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ARIZONA SUPREME COURT

PETITION TO AMEND RULES 103
THROUGH 106 AND 108, ARIZONA
RULES OF PROCEDURE FOR THE
JUVENILE COURT, ON AN
EXPEDITED BASIS

Arizona Supreme Court
No. R-09-_____

Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Attorney General petitions this Court to amend Rules 103 through 106 and 108, Arizona Rules of Procedure for the Juvenile Court, on an expedited basis to correct inconsistencies in the internal references to the juvenile appellate rules. (*See* Appendices.)

I. Rules 103 through 106 and 108, Arizona Rules of Procedure for the Juvenile Court, Contain Internal References that Are Not Consistent with the January 1, 2008, Renumbering of the Juvenile Appellate Rules.

On January 1, 2008, Part V of the Arizona Rules of Procedure for the Juvenile Court, dealing with juvenile appeals, was moved to Part VI. What had been Rules 88 to 93 became Rules 103 to 108. The internal references within the Rules were not amended, however. Thus, Rule 103(C), for example, allows the court of appeals to “vary the requirements of any section of Rules 88 through 93,” despite that those Rules now deal with juvenile emancipation proceedings rather than juvenile appeals.

To end confusion and bring the internal references in the juvenile appellate rules into conformity with the renumbered Rules 103 to 108, the Attorney General petitions this Court to adopt the attached changes on an expedited basis.

II. Justification for Emergency Adoption of Amendments.

The Attorney General requests that this Court consider this Petition on an expedited basis and order the emergency adoption of the proposed amendments to Rules 103 to 106 and 108, Arizona Rules of Procedure for the Juvenile Court.

This Court may “consider a rule change petition on an expedited basis” and take “immediate action . . . for the adoption or amendment of a rule” when “a rule change petition presents an urgent matter for which compelling circumstances render the annual rule processing cycle inadequate.” Ariz. R. Sup. Ct. 28(G).

Here, the proposed amendments are not substantive, but rather bring the internal rule references into conformity with the renumbered juvenile appellate rules. Because this Petition to amend the Rules of Procedure for the Juvenile Court presents an urgent matter for which compelling circumstances render the annual rule processing cycle inadequate, this Court should consider it on an expedited basis and order the emergency adoption of the proposed amendments.

III. Conclusion.

For all of the foregoing reasons, the Attorney General respectfully requests that this Court consider this Petition on an expedited basis and order the emergency adoption of the proposed amendments to Rules 103 to 106 and 108, Arizona Rules of Procedure for the Juvenile Court, attached hereto as Appendices A-E.

Dated this __10th__ day of April, 2009.

Terry Goddard
Attorney General

by _____/s/_____
Dawn R. Williams,
Assistant Attorney General,
Mary O'Grady
Solicitor General

Original of the foregoing and appendices (in PDF and Word formats)
were electronically filed this 10th day of April, 2009, with:

Arizona Supreme Court
Court Rules Forum

By /s/ _____
Dawn R. Williams, AAG
HDM# 438037

APPENDIX A

**PROPOSED AMENDMENTS TO RULE 103,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT**

Rule 103. Initiation of an Appeal

(A) – (B) [No change.]

(C) The appellate court shall give the appeal precedence over all other actions except extraordinary writs or special actions. For good cause, the appellate court, on motion of a party or on its own initiative may suspend, supplement, or vary the requirements of any section of Rules ~~88~~ 103 through ~~93~~ 108, and may substitute any other appropriate order of proceedings; provided, however, that the time specified in Rule ~~89~~ 104(A) for the filing of a notice of appeal or notice of cross-appeal may not be shortened or extended, except as provided in Rule ~~93~~ 108(B).

(D) – (E) [No change.]

(F) During the pendency of an appeal, the juvenile court may proceed within its legal authority on an issue remaining before it or newly presented to it to the extent (1) the appellate court has specifically authorized or directed the juvenile court to rule on the issue; (2) the juvenile court's ruling on the issue would be in furtherance of the appeal; (3) applicable statutory law or judicial rule confers continuing jurisdiction on the juvenile court; (4) the juvenile court's ruling on the issue would not legally or practically prevent the appellate court from granting the relief requested on appeal; or (5) the issue arises from a motion to dismiss the appeal filed by the appellant and presented to the juvenile court for ruling at a time before the clerk of the superior court forwards the record to the appellate court pursuant to Rule ~~90~~ 105(D). This rule shall not be interpreted to authorize the juvenile court to extend the time for filing briefs, motions, transcripts, or other documents or items with the clerk of the court of appeals or the supreme court.

