

Hon. Timothy Ryan, Juvenile Court Presiding Judge
Maricopa County Superior Court
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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
Petition to Amend Rule 123,) Supreme Court
Rules of the Supreme Court of) No. R-_____
Arizona; Rules 19, 47, 75, & 86,)
Rules of Procedure for the)
Juvenile Court)
_____)

Under Rule 28 of the Rules of the Supreme Court, Maricopa County Superior Court Juvenile Court Presiding Judge Timothy Ryan and Clerk of the Court Michael K. Jeanes respectfully petition this court to adopt the attached amendments to the Rules of the Supreme Court and the Rules of Procedure for the Juvenile Court.

I. Background and Purpose of the Proposed Rule Amendments.

Juvenile Court proceedings include public hearings and records, such as delinquency, emancipation, and Title 14 guardianship cases as well as

proceedings with various levels of confidentiality, such as dependencies, relinquishments, adoptions, and Title 8 guardianships. Depending on the type of case, juvenile matters involve multiple parties, agencies, and individuals, including parents, children, attorneys, guardians ad litem, foster parents, probation officers, child safety workers, and advocates. The current court rules require additional clarity to guide the custodian of records in providing appropriate access for individuals to allow their participation in juvenile court cases while protecting confidential, restricted, and sealed information from inappropriate access or dissemination.

II. Contents of the Proposed Rule Amendments.

The proposed amendments give juvenile court participants, the clerk of court, and the superior court more detail on the kind of access individuals can expect to juvenile court matters based on their roles in the case or relative to the children in the case. To the extent possible, the clerks of court should provide direct access when appropriate and should refer requests that require judicial review to the court when appropriate. The proposed amendments provide more direction than is currently available in court rule.

III. Summary of Proposed Changes.

The definition of “public” in Supreme Court Rule 123(b)(16) captures the universe of court record users. The petitioners considered but declined to

amend this all-inclusive definition, opting to specify access in individual court rules.

Amendments proposed to Rule 123(d)(1) clarify that the rules apply to all juvenile records, provide more case type information differentiating public and non-public cases, and stylistically include language conforming to the changes proposed throughout this petition.

The amendment proposed to Rule 123(g)(1)(D)(i)(a) clarifies that the prohibition on remote access referenced in that subpart applies to all juvenile matters brought under A.R.S. Title 8.

Juvenile Rule 19's proposed amendment is a stylistic or technical correction from a file "marked" as confidential to more digitally-inclusive terminology of a file "maintained as" confidential. No substantive change is intended.

An expanded Juvenile Rule 47 is proposed to provide participants, clerks, and courts clearer direction on the most commonly requested access to records scenarios. In addition to stylistically conforming changes, the proposed rule adds language to address the records access of parties and former parties, foster parents, non-parties, children who later request access to their case information, and access to other case participants. Other participants include guardians ad litem, regulatory and enforcement

agencies, juvenile corrections, and foster care review boards. The amendment proposed to subpart (B) clarifies that a request to inspect court records in a case involving child abuse, abandonment or neglect that resulted in a fatality or near fatality is accomplished by filing a request with the court.

Juvenile Rules 75 and 86 are specific to adoption records. Like the existing rules, proposed Rule 75 points the court user to Rule 86 for the procedures on accessing adoption records. Proposed Rule 86 directs that an adoption petitioner, the petitioner's attorney, and the adoptee may obtain a copy of the order of adoption on request but all other adoption records requests require judicial review.

IV. Pre-petition Distribution and Comment.

The Maricopa County Superior Court and Clerk of Court only recently met to coordinate solutions to the most common records access requests in juvenile cases. Neither the courts nor the clerks had meetings scheduled where the proposals could be presented before the deadline for filing a rule change petition. The proposed amendments were shared with the Superior Court in Maricopa County and were circulated by email to the members of the Arizona Association of Superior Court Clerks before filing. It is the petitioners' desire that the filing of the petition will invite comment

APPENDIX A: TEXT OF PROPOSED RULE CHANGES

RULES OF THE SUPREME COURT OF ARIZONA

Rule 123. Access to the Judicial Records of the State of Arizona

(a) – (c) [No changes]

(d) Access to Case Records. All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

(1) *Juvenile Delinquency Proceedings Records.*

(A) All Records of all juvenile delinquency and incorrigibility, emancipation, and guardianship under ARS Title 14 proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court or by law.

(B) All records of dependency, guardianship under ARS § 8-871 through 8-874, termination of parental rights, and adoption are confidential and must be withheld from public inspection unless authorized by law, rule, or court order. Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ARS § 8-321) or the family counseling fund (ARS § 8-261 et seq.) are confidential and ~~shall not be released~~ must be withheld from public inspection unless authorized by law, rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or ~~his~~ the juvenile's family may be identified, wherever such records are maintained by the court.

(2) – (5) [No changes]

(e) – (f) [No changes]

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) Parties, Attorneys, and Arbitrators. Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records that are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) Members of the State Bar of Arizona. In addition to access provided by paragraph (g)(1)(A), attorneys who are active members of the State Bar of Arizona may be provided remote electronic access to all case records that are not sealed or confidential by law, as authorized by the Arizona Code of Judicial Administration (ACJA).

