AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, February 1, 2019, 9:00 AM
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver CO 80203
Supreme Court Conference Room

I. Call to Order

II. Chair's Report
A. Approval of the 12/7/18 meeting minutes [pages 1 to 5]

III. Old Business
A. Review Present C.R.J.P 1 through 4.5 [pages 6 to 21]
1. C.R.J.P. 2.1 (appointment of counsel) (to be discussed at March meeting)
2. C.R.J.P. 4.5 (contempt) [page 21]
3. C.R.J.P. 4.3 (jury trials) [page 19]

IV. New (Yet Old) Business
A. Reaching Consensus: Revisiting Matters Left Unresolved at Previous Meetings
1. Default vs. Non-Appearing Party Rule [pages 22 to 25]
2. Continued (Deferred) Adjudications [pages 26 to 27]
3. Intervention Rule [pages 27 to 28]
4. One Evidence Rule or Evidence in Applicable Rules [pages 28 to 31]
5. Mini Termination Rule [page 31]
6. Keep Rules Self-Contained vs. Refer to the C.R.C.P. [pages 31 to 34]

V. Adjourn
A. Next Meeting: March 8, 2019, 9 AM, Supreme Court Conference Room

Conference call information

To join the call please **dial 720-625-5050** and, when prompted, enter **participant code, 56336823#** (don't forget the pound sign).

Adobe Connect link

https://connect.courts.state.co.us/wallace/

Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of December 7, 2018 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 1:00 PM in the supreme court conference room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Judge Karen Ashby, Chair	X	
David P. Ayraud	X	
Magistrate Howard Bartlett		X
Jennifer Conn		X
Sheri Danz	X	
Traci Engdol-Fruhwirth	X	
Judge David Furman	X	
Ruchi Kapoor	X	
Andi Truett for Shana Kloek	X	
Wendy Lewis		X
Peg Long	X	
Judge Ann Meinster	X	
Joe Picard for Judge Dave Miller	X	
Chief Judge Mick O'Hara		X
Trent Palmer		X
Professor Colene Robinson		X
Magistrate Fran Simonet		X
Judge Traci Slade		X
Magistrate Kent S. Spangler	X	
John Thirkell	X	
Pam Wakefield		X
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Terri Morrison	X	
J.J. Wallace	X	

Special Guests:
For Pre-Adj: Blair McCarthy

Attachments & Handouts:
(1) 11/2/18 Draft Meeting Minutes
(2) PreAdjudication Redlined & Clean

(3) Copy of Present C.R.J.P.

II. Chair's Report

A. The Chair announced membership changes to the committee. Chief Judge Wilson has resigned from the committee. Peg Long, Colorado CASA board member, has joined the committee as the CASA representative.
B. The November 2, 2018 minutes were approved without amendment or objection.

III. Old Business

A. Pre-Adjudication

Pre-Adjudication co-chair Judge Slade is currently in trial. Co-chair Traci Engdol-Fruhwirth and subcommittee member Blair McCarthy led the discussion.

They explained that they began with the existing version of the rules, starting with C.R.J.P. 4. The draft rule adds who may bring the petition, references to who must and may be named respondents, and a reference to the statute on service. The committee clarified the rule to note that there is a distinction between the County attorney (or designate) and the department of social services. The committee also settled on referencing the statute instead of specifically describing the respondents (or special respondents) that must or may be named.

The committee then talked about the utility of a rule that just references the statute. Those in favor of referencing the statute believed that having those references readily available promotes ease of use. Those opposed felt that providing a list of statutory references to assist lawyers was not the best use of a rule.

The committee asked what problem areas the subcommittee saw in current procedural practices that needed clarification. The subcommittee related that they discussed two areas where there is a procedural gap. First, the statute on amending a petition, section 19-3-505(4), C.R.S. (2018), covers amending a petition during trial, but there is no deadline for amending the petition before trial. The subcommittee believes a deadline would be helpful for practitioners. The committee agreed and suggested a 7 day deadline.

Second, the subcommittee discussed current problems with adding or dismissing parties and the standard a court must use to decide that issue, but the subcommittee felt that the legal standard for this decision is not clear and so drafting a rule would be a substantive decision on the law. The committee also noted that the proposed adjudication rules included a rule on joinder and that rule crafts procedures for joinder but does not provide any standards for joinder.

The subcommittee noted that there is quite a bit of overlap between their proposed rules and other subcommittees' work. They provided a rule on service of because pre-adjudication can be a heavy motions stage. The committee believes that generally

applicable rules, such as a rule governing motions, should be one rule, but directed subcommittees to identify any special needs their group feels should be included in the general rule. For pre-adjudication, procedures on emergency motions may be helpful (emergencies other than ex parte motions under 19-3-403, C.R.S. (2018)). The subcommittee felt a conferral requirement, even on emergency motions, was important. One committee member indicated that his jurisdiction has an administrative order on emergency motions and believes any rule addressing emergencies should be flexible so that diverse needs across the state could be met. Another member said that, in order to provide flexibility, the rule could set an outside limit which allows jurisdictions the flexibility to proceeding within those outside limits. The subcommittee also highlighted a special problem with service of motions in dependency and neglect cases, especially at the pre-adjudication stage. E-filing is not currently available for D&N case types, so everything is paper-filed with the court. Paper filing and mailing is not very efficient.

The committee members did not think that D&N e-filing would be rolled out in the near term, so any service rule should be flexible and account for the many different service methods currently being used. The subcommittee related that, because e-filing is not available for D&N cases, many jurisdictions have alternative electronic service agreements between counsel.

C.R.C.P. 5(b)(2)(D) authorizes service by "other electronic means" if written consent is given. Written consent includes placing an email or fax in the caption of any filing. Responsive pleadings are not required in D&N cases, so at this early stage, the subcommittee pointed out that RPC may not have made a filing with an email or fax. The committee feels RPC need timely notice of motions and electronic means are the most efficient.

For example, Douglas County uses a private company, Box, to facilitate electronic delivery of discovery and other pleadings. Other counties have an agreement to use email. Committee members pointed out that these agreements (to use Box, to use email, to use a courthouse mailbox) may not be reflected in writing in each case, but no practitioner indicated that there were problems using these systems. Some practitioners also indicated that for some respondents, particularly the homeless, notice by text message is best.