(G) [No change.]

APPENDIX B

**PROPOSED AMENDMENTS TO RULE 104,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT**

Rule 104. Time Within Which an Appeal May be Taken and Notice Thereof; Preparation of Certified Transcript and Record on Appeal

(A) [No change.]

(B) The notice of appeal or notice of cross-appeal shall specify the party taking the appeal or cross-appeal, designate the final order or part thereof appealed from, and in the case of appeal by a non-governmental party, state whether the party was proceeding with appointed counsel in the juvenile court when the final order was filed. When the appellant is represented by counsel, the notice of appeal or cross-appeal shall contain the following statement: “By signing and filing this notice of appeal, undersigned counsel avows that [he/she] communicated with the client after entry of the judgment being appealed, discussed the merits of the appeal and obtained authorization from the client to file this notice of appeal.” If counsel for a party files a notice of appeal or cross-appeal that does not contain the required statement, the clerk of the superior court shall forthwith refer the notice of appeal or cross-appeal to the judge assigned to the case in the juvenile court. Upon receiving the referral, the assigned judge shall promptly issue an order striking the notice of appeal or cross-appeal and directing the clerk of the superior court not to process it under rules ~~89~~ 104 and ~~90~~ 105 of these Rules.

(C)(1) – (2) [No change.]

(D)(1) The record on appeal to the appellate court shall consist of:

(a) a certified copy of the transcript;

(b) a certified copy of all pleadings, orders, and other documents filed with the clerk of the superior court;

(c) the originals of all paper, book, binder, and photographic exhibits of manageable size introduced into evidence; and

(d) documents and other items added pursuant to subsections (E) or (F)(1) of this rule. Notwithstanding the preceding provisions of Rule ~~89~~ 104(D)(1), the record on appeal shall not include any document or other item deleted pursuant to Rule ~~89~~ 104(E).

(2) The certified transcript shall consist of the following:

(a) in a delinquency or incorrigibility appeal, the adjudication and disposition hearings and any separate restitution hearing;

(b) in a transfer appeal, the probable cause and transfer phases of the transfer hearing;

(c) in a dependency matter, the contested dependency, report and review, or other hearing that generated the order being appealed;

(d) in a guardianship or termination of parental rights (severance) appeal, the contested guardianship or termination or other hearing that generated the order being appealed; and

(e) in an adoption appeal, any hearing on the validity of a parent's consent to adoption and any final adoption hearing.

Notwithstanding the preceding provisions of Rule ~~89~~ 104(D)(2), the certified transcript shall not include any proceeding or portion thereof excluded pursuant to Rule ~~89~~ 104(E).

(E) [No change.]

(F)(1) No later than 12 days after the filing of the notice of appeal any appellee may file with the clerk of the superior court and serve a pleading entitled "supplemental designation of record" (1) requesting that the clerk of the superior court add to the record on appeal specifically identified subpoenas or praecipes, or specifically identified studies, reports or medical or psychological evaluations, or compilations of such studies, reports or evaluations, prepared as required by statute, court rule, or order for the use of the juvenile court in the proceedings resulting directly or indirectly in the order from which the appeal is taken and not otherwise part of the record, or any specifically identified items deleted by appellant's designation of record; and (2) requesting that one or more court reporters or authorized transcribers add to the transcript any proceeding or part thereof deleted by appellant's designation of record or not automatically part of the transcript as defined in Rule ~~89D.2~~ 104(D)(2). The supplemental designation of record shall be served on all parties and on each affected court reporter and authorized transcriber.

(2) [No change.]

(G) No party shall request that any item be added to the record, or any proceeding to the transcript, that is not essential to deciding the issues presented by the appeal. For any infraction of this rule, the appellate court may impose sanctions pursuant to ARCAP 25 made applicable in juvenile appeals by Rule ~~88G~~ 103(G).

(H) – (J) [No change.]

