the proposed amendments. The Department does not object to an amendment reflecting that consideration, with the caveat expressed above that not all hearings at which reports may be considered or admitted are “evidentiary hearings” under the Rules of Procedure for the Juvenile Courts.

Preserving those reports in the court’s file also supports the court’s ability to use admitted or stipulated documents at later hearings. Rule 58(E)(1), Arizona Rules of Procedure for the Juvenile Court, permits the court to consider at any dependency review hearing, absent objection by a party, “the oral or written reports of the parties, documents previously entered into evidence at prior proceedings, documents agreed upon by the parties, and other reports, pursuant to Rule 45.” Similarly, the court may proceed with a termination action in a parent’s absence and enter orders “based upon the record and evidence presented” which may include reports admitted at prior hearings. *Adrian E. v. Ariz. Dep’t of Econ. Sec.*, 215 Ariz. 96, 102-03, ¶ 23 (App. 2007) (quoting Ariz. R.P. Juv. Ct. 64(C)). Thus preserving those reports will assist the court when it is asked to make a later ruling on the basis of the previously admitted reports.

### III. The Department's Proposed Alternative Amendments.

The Department suggests, as an alternative, that the amendment read as follows (deletions marked with double strikethrough, additions in bold italics):

#### **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, ***if an alternative date for disclosure is*** set by the court ***prior to the hearing.***

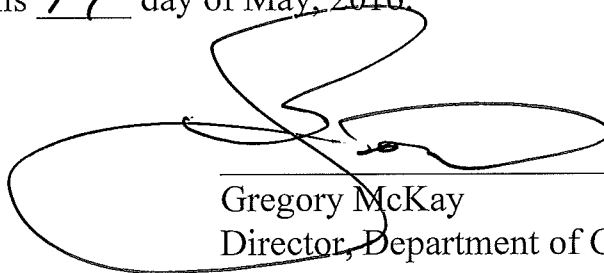
The court shall file a report in the dependency file maintained by the clerk when it is considered by the court ***or when it is admitted into evidence.*** ~~Unless a party objects, a report used in an evidentiary hearing shall be admitted into evidence.~~ If the child safety worker who prepared the report is available for cross-examination at the time the report is being offered, the report ~~may~~ ***shall*** be admitted into evidence over a party's objection.

The Department's alterations would maintain the longstanding practice of mandatory admission of timely filed reports with the author available for cross-examination, while clarifying that reports must be kept by the clerk whenever they are considered or admitted under the rule.

#### IV. Conclusion.

The Department objects to the proposed amendments to Rule 45 because they unnecessarily exceed the scope of the amendments' purpose and confuse, rather than clarify, when reports should be filed in the clerk's dependency file. The Department therefore requests that this Court deny the Petition or, in the alternative, amend the proposal as outlined in this Comment to cure the defects noted.

DATED this 19 day of May, 2016.

A handwritten signature in black ink, appearing to read 'Gregory McKay', is written over a horizontal line. The signature is stylized and somewhat abstract.

Gregory McKay  
Director, Department of Child Safety

A copy of this comment has been e-mailed  
this 20th day of May, 2016, to:

David K. Byers  
Projects2@courts.az.gov  
Petitioner

By /s/ Dawn Williams