

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

DRAFT

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of :)	
)	Supreme Court No. R-_____
PETITION TO AMEND RULES OF)	
PROCEDURE FOR THE JUVENILE)	PETITION FOR AMENDMENT
COURT PROVIDING FOR NOTICE OF)	PURSUANT TO RULE 28,
PROCEEDINGS)	RULES OF THE SUPREME
)	COURT
)	
)	(Emergency or expedited
_____)	adoption requested)

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, Petitioner asks the Court to consider the following amendment to the Rules of Procedure for the Juvenile Court providing for notice of proceedings. The proposed amendments are attached. Petitioner respectfully requests emergency or expedited adoption pursuant to Rule 28(G).

I. INTRODUCTION

On July 3, 2006, HR5403 the “Safe and Timely Interstate Placement of Foster Children Act of 2006” was signed into law as Public Law 109-239. The provisions had an effective date of October 1, 2006 and affected the funding cycle that commenced after that date. That act amended the Social Security Act (42 U.S.C. 629h) and required: “In order to be eligible to receive a grant under this section, a highest State court shall have in effect a rule requiring State courts to ensure that foster parents, pre-adoptive parents, and relative caregivers of a child in foster care under the responsibility of the State are notified of any proceeding to be held with

respect to the child.” This provision directly impacted court improvement funding beginning with the fiscal year commencing October 1, 2007.

The language proposed initially in the petition for rule amendments limited application of the rule to those contemplated by federal statute i.e. “under the responsibility of the state”. In the course of the comment process, language was drafted and adopted that went beyond the scope and requirements of the statute. As the language now reads, the court is required to ensure notice in every case, regardless of whether the child is “under the responsibility of the state” or not. This rule creates an unnecessary burden upon the juvenile courts in dependency cases and is not required by federal law.

The concept and issues surrounding this Rule Petition were addressed at the November 21, 2008 meeting of the Committee on Juvenile Courts (COJC), and the COJC voted to approve the Rule Petition.

II. SUMMARY OF MAJOR PROPOSED AMENDMENT

The proposed amendment deletes provision 41(I)(B) which requires: “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. As stated above, this requirement places an unnecessary burden upon the juvenile courts in dependency cases and is not required by federal law.

III. JUSTIFICATION FOR EMERGENCY ADOPTION

Emergency adoption is necessary to remove a requirement that is a burden upon the courts and not necessary to meet federal funding requirements.

IV. CONCLUSION.

Petitioner respectfully requests that the Supreme Court adopt the proposed amendment, attached as Appendix A, prior to circulation for public comment as the requested changes require emergency adoption and implementation.

Respectfully submitted this _____ day of _____, 2008.

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“EXHIBIT A”

Rule 41(I), Rules of Procedure for the Juvenile Court

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) B 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)~~ C Nothing in this rule shall be construed to limit the periodic review hearing notice requirements of ARS Sec. 8-847(B).