

The Honorable Robert Brutinel
Presiding Judge
Superior Court in Yavapai County
Chair, Committee on Juvenile Courts
c/o Legal Services Office
1501 W. Washington, Suite 414
Phoenix, Arizona 85007-3231
602-452-3283

ARIZONA SUPREME COURT

In the matter of :)
)
PETITION TO AMEND RULE 41 OF)
THE RULES OF PROCEDURE FOR THE)
JUVENILE COURT)
)
_____)

Supreme Court No. R-_____
PETITION TO AMEND RULE 41,
RULES OF PROCEDURE FOR
JUVENILE COURT

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, Petitioner requests the Court amend the Rules of Procedure for the Juvenile Court by adopting a new Rule 41(A), attached as Exhibit A.

I. Background and Purpose of the Proposed New Rule.

In its 2004 final report, The Pew Commission on Children in Foster Care reported that children, who are the subject of a dependency petition, lacked a voice in the court decisions that are made about their lives. The Commission stated:

“The decisions made in dependency court every day have powerful and life long implications for children and families. No child or parent should face the partial or permanent severance of familial ties without a fully informed voice in the legal process. Even when less shattering decisions are made, judges need to hear from the people who will be most affected by their decisions – children, parents, siblings, and other relatives, foster and adoptive parents.”

In 2006, the Home at Last Project, which was supported by the Pew Charitable Trusts, conducted national surveys to examine the participation of youth in court. The results showed that:

- More than 1 in 4 foster youths say they never attended their court hearings and 3 in 5 report that they attended court hearings only some of the time or less.
- Many of the youth who attended their dependency court hearings believe their presence in court benefited them and had they been in court more often, they would have benefited more.
- Many of these youth perceive these benefits as stemming from the active role they were able to have in the decisions being made about their lives; others reported taking a more passive role in their hearings, but felt that they still benefited from their ability to hear and see what was happening.

Arizona has been active in adopting rule changes that ensure foster parents, pre-adoptive parents and relative caregivers are provided with hearing notices, as well as ensuring their right to be heard. This proposed rule would ensure that children are also given the ability to attend the hearings that affect their lives.

II. Summary of Proposed New Rule.

The proposed rule would require children who are the subject of a dependency proceeding to be present at all hearings, except upon a written court order excusing a child from any or all hearings, for good cause shown, as well as require the Court to determine whether counsel for the child had meaningful contact with the child prior to every substantive hearing.

III. Conclusion.

Petitioner respectfully requests that the Court adopt the proposed new rule as set forth in Attachment A.

Respectfully submitted this _____ day of _____, 2008.

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“EXHIBIT A”

Rule 41. Attendance at hearings.

A. ~~At every substantive dependency hearing, such as the Preliminary Protective Hearing, the Report and Review Hearing and the Permanency Hearings, the child who is the subject of a dependency proceeding shall be present. Upon motion of the child, the court may enter a written order excusing a child from each hearing, for good cause shown. The Court shall determine whether counsel for the child had meaningful contact with the client prior to each substantive hearing.~~

B. ~~A-~~ Only those persons permitted by law may attend dependency, guardianship and termination or parental rights proceedings. The court may exclude any person whose presence the court finds would impede the full and fair presentation of the evidence.

C. ~~B-~~ The court may limit the presence of a participant to the time of the participant's testimony if:

1. It is in the best interest of the child; or
2. It is necessary to protect the privacy interests of the parties and will not be detrimental to the child.

D. ~~C-~~ The court may impose reasonable restrictions as may be required by the physical limitations of the facility or to maintain order and decorum.

E. ~~D-~~ On the record, the court shall advise the parent, guardian or Indian custodian of the right to request that a hearing or trial be open to the public.

F. ~~E-~~ Upon a request or a motion made prior to a proceeding under these rules by a parent, guardian or Indian custodian of a child who is the subject of the proceeding, the court shall order that the proceeding is open to the public unless the court finds good cause for all or part of the proceeding to remain closed. Before opening a proceeding to the public, the court shall consider:

1. Whether doing so is in the child's best interests.
2. Whether doing so would endanger the child's physical or emotional well-being or the safety of any other 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 proceeding to be open.

G. ~~F-~~ The court shall consider the request of a child to close the proceeding if the child is at least twelve years of age and a party to the proceeding.

H. ~~G-~~ If a hearing is open, at the beginning of the hearing the court shall admonish all attendees that they are prohibited by order of the court from disclosing outside the hearing personally identifiable information about the child, the child's siblings, parents, guardians, or caregivers and any others mentioned in the hearing. A person who knowingly and voluntarily remains in the courtroom after the admonition submits to the jurisdiction of the court and shall

abide by the orders of the court prohibiting disclosure of that information. Failure to abide by the orders shall be deemed contempt of court. The court shall explain contempt of court to all attendees, including observers, and the possible consequences of violating an order of the court. For the purposes of this subsection, “personally identifiable information: includes name, address, date of birth, social security number, tribal enrollment number, telephone or telefacsimile number, driver license number, places of employment, school identification or military identification number or any other distinguishing characteristic that tends to identify a particular person.

I. ~~H.~~ The court may close an open hearing at any time during the proceeding.

J. ~~I.~~ **Notice.**

- (A) If the Arizona Department of Economic Security (the Department) is the petitioner, it shall notify the foster parents, pre-adoptive parents, or relative caregivers of a child in foster care under the responsibility of the State of the date, time, and location of all proceedings to be held with respect to the child. Foster parents, pre-adoptive parents, or relative caregivers of a child in foster care under the responsibility of the State shall have a continuing duty to provide the Department with a current and correct mailing address, including addresses identified as protected by court order.
- (B) If the petitioning party is not the Department, the court shall ensure that foster parents, pre-adoptive parents, or relative caregivers are notified of all proceedings to be held with respect to the child.
- (C) The foster parents, pre-adoptive parents, or relative caregivers shall be afforded the right to be heard in any proceeding to be held with respect to the child. This right shall not be construed to require that any foster parents, pre-adoptive parents, or relative caregivers be made a party to such proceeding solely on the basis of such notice and a right to be heard.
- (D) Nothing in this rule shall be construed to limit the periodic review hearing notice requirements of ARS §8-847(B).