In this case, a broad rule, which deviates from the civil rule by authorizing alternative service without written consent may be necessary to match current practices. A comment may also be necessary to explain and give examples of the "other electronic means" which are authorized. The committee also agreed that an inmate filing rule was needed for D&N cases.

In this case, a broad rule, which deviates from the civil rule by authorizing alterative service without written consent may be necessary to match current practices. A comment may also be necessary to explain and give examples of the "other electronic means" which are authorized. The committee also agreed that an inmate filing rule was needed for D&N cases.

Because service of motions and other pleadings is broadly applicable, J.J. Wallace will email the subcommittee chairs with proposed rules in these areas: discovery; adjudication; and pre-adjudication and will send the versions of each group in the hopes that the subcommittees can combine their portions into one generally applicable rule.

The subcommittee noted that the current version of C.R.J.P. 1 refers to the C.R.C.P. There was a brief discussion on referring to the C.R.C.P. Some committee members feel strongly that juvenile cases are different and do not involve the same interests as the average civil case, so the juvenile rules should be separate and self-contained and not refer to the C.R.C.P. Other members felt that referring to the C.R.C.P. is efficient and having new and different rules within the juvenile rules covering similar subjects would increase litigation. Committee members related that, in their experience, subcommittees look to the civil rules as a starting place. While consensus on whether to refer to the C.R.C.P. or to make the juvenile rules self-contained was not reached, the committee did agree that the committee and subcommittees should highlight any area in which the civil rules do not suit juvenile cases.

The rule on civil rule on captions, C.R.C.P. 10, does not work for juvenile cases because there are different kinds of parties in D&N cases.

The proposed rule like C.R.C.P. 11 is the same as the civil rule. Committee members related that they have occasionally seen limited representation in D&N cases.

The committee also related that, in looking at the pre-adjudication stage of a case, they believed some procedural issues at this stage overlap with procedural issues of other stages, particularly adjudication.

The subcommittee also updated the first appearance advisement rule. Their new draft includes a requirement that the court ask about ICWA. In order to determine UCCJEA issues, the subcommittee also recommends requiring an affidavit as to children, which the subcommittee adapted from domestic relations forms. Committee members agreed that late-revealed information on other child custody cases can set back D&N cases and delay permanency, so getting the information early is essential. The committee also noted that the discovery rules have made this information a priority by making it a mandatory disclosure.

The subcommittee also discussed the two issues referred to the subcommittee at previous committee meetings. First, the subcommittee was asked to consider whether there should be a rule that the court must appoint counsel whether a parent appears or not. For various reasons, the subcommittee did not think that rule would be beneficial. Second, the subcommittee considered a rule requiring all courts to adopt a uniform CMO in D&N cases. On this issue, the subcommittee believes its draft addresses the procedural problems a CMO would address. It believes formal CMOs should be left to the jurisdictions. The committee also noted that comments could be used to address best practices and the adoption of CMOs.

B. Review Present C.R.J.P 1 through 4.5

As the meeting came to a close, the committee's attention was drawn to the present C.R.J.P. included in the materials packet. Committee members were invited to review the present rules before the next meeting to determine if there is anything that has not been covered in the rule drafts or a present rule that should be modified.

In a brief review, committee members noted that C.R.J.P. 2.1 (appointment of counsel) may need updating to refer to CJD 16-02; C.R.J.P. 4.5 (contempt) may need to be updated to match actual practices; C.R.J.P. 4.3 (jury trials) may need clarification on peremptory challenges. *See People in Interest of J.J.M.*, 2013 COA 159. J.J. Wallace will send an email asking committee members to review the current list of rules and email concrete feedback on suggested changes to the rule and they will be on the agenda for the February meeting for full committee discussion.

IV. Adjourn

The meeting adjourned at approximately 3:45 PM. The next meeting will be on Friday, February 1, 2019 at 9 AM in the supreme court conference room.

_____

Respectfully Submitted,
J.J. Wallace

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part One. Applicability

Juvenile Procedure Rule 1

RULE 1. SCOPE OF RULES

Currentness

These rules govern proceedings brought in the juvenile court under Title 19, 8B C.R.S. (1987 Supp.), also hereinafter referred to as the Children's Code. All statutory references herein are to the Children's Code as amended. Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19, 8B C.R.S. (1987 Supp.), shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.

Credits
Amended eff. July 1, 1997.

Juvenile Procedure Rule 1, CO ST JUV P Rule 1
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Two. General Provisions

Juvenile Procedure Rule 2

RULE 2. PURPOSE AND CONSTRUCTION

Currentness

These rules are intended to provide for the just determination of juvenile proceedings. They shall be construed to secure simplicity in procedure and fairness in administration.

Juvenile Procedure Rule 2, CO ST JUV P Rule 2
Current with amendments received through July 15, 2018.

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Two. General Provisions

Juvenile Procedure Rule 2.1

RULE 2.1. ATTORNEY OF RECORD

Currentness

(a) An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court.

(b) The clerk shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

Credits
Amended eff. Jan. 1, 2001.

Juvenile Procedure Rule 2.1, CO ST JUV P Rule 2.1
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Two. General Provisions

Juvenile Procedure Rule 2.2

RULE 2.2. SUMMONS--CONTENT AND SERVICE

Currentness

(a) Juvenile Delinquency Proceedings.

(1) The summons served in juvenile delinquency proceedings shall contain the notifications required by § 19-2-514, C.R.S. The summons and petition shall be served upon the juvenile in the manner provided in § 19-2-514, C.R.S.

(2) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.

(3) If a juvenile is issued a promise to appear pursuant to § 19-2-507(5), C.R.S., the promise to appear shall contain the notifications required by § 19-2-507(5), C.R.S.

(b) Dependency and Neglect Proceedings.

(1) The summons served in dependency and neglect proceedings shall contain the notifications required by § 19-3-503, C.R.S. The summons and petition shall be served upon respondent(s) in the manner provided in § 19-3-503(7) and (8), C.R.S.

(2) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.

(c) Relinquishment Proceedings.

(1) The summons served in relinquishment proceedings shall contain the notifications required by § 19-5-105(5), C.R.S.

