

1 Honorable Janet E. Barton
2 Presiding Judge
3 Superior Court of Arizona in Maricopa County
4 125 W. Washington Street
5 Phoenix, Arizona 85003
6 (602) 506-5340

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 In the Matter of:

} Supreme Court No. R-17-0046

9
10 PETITION TO ADD NEW RULE
11 47.3 TO THE RULES OF
12 PROCEDURE FOR JUVENILE
13 COURT

} COMMENT TO PROPOSED RULE
47.3

14 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Presiding
15 Judge of the Superior Court of Arizona in Maricopa County submits the
16 following comment recommending amendments to the proposed new Rule 47.3
17 of the Rules of Juvenile Procedure. These formal comments have previously
18 been informally raised in implementation discussions with the Administrative
19 Office of the Courts.

20 The purpose of the proposed Rule 47.3 is to implement amendments to
21 A.R.S. §8-821(A) that take effect on July 1, 2018. The Rule creates the process
22 by which applicants can seek pre-petition temporary custody orders from the
23 court in certain circumstances where it is clearly necessary to protect a child
24 from suffering abuse or neglect. The new Rule envisions a process in which the
25 Superior Court in Maricopa County’s 24/7 Initial Appearance Court will be able
26 to electronically receive and rule on written applications for temporary custody
27 orders from applicants in every county in Arizona using an approved format.
28 While the petition accompanying the proposed Rule states that oral

1 communication will also be available as a backup, the proposed Rule itself
2 simply states that an application may be made *either* in writing *or* by recorded
3 oral statement to the designated judicial officers.

4 The recommended amendments to the proposed Rule are to ensure that
5 the *written* application process using the format approved by the Administrative
6 Director of the Supreme Court and utilizing the technology developed in
7 conjunction with the Superior Court in Maricopa County is the *primary* process
8 by which applications are submitted to our 24/7 Initial Appearance Court. As the
9 Rule is presently drafted, it leaves it up to the applicants as to whether they wish
10 to utilize the written application format and electronic technology currently
11 being developed or instead bypass these processes and attempt to make the
12 application by oral statements to the judicial officer. Our suggested amendments
13 would make it clear that an application by recorded oral statement to the
14 designated judicial officers is only to be utilized when the written application
15 process is unavailable to the applicant.

16 Respectfully submitted this 23rd day of October, 2017.

17
18 /s/ Janet E. Barton

19 Hon. Janet E. Barton
20 Presiding Judge
21 Superior Court of Arizona in Maricopa
22 County

23 Electronic copy filed the
24 Clerk of the Supreme Court
25 of Arizona this 23rd day of
26 October, 2017.
27
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1 (g) any time by which custody must be taken,

2 (h) reason for any authorization needed to execute the order between ten p.m.
3 and six-thirty a.m., and

4
5 (i) whether law enforcement assistance is requested.

6 Additionally, under 25 C.F.R. § 23.113(d), if there is reason to know the child is
7 an Indian child, the applicant should provide any available information
8 regarding the child's tribal affiliation, whether the child resides on a reservation
9 and any efforts to contact a tribe. The other information that should be provided
10 under 25 C.F.R. § 23.113(d) may be provided in the dependency petition.

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12 **2. Form.** The application must be submitted in a format approved by the
13 Administrative Director of the Supreme Court. EXEPT THAT IF AN
14 APPLICANT IS UNABLE TO SUBMIT A WRITTEN APPLICATION USING
15 THE APPROVED FORMAT, THEN THE APPLICANT MAY APPLY FOR
16 EMERGENCY TEMPORARY CUSTODY BY RECORDED ORAL
17 STATEMENT MADE UNDER OATH TO ONE OF THE JUDICIAL
18 OFFICERS DESIGNATED BY THE PRESIDING JUDGE OF THE
19 SUPERIOR COURT IN MARICOPA COUNTY TO RECEIVE AND
20 RESPOND TO APPLICATIONS UNDER THIS RULE. THE RECORDED
21 ORAL STATEMENT MUST CONTAIN THE INFORMATION REQUIRED
22 BY PARAGRAPH (C)(1) OF THIS RULE.

23 **3. Evidence.** Evidence presented in support of an application for emergency
24 temporary custody may include evidence which is reliable hearsay, in whole or
25 in part.

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27 **4. Consideration.** As soon as possible after receipt of an oral statement or a
28 written application, a designated judicial officer will consider the application ex

1 parte. The judicial officer may question the applicant and any witnesses orally or
2 in writing. Any oral questioning must be recorded.

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4 **D. Findings and Order.**

5 1. through 5. – [No Change]
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