APPENDIX C

**PROPOSED AMENDMENTS TO RULE 105,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT**

Rule 105. Docketing of Appeal; Transmission and Filing of Record on Appeal; Filings in Juvenile Court after Commencement of Appeal

(A) The clerk of the court of appeals shall docket the appeal upon receipt of the notice of appeal and the order from which the appeal is taken. A juvenile appeal shall in the alternative be docketed on the filing with the clerk of the court of appeals of a motion seeking to suspend or stay the juvenile court's order pending resolution of the appeal, provided the motion makes an appropriate showing that a timely notice of appeal was filed in the juvenile court and that the order from which the appeal is taken was final and appealable. The clerk of the court of appeals shall determine and establish the official caption of the appeal pursuant to the criteria set forth in Rule ~~88~~ 103(A) for captioning the notice of appeal. After the appeal has been docketed, the clerk of the court of appeals shall mail notice to all parties and the clerk of the superior court of the date on which the appeal was docketed.

(B)(1) – (2) [No change.]

(B)(3) 30 days after the appellant makes satisfactory arrangements to pay for the certified transcript, whichever event first occurs. At the time of filing the certified transcript, the court reporter or reporters or authorized transcriber shall serve one copy of the certified transcript on each appellant and each appellee who has not filed a notice pursuant to ~~Rule 89C.2~~ 104(C)(2). The court reporter or reporters or authorized transcriber shall contemporaneously file notice of service of the certified transcript with the appellate court, reflecting when, upon whom, and by what means service was made. Service of certified transcript copies shall be made in the manner prescribed by any applicable local rule or administrative order, or otherwise in accordance with the prevailing custom in the juvenile court from which the appeal originates.

(C) [No change.]

(D) No later than 20 days after the notice of appeals is filed, the clerk of the superior court shall

(1) prepare a certified copy of the pleadings, orders, and other documents filed with the clerk of the superior court except for subpoenas or praecipes not added to the record pursuant to Rule ~~89~~ 104(E) or (F), and documents deleted from the record pursuant to Rule ~~89~~ 104(E), and

individually number each document copy on the first page thereof in filing-date order beginning with the first such item to be filed;

(2) identify and assemble the original documentary and electronic exhibits in the record that are of manageable size, including those added to the record pursuant to Rule ~~89~~ 104(E) or (F) and excluding those deleted from the record pursuant to Rule ~~89~~ 104(E);

(3) – (5) [No change.]

(E) – (F) [No change.]

(G) The appellate court, on motion or on its own initiative, may direct the transmission of any document, exhibit or other item necessary to determining the appeal and not transmitted under Rule ~~90~~ 105(D).

APPENDIX D

**PROPOSED AMENDMENTS TO RULE 106,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT**

Rule 106. Briefing, Consideration and Disposition in the Court of Appeals

(A) [No change.]

(B) ARCAP 15 shall apply in appeals from final orders of the juvenile court, except that

(1) appellant's opening brief shall be filed with the clerk of the court of appeals within 20 days after the mailing of the notice required by Rule 90 105(e);

(2) – (4) [No change.]

(C) – (G) [No change.]

APPENDIX E

**PROPOSED AMENDMENTS TO RULE 108,
ARIZONA RULES OF PROCEDURE
FOR THE JUVENILE COURT**

Rule 108. Service; How Made; Filing; Extensions of Time

(A) Unless otherwise specified, any pleadings, motions, notices, or other documents required to be filed under any provision of Rules ~~88~~ 103 through ~~90~~ 105 of these rules shall be filed with the clerk of the superior court and a copy thereof lodged with the presiding judge of the juvenile court. Whenever under Rules ~~88~~ 103 through ~~92~~ 107 service of pleadings, motions, notices, or other documents filed with the clerk of the superior court or the appellate court is required or permitted, such service shall be made in accordance with the provisions of Rule 5(c), Ariz. R. Civ. P., 16 A.R.S.

(B) Any requests for extensions of time for filing pleadings, motions, or other documents with the clerk of the superior court under the provisions of Rules ~~88~~ 103 through ~~90~~ 105 of these rules shall be made to the presiding judge of the juvenile court and shall be governed by the provisions of Rule 6(b), Ariz. R. Civ. P.; provided, however, that the time specified in Rule ~~89~~ 104(A) for filing a notice of appeal or cross-appeal may not be extended, but where the failure to timely file was the result of excusable neglect, the juvenile court may excuse the untimely filing upon motion made after the expiration of the specified period.