(2) The summons and petition shall be served upon the non-relinquishing parent as follows:

A. As ordered by the court; or

B. In the same manner as a summons in a civil action; or

C. By mailing it to the respondent ('s/s') last known address, not less than 14 days prior to the time the respondent(s) is/are required to appear, by registered mail return receipt requested or certified mail return receipt requested. Service by mail shall be complete upon return of the receipt signed by the respondent(s) or signed on behalf of the respondent(s) by one authorized by law.

(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).

(4) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.

(d) Truancy Proceedings.

(1) The summons served in truancy proceedings shall comply with the provisions of C.R.C.P. 4(c). If the summons is combined with the notice required by § 22-33-108(5)(c), C.R.S., it shall also comply with the provisions of that section. In any jurisdiction in which juvenile detention may be used as a sanction after a finding of a violation of a valid court order, the summons shall inform the juvenile served of his or her right to a hearing and to due process as guaranteed by the United States Constitution prior to the entry of a valid court order.

(2) The summons and petition shall be served upon the respondent(s) as required pursuant to C.R.C.P. 4.

(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).

(4) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Civil Procedure, subsequent pleadings and notice may be served by regular mail.

(e) Uniform Parentage Act Proceedings.

(1) The petition and summons served in Uniform Parentage Act proceedings shall comply with all requirements of Title 19, Article 4 of the Colorado Revised Statutes.

(2) The petition and summons, filed by one party, shall be personally served upon all other parties in accordance with § 19-4-105.5, C.R.S., or § 19-4-109(2), C.R.S., or the Colorado Rules of Civil Procedure.

(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g). Affidavits in support of motions for service by publication shall include a detailed statement of the specific efforts made to locate an absent parent.

(4) The summons issued upon commencement of a proceeding under Article 4 shall include the specified advisements and notice requirements of § 19-4-105.5(5), C.R.S.

(5) If the child support enforcement unit is initiating a proceeding under the Uniform Parentage Act, a delegate shall serve the petition and notice of financial responsibility in the manner identified in § 26-13.5-104, C.R.S.

(f) Adoption Proceedings.

(1) In adoption proceedings where either parent's parental rights have not been terminated or relinquished, that parent must be personally served with a copy of the petition for adoption.

(2) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g). Affidavits in support of motions for service by publication shall include a detailed statement of the specific efforts made to locate an absent parent.

(3) If the motion for service through publication is granted, the court shall order service by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than 35 days after service of the notice is complete.

(4) If the subject child in the adoption proceeding is an enrolled member of a federally recognized American Indian Nation, the petition for adoption must be sent to the parent or Indian custodian of the Indian child and to the Indian child's tribe by registered mail, return receipt requested, pursuant to § 19-1-126, C.R.S., and § 19-5-208, C.R.S., and proof shall be filed with the court. Postal receipts, or copies thereof, shall be attached to the petition for adoption when it is filed with the court or filed within 10 days after the filing of the petition, as specified in § 19-1-126(1)(c), C.R.S.

(5) Service of petition and notice requirements do not apply to validation of a foreign adoption decree proceedings.

(6) A petition for adult adoption shall be filed in accordance with § 19-5-208, C.R.S. The petition and summons shall be served on the identified adult adoptee by the petitioner.

(g) Support Proceedings Under the Children's Code.

(1) Upon filing of the petition for support, the clerk of court, petitioner, or child support enforcement unit shall issue a summons stating the hearing date and the substance of the petition. A copy of the petition may be attached to the summons in lieu of stating the substance of the petition in the summons.

(2) Service of the summons shall be by personal service pursuant to C.R.C.P. 4(e). If the obligor is a nonresident of this state, the summons and petition may be served by sending the copies by certified mail with proof of actual receipt by the individual.

(3) The hearing to establish support shall occur at least 10 days after service is completed, or any later date the court orders.

(h) Administrative Procedure for Establishing Child Support by the Child Support Enforcement Unit.

(1) The child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes child support.

(2) The child support enforcement unit shall serve the notice of financial responsibility on the obligor not less than 10 days prior to the date stated in the notice for the negotiation conference. Service can be accomplished in accordance with the Colorado Rules of Civil Procedure, by an employee appointed by the child support enforcement unit to serve process, or by certified mail, return receipt requested, signed by the obligor only. The receipt will be prima facie evidence of service.

(3) If process is served through the administrative process, there will be no additional service necessary if the case is referred to court for further review.

Credits
Amended eff. Feb. 24, 1999; Jan. 1, 2001; Nov. 1, 2014; March 2, 2015.

Juvenile Procedure Rule 2.2, CO ST JUV P Rule 2.2
Current with amendments received through July 15, 2018.

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Two. General Provisions

Juvenile Procedure Rule 2.3

RULE 2.3. EMERGENCY ORDERS

Currentness

(a) On the basis of a report that a child's or juvenile's welfare or safety may be endangered, and if the court believes action is reasonably necessary, the court may issue an ex parte order.

(b) Where the need for emergency orders arises, and the court is not in regular session, the judge or magistrate may issue such orders orally, by facsimile, or by electronic filing. Such orders shall have the same force and effect. Oral orders shall be followed promptly by a written order entered on the first regular court day thereafter.

(c) Any time when a child or juvenile is subject to an emergency order of court, as herein provided, and the child or juvenile requires medical or hospital care, reasonable effort shall be made to notify the parent(s), guardian, or other legal custodian for the purpose of gaining consent for such care; provided, however, that if such consent cannot be secured and the child's or juvenile's welfare or safety so requires, the court may authorize needed medical or hospital care.

Credits
Amended eff. Jan. 1, 2001.

Juvenile Procedure Rule 2.3, CO ST JUV P Rule 2.3
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Two. General Provisions

Juvenile Procedure Rule 2.4

RULE 2.4. LIMITATION ON AUTHORITY OF JUVENILE MAGISTRATES

Currentness

No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

Credits
Adopted eff. Feb. 3, 1994.

Juvenile Procedure Rule 2.4, CO ST JUV P Rule 2.4
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Four. Dependency and Neglect

Juvenile Procedure Rule 4

RULE 4. PETITION INITIATION, FORM AND CONTENT

Currentness

(a) [1] A petition concerning a child who is alleged to be dependent and neglected shall be initiated in accordance with Section 19-3-501, C.R.S., and shall be in the form set forth in Section 19-3-502, C.R.S. Said petition shall be filed within 14 days from the day a child is taken into custody, unless otherwise directed by the court.

Credits
Amended eff. Jan. 1, 2012.