(C) Governmental Entities and Private Organizations Serving a Public Purpose. Any federal, state, tribal or local governmental entity or private organization serving a public purpose may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records. The director of the Administrative Office of the Courts may enter into a memorandum of understanding with a governmental entity as authorized by the ACJA.

(D) General Public, Registered Users.

(i) Members of the public may be provided remote electronic access pursuant to ACJA § 1-604 to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) Civil case records in any action brought to enforce, redress, or protect a private or civil right but not:

- Juvenile dependency and delinquency or other matters brought under ARS Title 8;

- Family law, paternity, or other matters arising out of ARS Title 25;

- Orders of protection, injunctions against harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt; or

- Probate proceedings brought under ARS Titles 14 and 36.

(b) Civil traffic case records in any action brought as such under ARS Titles 28 or 41 or a matter expressly designated as a civil traffic violation by a traffic ordinance of a city or town, and any boating violation punishable by a civil sanction under ARS Title 5, chapter 3, articles 1 through 11, or a non-traffic ordinance expressly designated a civil violation or a boating ordinance by a city or town.

(c) Criminal case records in any action instituted by the government to punish offenses classified as a misdemeanor or felony brought pursuant to ARS Titles 4, 13, 28, or local ordinance and case records in any action instituted to punish petty offenses classified by ARS § 13-601.

(d) Case records in any action instituted by a county to enforce an ordinance that provides for criminal and civil penalties pursuant to ARS §§ 11-251 and 11-808.

(to end) [No changes]

RULES OF PROCEDURE FOR THE JUVENILE COURT

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 provided by rule or ordered by the court. Within the legal file, the clerk shall file and segregate confidential documents, including any information and documents from the social file submitted to the court as provided in Rule 30(A). 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 maintained as confidential, or ordered closed by the judge, the legal file shall be open to public inspection without order of the court. The court shall state its reasons for withholding the legal file, or portions thereof, from public inspection.

(to end) [No Changes]

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 47. Release of Information

A. Records confidential generally. All records ~~pertaining to~~ of dependency, guardianship under A.R.S. § 8-871 through 8-874, and termination of parental rights ~~shall be maintained as~~ are confidential and shall must be withheld from public inspection ~~except upon order of the court or as otherwise provided by law~~ unless authorized by law, rule, or court order.

1. Access to parties. A parent, grandparent, petitioner, or court-appointed legal guardian named as a party to the case may inspect case records on request while that individual remains a party to the case.

a. Foster parent. A foster parent may inspect case records on request during the foster placement under A.R.S. § 8-529(A)(17).

b. Non-party access. A court-appointed legal guardian not a party to the case may obtain a certified copy of the guardian's appointment order on request during the term of the guardian's appointment. An individual whose parental rights were terminated, who was not named as a party to the case, or who was dismissed from the case must file a request with the court to inspect court records.

2. Access to children. An individual who was the subject of a dependency, a guardianship under A.R.S. § 8-871 through 8-874, or a termination of parental rights action as a minor must file a request with the court to inspect the court records.

3. Access to agencies and advocates. A party's attorney of record or current guardian ad litem or current advocate appointed under Rule 3, the judicial conduct commission, the department of child safety, the department of juvenile corrections, a juvenile probation officer, or a local foster care review board may inspect case records on request and only as required to carry out its responsibilities.

B. Any person may file a request with the court to inspect court records in a case involving child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court shall consider:

1. Whether doing so is in the child's best interests.

2. Whether inspection of records would endanger the child's physical or emotional well-being or the safety of another person.

3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.

4. Whether all parties have agreed to allow the inspection.

5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.

6. Whether inspection of records could cause specific material harm to a criminal investigation.

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) through (6) and A.R.S. § 8-807.01(A)(1).

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 75. Release of Information

A. Records confidential generally. All adoption records pertaining to adoption proceedings shall be maintained as are confidential and shall must be withheld from public inspection except upon order of the court or as otherwise provided by law unless authorized by law, rule, or court order.

B. Access required for adoption. Other than court employees, individuals authorized to inspect records by law and their attorneys must follow the procedures in Rule 86.

RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 86. Adoption Records

A. Request for Records. The court or clerk of court may provide a copy of the order of adoption to the petitioner, petitioner's attorney, and to the adopted individual on request. Otherwise, and unless otherwise provided by law, all individuals must file a request with the court to inspect adoption records ~~requests for information concerning adoption records will be made in writing and filed with the clerk of the court. The rRequests will~~ must state set forth the information being sought and why the requestor needs the information is needed by the requestor. The court will not release identifying information about the adoptee or birth parent; unless:

- (1). in the absence of the file contains or the adoptee or birth parent provides a notarized statement authorizing release, or;
- (2). unless the requestor establishes a compelling need for disclosure.

B. Records of Indian Adoption. Upon application a request filed with the court by an Indian individual who has reached the age of ~~eighteen~~ (18) and who was the subject of an adoptive placement, the court which entered the final adoption decree shall inform the individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. If the biological parent executed a notarized statement requesting anonymity, information pertaining to the biological parent shall be redacted prior to release.