

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-17-0046
RULE 47.3, RULES OF)
PROCEDURE FOR THE JUVENILE COURT)
)
) **FILED 12/13/2017**
)
_____)

ORDER

ADOPTING RULE 47.3, RULES OF PROCEDURE FOR THE JUVENILE COURT

A petition having been filed proposing to add new Rule 47.3,
Rules of Procedure for the Juvenile Court,

IT IS ORDERED that Rule 47.3, Rules of Procedure for the
Juvenile Court, be adopted in accordance with the attachment hereto,
effective July 1, 2018.

DATED this 13th day of December, 2017.

_____/s/_____
SCOTT BALES
Chief Justice

T0:

Rule 28 Distribution

David K Byers

Del McArdle

Lori J Ford

Hon. Janet E Barton

Hon. Juan Pablo Guzman

Christina M Phillis

Kathryn R Blades

ATTACHMENT

Rules of Procedure for the Juvenile Court

Rule 47.3. Court Authorized Removal

A. Purpose. On application under oath by a child safety worker, a child welfare investigator, or a peace officer, the court will determine whether to authorize the applicant to take ex parte temporary custody of a child.

B. Burden of Proof. The applicant shall have the burden of stating explicit facts that provide reasonable grounds to believe:

1. ex parte temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect, and
2. remaining in the child's current home is contrary to the welfare of the child.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the facts stated must support a finding that ex parte temporary custody is necessary to prevent imminent physical damage or harm to the child.

C. Procedure.

1. Application. A child safety worker, a child welfare investigator, or a peace officer may apply for authorization to take ex parte temporary custody of the child by submitting an application in writing to one of the judicial officers designated by the presiding judge of the superior court in Maricopa County to receive and respond to applications under this rule. The application must state:

- (a) the professional qualifications of the applicant,
- (b) the particular reasons each child is presently or imminently in danger of abuse or neglect,
- (c) a detailed account of circumstances that require ex parte temporary custody including the facts that support the reasons given,
- (d) efforts made to determine the availability of less restrictive voluntary options, including care by a parent or a relative, that effectively removes or controls the danger, and

(e) the identity and description of each child to be placed in ex parte temporary custody.

Additionally, under 25 C.F.R. § 23.113(d), if there is reason to know the child is an Indian child, the applicant must provide this information. The information that should be provided under 25 C.F.R. § 23.113(d) should be provided in the dependency petition.

2. Form. The application must be submitted in a written format approved by the Administrative Director of the Supreme Court. If an applicant is unable to submit a written application using an approved written format, the applicant may apply for ex parte temporary custody by recorded oral statement or by other means acceptable to the court made under oath. The recorded oral statement or other means of communication must otherwise comply with this rule.

3. Evidence. Evidence presented in support of an application for ex parte temporary custody may include evidence that is reliable hearsay, in whole or in part.

4. Consideration. As soon as possible after receipt of an oral statement or a written application, a designated judicial officer will consider the application ex parte. The judicial officer may question the applicant and any witnesses orally. Any additional information shall be submitted or recorded in writing.

D. Findings and Order.

1. Content. The order must state whether there is reasonable grounds to believe that ex parte temporary custody of the child is clearly necessary to prevent abuse or neglect, and whether remaining in the child's current home is contrary to the welfare of the child. An order granting an application must include: (a) a factual basis for the determination for each child, and (b) the identity and description with reasonable particularity of each child to be placed in ex parte temporary custody.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the court must find that ex parte temporary custody is necessary to prevent imminent physical damage or harm to the child.

2. Form. If the applicant and judicial officer are not in each other's physical presence, the judge may sign the order authorizing ex parte temporary custody using an electronic signature to serve as the original order, orally authorize the applicant to sign the judge's name on the order, or sign an electronically transmitted version of the original order which is then deemed to be the original. The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order.

3. Notice. The applicant must provide the parent or other custodian a copy of the ex parte temporary custody application and the order authorizing ex parte temporary custody when and the Temporary Custody Notice (TCN) is provided as required by law.

4. Execution and Duration. The applicant may execute the order until there is a material change in the factual basis for the reasonable grounds determination and within ten calendar days of issuance of 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.

5. Filing. The applicant must file the application and order when the dependency petition is filed.