Footnotes
1 No paragraph (b) in original.
Juvenile Procedure Rule 4, CO ST JUV P Rule 4
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Four. Dependency and Neglect

Juvenile Procedure Rule 4.1

RULE 4.1. RESPONSIVE PLEADINGS AND MOTIONS

Currentness

(a) No written responsive pleadings are required. Jurisdictional matters of age and residence of the child which shall be deemed admitted unless specifically denied.

(b) Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.

(c) Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, shall be raised only by motion filed prior to the entry of an admission or denial of the allegations of the petition. Failure to present any such defense or objection constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the court at any time during the proceeding.

(d) All motions shall be in writing and signed by the moving party or counsel, except those made orally by leave of court.

Juvenile Procedure Rule 4.1, CO ST JUV P Rule 4.1
Current with amendments received through July 15, 2018.

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Four. Dependency and Neglect

Juvenile Procedure Rule 4.2

RULE 4.2. ADVISEMENT--DEPENDENCY AND NEGLECT

Currentness

(a) At the first appearance before the court, the respondent(s) shall be fully advised by the court as to all rights and the possible consequences of a finding that a child is dependent or neglected. The court shall make certain that the respondent(s) understand the following:

(1) The nature of the allegations contained in the petition;

(2) As a party to the proceeding, the right to counsel;

(3) That if the respondent(s) is a parent, guardian, or legal custodian, and is indigent, the respondent may be assigned counsel as provided by law;

(4) The right to a trial by jury;

(5) That any admission to the petition must be voluntary;

(6) The general dispositional alternatives available to the court if the petition is sustained, as set forth in Section 19-3-508, C.R.S.;

(7) That termination of the parent-child legal relationship is a possible remedy which is available if the petition is sustained;

(8) That if a motion to terminate the parent-child legal relationship is filed, the court will set a separate hearing at which the allegations of the motion must be proven by clear and convincing evidence;

(9) That termination of the parent-child legal relationship means that the subject child would be available for adoption;

(10) That any party has the right to appeal any final decision made by the court; and

(11) That if the petition is admitted, the court is not bound by any promises or representations made by anyone about dispositional alternatives selected by the court.

(b) The respondent(s), after being advised, shall admit or deny the allegations of the petition.

(c) If a respondent(s) admits the allegations in the petition, the court may accept the admission after making the following findings:

(1) That the respondent(s) understand his or her rights, the allegations contained in the petition, and the effect of the admission;

(2) That the admission is voluntary.

(d) Notwithstanding any provision of this Rule to the contrary, the court may advise a non-appearing respondent(s) pursuant to this Rule in writing and may accept a written admission to the petition if the respondent has affirmed under oath that the respondent(s) understands the advisement and the consequences of the admission, and if, based upon such sworn statement, the court is able to make the findings set forth in part (c) of this Rule.

Juvenile Procedure Rule 4.2, CO ST JUV P Rule 4.2
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Four. Dependency and Neglect

Juvenile Procedure Rule 4.3

RULE 4.3. JURY TRIAL

Currentness

(a) At the time the allegations of a petition are denied, a respondent, petitioner, the court, or guardian ad litem may demand a jury of not more than six. Unless a jury is demanded, it shall be deemed waived.

(b) Examination, selection, and challenges for jurors in such cases shall be as provided by C.R.C.P. 47, except that the petitioner, all respondents, and the guardian ad litem shall be entitled to three peremptory challenges. No more than nine peremptory challenges are authorized.

Juvenile Procedure Rule 4.3, CO ST JUV P Rule 4.3
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Four. Dependency and Neglect

Juvenile Procedure Rule 4.4

RULE 4.4. CERTIFICATION OF CUSTODY MATTERS TO JUVENILE COURT

Currentness

(a) Any party to a dependency or neglect action who becomes aware of any other proceeding in which the custody of a subject child is at issue shall file in such other proceeding a notice that an action is pending in juvenile court together with a request that such other court certify the issue of legal custody to the juvenile court pursuant to Section 19-1-104(4) and (5), C.R.S.

(b) When the custody issue is certified to the juvenile court, a copy of the order certifying the issue to juvenile court shall be filed in the dependency or neglect case.

(c) When the juvenile court enters a custody order pursuant to the certification, a certified copy of such custody order shall be filed in the certifying court. Such order shall thereafter be the order of the certifying court.

Juvenile Procedure Rule 4.4, CO ST JUV P Rule 4.4
Current with amendments received through July 15, 2018.

End of Document

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
Related Court Rules
Chapter 28. Colorado Rules of Juvenile Procedure
Part Four. Dependency and Neglect

Juvenile Procedure Rule 4.5

RULE 4.5. CONTEMPT IN DEPENDENCY AND NEGLECT CASES

Currentness

The citation, copy of the motion, affidavit, and order in contempt proceedings pursuant to C.R.C.P. 107, shall be served personally upon any respondent or party to the dependency and neglect action, at least 14 days before the time designated for the person to appear before the court. Proceedings in contempt shall be conducted pursuant to C.R.C.P. 107, except that the time for service under subsection (c) shall be not less than 14 days before the time designated for the person to appear.

Credits
Adopted eff. Jan. 1, 2001. Amended eff. Jan. 1, 2012.

Juvenile Procedure Rule 4.5, CO ST JUV P Rule 4.5
Current with amendments received through July 15, 2018.

End of Document

AGENDA ITEM IV(A)(1) NON-APPEARING PARTY RULE VS. DEFAULT

From 8/4/17 Minutes:

David Ayraud opened by explaining the highlights of the two rules. He indicated that these rules generated the most discussion out of all the rules. The subcommittee surveyed various jurisdictions to get an idea of how they handled non-appearing parties. He said 40% of jurisdictions use default for non-appearing parties; 40% have a short hearing with sworn testimony; and 20% used a variety of other methods. He also said that the subcommittee did not develop a clear preference between the two rules.

