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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of)	Supreme Court No. R-17-0046
)	
PETITION TO ADD NEW RULE 47.3)	COMMENT TO PROPOSED
CONCERNING CHILD REMOVAL TO THE)	RULE 47.3
RULES OF PROCEDURE FOR THE)	
JUVENILE COURT)	
_____)	

The Arizona Association of Superior Court Clerks (Clerks) submits the following comments recommending further amendments to Juvenile Rules 47.3(D)(4), 47.3(D)(5) and the addition of a Rule 47.3(D)(6). The Clerks of Superior Court were represented in post-petition discussions on implementing proposed Rule 47.3. The representatives in those discussions considered an approach similar to the existing process in Maricopa County’s Initial Appearance court where search warrants can be requested and either approved or denied. The formal comments presented here were raised during the informal implementation discussions.

Juvenile Rule 47.3(D)(4) as proposed in the petition would require that notice of execution of a temporary custody order be provided to the court that issued the order (a “return”). In all cases under the proposed Rule 47.3 process, Maricopa County will be the court issuing the order and the court in Maricopa County would have to file the return with the county that would have jurisdiction of a dependency petition for that county to

be able to review continuation of temporary custody. Once the court in Maricopa County issues a temporary custody notice (TCN), a dependency petition, if any, will be filed in the county with jurisdiction and the petition will include a copy of the application, order, and notice. The dependency petition process makes notice of execution to Maricopa County (the “return”) unnecessary and duplicative. The Clerks recommend striking the notice provision from this subpart.

Proposed Juvenile Rule 47.3(D)(5) would require the applicant to file the application and order with the court that would have jurisdiction even when no dependency petition is filed. During implementation discussions the participants indicated the proposed procedure would be equivalent to creating a superior court case to memorialize that no superior court case was filed. The Clerks recommend removing the filing requirement while allowing the court to maintain related documents in its case management system. Alternatively, after Maricopa County issues the order, the applicant could file the original application, order, and any related documents directly with the county that would have jurisdiction. Recommended language for both alternatives appears in Appendix A.

The Clerks propose a new Juvenile Rule 47.3(D)(6) to address applications the court denies. For the reasons stated above in subpart 47.3(D)(5), the Clerks recommend that orders denying applications and their related documents may be maintained by the court in its case management system, but not filed as Superior Court cases. This mirrors the process when law enforcement’s application for a search warrant is denied. A Superior Court case would be created in the county with jurisdiction when a dependency

APPENDIX A

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 47.3 Court Authorized Removal

A. through C. – [No Change]

D. Findings and Order.

1. through 3. – [No Change]

4. Execution and Duration. The applicant may execute the order until there is a material change in the factual basis for the probable cause determination and within ten calendar days of issuance of the order. ~~The applicant must provide notice of the execution of the order to the court that issued the order.~~ The temporary custody authorized by the order will expire after 72 hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in rules 50 and 51.

[Alternative 1]

5. Filing: The applicant must file the application and order when the TCN and the dependency petition are filed. Prior to filing the application and order the applicant must indicate on the order whether the child was removed as authorized by the order. If no petition is filed following an order authorizing emergency temporary custody under this rule the ~~applicant must file the~~ application and order WILL NOT BE FILED BUT MAY

BE MAINTAINED BY THE COURT ~~within 72 hours excluding Saturdays, Sundays and holidays in the court that would have dependency jurisdiction of the child.~~

[Alternative 2]

5. Filing: The applicant must file the application and order when the TCN and the dependency petition are filed. Prior to filing the application and order the applicant must indicate on the order whether the child was removed as authorized by the order. If no petition is filed following an order authorizing emergency temporary custody under this rule the applicant must file the ORIGINAL application, ~~and~~ order AND RELATED DOCUMENTS within 72 hours excluding Saturdays, Sundays and holidays in the court that would have dependency jurisdiction of the child.

6. DENIAL: IF THE COURT DENIES AN APPLICATION, THE APPLICATION AND ORDER WILL NOT BE FILED BUT MAY BE MAINTAINED BY THE COURT.