The committee began with the default rule:

- If default will be allowed by rule, the rules need summons language advising and giving respondents notice that default can be entered against them. Because the rule currently does not require responsive pleadings, see C.R.J.P. 4.1(a), summons language may need to advise respondents who "fail to defend" that default may be entered against them. The summons language should account for two scenarios: (a) non-appearing respondents who appear once or twice and then leave; and (2) non-appearing respondents who never appear.
- The rule sets out a two-step process (similar to, but not the same as, C.R.C.P. 55): (1) entering default against the non-defending party; and (2) entering the adjudication.
- RPC likes that the rule provides a process to set aside a default. A process to set aside a default provides a way to cure notice problems. RPC generally prefers this rule to the alternative because of this one process. There was a discussion of trying to do a hybrid rule using the non-appearing respondent rule and then adding an element to set it aside, but David Ayraud thought the hybrid would only be possible for incompetent or minor respondents. The committee also discussed taking setting aside default out of this rule and drafting a separate, independent rule with a process for setting aside an adjudication (not just an adjudication entered by default).
- GALs expressed concerned that this rule (and the ability to set aside an adjudication generally), may delay permanency.
- Smaller jurisdictions like the default rule because it's hard to marshal resources for even a short evidentiary hearing for the large number of non-appearing respondents.
- The draft rule says that the affidavit for adjudication by default may be executed by the attorney for the petitioner. This is different from C.R.C.P. 121 § 1-14(1)(d), which requires a person with knowledge of the damages and the basis therefore and forbids the attorney from doing the affidavit. The subcommittee drafted the rule to allow for attorney affidavit because of smaller jurisdictions. A suggestion was made to add "with the permission of the court" at the end of the sentence to allow the court to decide if the attorney affidavit is sufficient or if a caseworker or other person with knowledge is required.
- If the committee goes with the default rule, the pre-adjudication subcommittee should think about the following issues: (1) appropriate advisement that default is possible; (2) right to counsel; (3) notice issues to ensure actual notice (for example, child support units

might have a good address for a parent from a IV-D order, but the child welfare unit might say that they can't find the parent).

The committee then turned to the non-appearing respondent rule:

- This rule calls for a short evidentiary hearing (sometimes called "an offer of proof," but really it is an evidentiary hearing).
- This rule allows for cross-examination (unlike default)-it's an opportunity to test the evidence.
- The committee liked that this kind of adjudication was based on evidence (not a failure to appear or defend), so it would be harder to undo later, which is good for children's permanency and consistent with the Children's Code.
- But even under this rule, lack of proper notice might justify setting aside the adjudication (the committee emphasized again how important providing notice is in keeping the case on track). Thus, a separate rule on setting aside an adjudication could be helpful. A committee member pointed out that C.R.C.P. 60(b), which is currently applicable to D&N cases, already provides a mechanism to set aside an adjudication. He also noted that magistrates, who frequently hear D&N cases, cannot rule on C.R.C.P. 60(b) motions. The subcommittee should think about complexities added by the C.R.M., § 19-1-108, and case law on magistrates. Research assistance through the library is available if it is needed in exploring this issue.
- RPC raised concerns about this rule's application when there is a criminal case going on.
- The committee agreed that there is a need for a streamlined process of some sort.
- If the committee goes with the non-appearing respondent rule, the pre-adjudication subcommittee should think about whether there should be appointed counsel in every case (even when no one appears), which might provide a safety valve.
- Judge Ashby encouraged committee members to talk to their colleagues about the two proposed rules to get a sense if there is a preference.

Adjudication Rule 4.2.6 Default *(revised 6/15/2017)*
(Alternative to Adjudication for Non-Appearing Respondent)

(a) **Entry.** When a respondent has failed to appear or has failed to defend in a dependency or neglect action, the court may enter his or her default. A respondent fails to appear in the action if, after being duly served with process, he or she does not appear before the court, in person or through counsel, at the date and time stated in the summons. A respondent fails to defend in the action if, after being duly served with process, he or she fails or refuses to admit or deny the allegations contained in the petition.

(b) **Adjudication After Default.** After entry of default, a party entitled to an adjudication due to the default of a respondent may apply to the court therefor by filing a motion and any supporting documentation in accordance with this rule. The following documents must be submitted with a motion for adjudication by default: (1) The original summons showing valid service on the particular respondent; (2) an affidavit stating facts sufficient to show that venue of the action is proper; (3) an affidavit stating facts sufficient to show that the particular respondent is not a minor, an incompetent person, or in the military service; (4) an

affidavit stating facts sufficient to show that the court has jurisdiction to make a child-custody determination in accordance with the Uniform Child-custody Jurisdiction and Enforcement Act (UCCJEA), Title 14, Article 13, Section 2, Colorado Revised Statutes; and (5) a proposed form of order for adjudication by default. Affidavits may be executed by the attorney for the petitioner on the basis of reasonable inquiry with the permission of the court?. Affidavits may be combined or submitted separately. If further documentation, proof, or hearing is required, the court shall notify the parties.

(c) **Proceedings.** A court may conduct such hearing or hearings as it deems necessary and proper to determine an application for adjudication by default. A court is not required to conduct a hearing on an application for adjudication by default if all necessary prerequisites for adjudication by default are shown by the motion and supporting documentation. If the court determines that a hearing is required, the court shall set the motion for hearing and petitioner shall serve written notice of the application for adjudication by default on all parties and their attorneys of record, if any, at least seven days prior to the hearing.

(d) **Military Status.** If the respondent against whom adjudication by default is sought is in the military service, or his or her military status cannot be shown, the court shall require such additional evidence or proceeding as will protect the interests of such party in accordance with the Service Member Civil Relief Act (SMCRA), 50 USC § 520, including the appointment of an attorney when necessary.

(e) **Minors and Incompetent Persons.** Adjudication by default shall not be entered against a respondent who is a minor or an incompetent person unless that party is represented in the action by a parent, guardian, legal custodian, or guardian ad litem.

(f) **Adjudication.** Before adjudication by default is entered the court shall be satisfied that it has jurisdiction over the parties and the subject matter of the action, venue of the action is proper, and the respondent against whom adjudication by default is being sought has failed to appear or has failed to defend in the action.

(g) **Adjudication on Alternative Service**. Service of process by publication, mail, personal service out of the state, or any other means authorized by C.R.S. 19-3-503 shall not preclude adjudication by default.

(h) **Setting Aside Default.** For good cause shown the court may set aside an entry of default. If adjudication by default has been entered, a court may set aside the adjudication in accordance with Rule 60(b) of the Colorado Rules of Civil Procedure.

Comment: *Default is a separate step from entry of adjudication. It permits the court to enter a finding of default, but delay the entry of adjudication upon default if appropriate. For example, if one parent may be in default after proper service, but the other parent has not been served yet. The Court may determine it wants to wait to enter adjudication on the defaulting parent until the other parent is served. The rule is also written broadly enough to permit a guardian ad litem, in addition to the county attorney, to apply for adjudication by default.*

Adjudication Rule 4.2.6 Adjudication On Non-Appearing or Non-Defending Respondent (Alternative to Default)

(i) **Entry.** When a respondent has failed to appear or has failed to defend in a dependency or neglect action, the court may enter adjudication upon evidence submitted pursuant to this rule. A respondent fails to appear in the action if, after being duly served with process, he or she does not appear before the court, in person or through counsel, at the date and time stated in the summons. A respondent fails to defend in the action if, after being duly served with process, he or she fails or refuses to admit or deny the allegations contained in the petition at the date and time set forth in the summons or as ordered by the court. A party seeking an adjudication for a non-appearing or non-defending respondent may request adjudication be entered either upon written or verbal motion to the court, with supporting evidence in accordance with this rule.

(j) **Supporting Documentation.** If the motion is requested in writing, the motion may include an affidavit stating facts sufficient to support at least one of the allegations contained in the petition. Affidavits may be executed by the attorney for the petitioner on the basis of reasonable inquiry. Affidavits may be combined or submitted separately. If no affidavits are submitted or further documentation, proof, or hearing is required, the court shall notify the parties.

(k) **Testimony.** If the motion is requested verbally or a hearing is conducted on a written motion, the moving party shall present witness testimony or other appropriate evidence stating facts sufficient to support at least one of the allegations contained in the petition. Testimony may be presented through a proffer of testimony by the attorney, which is then adopted under oath as the sworn testimony of the witness. If such process is used, the testimony may be relied upon as if the witness directly testified.

(l) **Proceedings.** A court may conduct such hearing or hearings as it deems necessary and proper to determine a motion for adjudication for a non-appearing or non-defending respondent. A court is not required to conduct a hearing if all necessary prerequisites for adjudication are shown by the motion and supporting documentation.

(m) **Adjudication.** Before adjudication for a non-appearing or non-defending respondent is entered the court shall be satisfied that it has jurisdiction over the parties and the subject matter of the action, and venue of the action is proper.

(n) **Alternative Service**. Service of process by publication, mail, personal service out of the state, or any other means authorized by C.R.S. 19-3-503 shall not preclude adjudication on a non-appearing or non-defending Respondent.

Separate Rule for Setting Aside Adjudication

AGENDA ITEM IV(A)(2) CONTINUED (DEFERRED) ADJUDICATIONS

From 3/24/17 minutes:

The subcommittee members indicated that subsection [(c)] was drafted to account for a split process for continued (deferred) adjudications. Some jurisdictions take the admission and then later decide the terms and conditions of the continued (deferred) adjudication (split process). Other jurisdictions only take the admission and the terms and conditions at the same time (unified process). The pros and cons of each process were discussed and committee members from each kind of jurisdiction felt strongly about their process. For now, the committee decided to leave the rule to allow for either a split process or a unified process and will look to see if there is case law requiring any particular process.

Adjudication 4.2.5 Continued (Deferred) Adjudications *(revised 4/6/17)*

(a) Advisement. Prior to parties consenting to a continued (deferred) adjudication, the respondent must be informed of his or her rights in the proceeding, including the right to have a hearing either dismissing or sustaining the petition, and that he or she is waiving the right to contest their admissions to the allegations of the petition or the factual basis of their admissions. Once advised, consent to a continued (deferred) adjudication must be given by the State, the child if the child is of sufficient age and understanding, the Guardian *ad litem*, and the Respondent.

(b) Findings. The court must find that an allegation alleged in the petition is supported by a preponderance of the evidence. The court shall specify the facts that support an adjudication, unless the Respondent has waived the factual basis but concedes there is a basis to enter an adjudication.

(c) Terms and Conditions. During the period of continuance (deferral), the court may review the matter from time to time, allowing the child to remain in his or her home or in the temporary custody of another person or agency.

(1) After consent has been obtained pursuant to subsection (a), the court shall adopt terms and conditions for the parties, including but not limited to, a treatment plan, education, visitation, supervision, conditions of conduct, or other requirements as the court may prescribe.

(2) Any decree vesting legal custody of a child shall continue to be reviewed pursuant to C.R.S. 19-1-115 during the continued (deferred) adjudication.

(d) Duration of Continuance (Deferral). The continuance (deferral) of adjudication shall not extend longer than six (6) months. The court shall review the matter and upon review may continue the case for another period not to exceed an additional six (6) months.

(e) Entry of Adjudication Following a Continued (Deferred) Adjudication. At any time a party may move to revoke the continued (deferred) adjudication and enter the adjudication.

(1) A hearing on the revocation of a continued (deferred) adjudication shall determine, by a preponderance of the evidence, whether the Respondent has

failed to comply with the terms and conditions of the continued (deferred) adjudication.

(2) If the court determines the Respondent has been noncompliant with the terms and conditions, the Court shall proceed to consider any other relevant factors as required by law in determining whether to enter adjudication and if appropriate issue a written order of adjudication.

(3) If the court has adopted a treatment plan as terms and conditions of a continued (deferred) adjudication, such treatment plan shall continue as the court's dispositional order following entry of adjudication, unless otherwise ordered by the court.

(f) Waiver of Procedural Rights. A Respondent may waive their right to a hearing or other procedural right, after being advised of the consequences of such waiver.

(g) Permanency During and Following Continued (Deferred) Adjudication. A continued (deferred) adjudication shall not delay or toll any period for permanency as described in part 7 of article 3 of title 19.

AGENDA ITEM IV(A)(3) INTERVENTION RULE

From 3/24/17 Minutes:

Section 19-3-507(5)(a), C.R.S. (2016) states: Parents, grandparents, relatives, or foster parents who have the child in their care for more than three months who have information or knowledge concerning the care and protection of the child may intervene as a matter of right following adjudication with or without counsel. Regarding (a)(1), there was a discussion as to whether the phrase "who have information or knowledge concerning the care and protection of the child" modifies just foster parents or if it modifies parents, grandparents, and relatives as well. The committee decided this was an unsettled question of law and decided to leave the proposal as is (for now). *See* (yellow highlighting below).

Adjudication 4.2.9 Intervention *(4/6/17)*
(WORDING AGREED UPON, BUT MOVE TO GENERAL SECTION)

(a) Intervention of Right; Grounds.

(1) Parents, Grandparents, and Relatives. Upon motion after adjudication, parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child shall be permitted to intervene as a matter of right.

(2) Foster Parents. Upon motion after adjudication, foster parents who have the child in their care for more than three months and who have information or knowledge concerning the care and protection of the child shall be permitted to intervene as a matter of right.

(3) Indian Custodians and Indian Tribes. In any dependency or neglect action involving an Indian child, an Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any time in the proceeding.

(b) Permissive Intervention; Grounds. Upon timely motion a court may permit a person or entity to intervene in a dependency or neglect action at any time in the proceedings when a statute confers a conditional right to intervene. In exercising its discretion a court shall consider whether the intervention will serve the best interests of the child and the public,

whether the intervention will unduly delay or prejudice the rights of the original parties to the action, and whether the movant's interest is adequately represented by existing parties.

(c) Procedure. A person or entity desiring to intervene in a dependency or neglect action shall serve a motion to intervene upon the parties. The motion shall state the grounds therefor and shall cite the legal authority, if any, that confers upon the applicant an unconditional or conditional right to intervene.

AGENDA ITEM IV(A)(4) ONE EVIDENCE RULE OR EVIDENCE IN APPLICABLE RULES

From 8/17/15 Minutes:

Finally, it was decided that each subcommittee will deal with evidentiary issues that are pertinent to their assigned stage of the case.

From 3/24/17 Minutes:

The subcommittee attempted to catalog evidentiary considerations for D&N cases (the proposed rule would appear to cover temporary hearings, review hearings, etc.). The committee directed the subcommittee to just focus on evidentiary considerations for adjudications.

From 5/12/17 Minutes:

The rules generally applicable to all stages of a D&N case are becoming more clear: motions; evidence; time computation; summary judgment; CMOs. It would be helpful if the subcommittees shared their work in these areas.

Adjudication Rule 4.2.7 Evidence *(10/12/16)*
(Should be moved to General Section)

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules, the Colorado Rules of Civil Procedure, the Colorado Rules of Evidence, or any statute of this state or of the United States (except the Federal Rules of Evidence).

(b) Applicability of Rules of Evidence; Exceptions. The Colorado Rules of Evidence shall apply to dependency or neglect actions except as otherwise provided by law.

(1) At a temporary custody hearing conducted pursuant to section 19-3-403, Colorado Revised Statutes, any information having probative value may be admitted as evidence, regardless of its admissibility under the Colorado Rules of Evidence; [Source, CRS 19-3-403(3.6)(a)(II)]

(2) Social studies and other reports may be admitted as evidence in accordance with section 19-1-107(2) and section 19-3-604(3), Colorado Revised Statutes;

(3) Reports of known or suspected child abuse or neglect may be admitted as evidence in accordance with section 19-3-307(4), Colorado Revised Statutes;
(4) Out-of-court statements of a child witness or victim may be admitted as evidence in accordance with section 13-25-129, Colorado Revised Statutes;
(5) Out-of-court statements of persons with intellectual or developmental disabilities may be admitted as evidence in accordance with section 13-25-129.5, Colorado Revised Statutes; and,
(6) Certain evidentiary privileges may be rendered inapplicable by operation of section 19-3-311, Colorado Revised Statutes.

(c) Testimony of Report Writers. At an appropriate stage of the case, the court shall inform the child, his or her parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other materials relating to the child's mental, physical, and social history. Except in emergency proceedings and temporary custody hearings under section 19-3-403, Colorado Revised Statutes, any party who intends to offer evidence in the form of written reports and other material relating to the child's mental, physical, and social history at a proceeding shall notify the court and other parties no later than ___ days before the proceeding. If requested by the child, the child's parent or guardian, or other interested party within ___ days before the proceeding the court shall require the person who wrote the report or prepared the material to appear as a witness and be subject to both direct and cross-examination. Absent such a request, the court may, at any time, order the person who prepared the report or other material to appear at the proceeding if it finds that the interest of the child so requires.

(d) Evidence on Motions. When a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, or the court may direct that the matter be heard wholly or partly on oral testimony.

(e) Evidentiary Stipulations. In any dependency or neglect proceeding the parties may stipulate or agree to the existence of a fact or facts. The parties may also stipulate or agree to what a witness would have testified to if he or she were called to testify. Such a stipulation or agreement makes the presentation of any evidence to prove the matters agreed to or admitted unnecessary. [Source, CJI-Civ. 1:13, 1:14]

(f) Proof of Official Record. An official record or an entry or lack of entry therein may be proven in accordance with Rule 44 of the Colorado Rules of Civil Procedure.

(g) Determination of Foreign Law. A court may determine the law of a foreign country in accordance with Rule 44.1 of the Colorado Rules of Civil Procedure.

(h) Absentee Testimony. (1) **Request.** A party may request that testimony be presented at a trial or hearing by a person absent from the courtroom by means of telephone or some other suitable and equivalent medium of communication. A request for absentee testimony shall be made by written motion or stipulation filed as soon as practicable after the need for absentee testimony becomes known. The motion shall include:
(A) The reason(s) for allowing such testimony;

(B) A detailed description of all testimony which is proposed to be taken by telephone or other medium of communication.; and
(C) Copies of all documents or reports which will be used or referred to in such testimony.
(2) **Response.** If any party objects to absentee testimony, said party shall file a written response within 3 days following service of the motion unless the opening of the proceeding occurs first, in which case the objection shall be made orally in open court at the commencement of the proceeding or as soon as practicable thereafter. If no response is filed or objection is made, the motion may be deemed confessed.
(3) **Determination.** The court shall determine whether in the interest of justice absentee testimony may be allowed. If the court orders absentee testimony to be taken, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.
(4) **Relevant Factors.** The facts to be considered by the court in determining whether to permit absentee testimony shall include but not be limited to the following:
(1) Whether there is a statutory right to absentee testimony.
(2) The cost savings to the parties of having absentee testimony versus the cost of the witness appearing in person.
(3) The availability of appropriate equipment at the court to permit the presentation of absentee testimony.
(4) The availability of the witness to appear personally in court.
(5) The relative importance of the issue or issues for which the witness is offered to testify.
(6) If credibility of the witness is an issue.
(7) Whether the case is to be tried to the court or to a jury.
(8) Whether the presentation of absentee testimony would inhibit the ability to cross examine the witness.
(9) The efforts of the requesting parties to obtain the presence of the witness.

Discovery Rule paragraph (e)(Disclosures Upon Written Request)(3)(Evidence for a Contested Trial or Hearing:

Parties and others required by the court in accordance with law shall disclose the following no later than 7 days before a contested trial or contested hearing, or such other time the court determines reasonable and appropriate:

(A) Names, addresses, and telephone numbers of all witnesses that will or may be offered at the contested trial or contested hearing, and any written or recorded statements by the witnesses related to their testimony or the case not protected by work product;

(B) Curricula vitae, résumé, or statement of the qualifications of each witness who will or may be offered as an expert;

(C) Written reports of witnesses who will or may be offered as an expert. If no written report has been prepared, a summary of any expert witness testimony that will be introduced at the contested trial or contested hearing; and

(D) A list of all other evidence intended to be presented at the contested trial or contested hearing. Copies of evidence that will or may be offered at the contested trial or hearing shall be provided if not previously disclosed.

AGENDA ITEM IV(A)(5) MINI TERMINATION RULE

From 7/27/18 Minutes:

The committee cross-referenced the discovery/disclosure rules and noted that those rules would guide the termination hearing. There was a suggestion that, if the committee adopted a termination rule, it should include: an advisement, a reminder about ICWA, and a reminder for parties to look back at the discovery/disclosure rule and sample case management order.

AGENDA ITEM IV(A)(6) KEEP RULES SELF-CONTAINED VS. REFER TO THE C.R.C.P. WHEN APPROPRIATE

From 5/12/17 Minutes:

The committee discussed referring to existing civil rules or forming self-contained rules. The committee agreed to keep the rules self-contained for now to put the emphasis on the needs of juvenile (and to keep focus on where those needs might be different from other civil cases). The committee acknowledged difficulties with this approach. Once the discussion began on the proposed summary judgment rule, the committee recognized relying on case law from C.R.C.P. 56 summary judgment would be helpful and changing the rule for juvenile may open the door to departing from that settled law.

From 12/7/18 (Unofficial) Minutes:

The subcommittee noted that the current version of C.R.J.P. 1 refers to the C.R.C.P. There was a brief discussion on referring to the C.R.C.P. Some committee members feel strongly that juvenile cases are different and do not involve the same interests as the average civil case, so the juvenile rules should be separate and self-contained and not refer to the C.R.C.P. Other members felt that referring to the C.R.C.P. is efficient and having new and different rules within the juvenile rules covering similar subjects would increase litigation. Committee members related that, in their experience, subcommittees look to the civil rules as a starting place. While consensus on whether to refer to the C.R.C.P. or to make the juvenile rules self-contained was not reached, the committee did agree that the committee and subcommittees should highlight any area in which the civil rules do not suit juvenile cases.

Cross-references/Reiteration of Identical C.R.C.P. in Current Drafts:

- C.R.C.P. 5 & C.R.C.P. 121 § 1-15 (motions) in adjudication rule (5/12/17 minutes)

Adjudication Rule 4.2.11 Responsive Pleadings and Motions

(d) Form and Service. All motions shall be in writing and signed by the moving party or counsel, except those made orally by leave of court. Unless the court otherwise orders, every motion except one that may be heard ex parte shall be served upon each of the parties in the manner specified in Rule 5 of the Colorado Rules of Civil Procedure or Rule XX of the Colorado Rules of Juvenile Procedure.

(e) Determination of Motions. Rule 121 § 1-15 of the Colorado Rules of Civil Procedure shall apply to dependency or neglect actions except (1) a responding party shall have 14 days after the filing of the motion in which to file a responsive brief, (2) the moving party shall have reply only upon authorization of the court, (3) summary judgment motions are governed by Rule 4.2.12, and (4) a motion to reconsider interlocutory orders of the court shall be filed within 7 days from the date of the order.

- C.R.C.P. 11 (Restated in pre-adjudication rule)(unofficial 12/7/18 minutes)

Preadjudication Rule Reports, Filings and Other Pleadings

2) **Obligations of Parties and Attorneys.** Every pleading or document filed by a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name. The initial pleading shall state the current number of his or her registration issued to him by the Supreme Court. The attorney's address and that of the party shall also be stated. A party who is not represented by an attorney shall sign his or her pleadings and state his or her address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him or her that he or she has read the pleading; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader.
3) **Limited Representation.** An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent

reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this rule.

Limited representation of a pro se party under this Rule _____ shall not constitute an entry of appearance by the attorney, and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party does constitute an entry of an appearance.

- Rules of Civil Procedure Referenced in Scope of Case Commencement Rules

Case Commencement Rule 4. Procedure Governed, Scope and Purpose of Rules

(a) This part four of the juvenile rules shall govern the procedure used in trial courts in dependency and neglect cases.

(b) To the extent is specifically prescribed by rule in this part 4, the court may proceed in any lawful manner not inconsistent with these rules and shall look to the applicable law, to other parts of the Rules of Juvenile Procedure or the Rules of Civil Procedure if no other provision of the Juvenile Rules applies.

(c) These rules shall be liberally construed to achieve safe, stable, secure permanent homes for children that are subject to dependency and neglect proceedings and to assure fairness to all parties.

- Discovery Rule References Civil Rules in Purpose Section:

(a) **Purpose of this Rule.**

•••

This rule provides a just, timely, and cost-effective process requiring attention to active case management by the court. This rule provides a uniform procedure for resolution of all disclosure and discovery issues in Dependency and Neglect cases in a manner that furthers the purposes and policies of the Children's Code. Proceedings are civil in nature. Where not governed by these rules or the procedures set forth in Title 19, proceedings shall be conducted according to the Colorado Rules of Civil Procedure, except where those rules specifically exclude their applicability to juvenile proceedings.

- Evidence Rule (outlined above) reiterates much of C.R.C.P. 43, 44 & 44.1

- C.R.C.P. 60 (has been applied to D&N cases in case law; especially useful for setting aside an adjudication of a non-appearing party) (8/4/17 minutes)

- C.R.C.P. 56 (especially the usefulness of case law discussing and applying summary judgment in D&N cases) (5/12/17 minutes)