

AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, December 7, 2018, 1:00 p.m.
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 11/2/18 meeting minutes [pages 1 to 6]
- III. Old Business
 - A. Pre-Adjudication: Judge Slade & Traci Engdol-Fruhirth
 - 1) Redline Version [pages 7 to 13]
 - 2) Clean Version [pages 14 to 20]
 - B. Review Present C.R.J.P 1 through 4.5 [pages 21 to 35]
- IV. Adjourn
 - A. Next Meeting: February 1, 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, 34496841#** (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 November 2, 2018 Meeting**

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM 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 | |
| Jenny Bender | X | |
| Jennifer Conn | X | |
| Sheri Danz | X | |
| Traci Engdol-Fruhworth | X | |
| Judge David Furman | X | |
| Melissa Thompson for Ruchi Kapoor | X | |
| Andi Truett for Shana Kloek | X | |
| Wendy Lewis | X | |
| Judge Ann Meinster | X | |
| 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 | |
| Chief Judge Jeffrey Wilson | | X |
| Non-voting Participants | | |
| Justice Richard Gabriel, Liaison | X | |
| Terri Morrison | X | |
| J.J. Wallace | X | |

Special Guests:

For Dispositional review subcommittee: Katherine Gregg and Andrew Poland.

For Pre-Adjudication subcommittee: Allison Bettenberg and Blair McCarthy.

Attachments & Handouts:

- (1) 7/27/18 Draft Meeting Minutes
- (2) Memo Re: Harmless Error & Plain Error
- (3) PreAdjudication Redlined & Clean
- (4) Present C.R.J.P.

II. Chair's Report

- A. The July 27, 2018 minutes were approved with two corrections to the attendance.

III. Old Business

- A. Harmless Error & Plain Error

J.J. Wallace briefly recapped the memo distributed with the meeting materials providing a background on the issue. The committee held a thorough discussion on the pros and cons of adopting a rule setting out a standard of review in the juvenile rules. Some committee members felt a rule adopting plain error would send a message to trial courts to be concerned about the fairness of the proceedings, even if no objection was made. Some committee members also felt a plain error rule might help protect the appellate rights of pro se litigants. Other committee members were concerned that including a plain error rule that allowed parties to routinely raise unpreserved issues would lengthen the appeals process and, correspondingly, lengthen permanency for children. The committee also discussed the challenges of adopting a new rule when the present juvenile rules reference the civil and criminal rules. On this issue, some committee members felt it would be difficult to craft a new rule: there's not clarity in case law or consensus among the committee members about what a new rule would say.

On balance, the committee agreed to table the issue. The committee decided that the issue has not been well-developed in case law; it may come up more in the future, which would develop the issue; and there's a lack of clarity on what the rule would say. The committee agreed that the issue may be revisited in the future.

IV. New Business

- A. Dispositional Review-Judge Simonet, Jennifer Conn, Wendy Lewis, & special guests Katherine Gregg & Andrew Poland.

Judge Ashby asked for clarification on the structure of the proposal. Judge Simonet clarified that the underlined headings are intended to designate separate rules.

The committee suggested that the proposed rules conform to more rule-like language. For example, under "Purpose of the Dispositional Hearing," the committee recommends beginning with "The court shall hold a dispositional hearing and shall consider: [the purposes articulated in a-c]." J.J. Wallace kept notes of the suggested

changes by the committee and will meet with the subcommittee before the subcommittee's next presentation to the committee to assist with this suggestion.

The committee discussed the reference to a continuance in the "Timing of a Dispositional Hearing" section. The committee members recognized that there are several different standards for continuances, which sometimes leads to confusion. For EPP cases, there is a statutory requirement that the court find good cause for the continuance and that the continuance serve the child's best interests. §§ 19-3-104, 19-3-505(7)(b), 19-3-508(1). For older children under the statutes, the court must find good cause exists, § 19-3-505(7)(b), and must also find that delay serves the child's best interests. § 19-3-508(1). CJD 96-08(4) adds a "manifest injustice" standard to a continuance.

In discussing CJD 96-08, the committee also noted that the requirement to file the caseworker's report 5 days before the hearing comes from the CJD and is included in the proposed rule under "Court Report." The committee believes that, along with the proposed set of rules, the committee should make recommendations regarding CJD 96-08 when the proposed rules are submitted to the court to assure consistency between them. The committee also stated that the 5-day time period should probably conform to the "rule of 7" and be changed to 7 days.

The committee talked about problems with the timing of dispositional hearings and the difficulties that lead to continuing the hearing. The committee agreed that the hearing is often continued because the caseworker's report is late, the caseworker has not met with the family (respondents & child) before the hearing, or the respondent/GAL has not been able to review the caseworker's report before the hearing. Sometimes the parent is not engaged or is incarcerated, making reviewing the report within the short time period before the hearing difficult. The committee members related strategies they used to address these problems and minimize delays. These include: briefly passing the case so that RPC and/or the caseworker can speak with the respondents about the caseworker's report in an attempt to resolve any issues that day; adopting the treatment plan as proposed, but allowing a time period for written objections to the plan; or setting a new dispositional hearing in 30 days (with or without adopting the proposed treatment plan in the interim).

The committee agreed that, since there are several different approaches, the rule should be fashioned to give the court discretion to utilize all these approaches (and the subcommittee should think about drafting a comment to list these options), but it was emphasized that in affording discretion to address the various circumstances that can result in delays, the committee does not want to normalize delay-it should still be the exception.

The committee also discussed the need for the dispositional rules to address amendments/updates to the treatment plan. One committee member explained that service providers aren't usually identified in the initial treatment plan, but it's useful to have that information formalized in writing in the treatment plan at some point.

Others commented that stipulations and/or amendments to the treatment plan are sometimes done on the record at a review hearing and are never written down. The committee sees a need for the rules to require a written memorialization of any changes to the treatment plan. Also, the committee asked the subcommittee to consider adopting a timeline for submitting proposed amendments to the treatment plan before the hearing (although some committee members noted that many jurisdictions' practice is to do oral motions and this would be a substantial change).

The committee discussed whether to include "best practice" requirements for the treatment plan (i.e., a-d under "Court Report") in the rule or in a comment. *See also* §§ 19-1-103(10) (defining "appropriate treatment plan"), 19-1-107(2.5) (requiring listing of services, priority of services, and describing services in EPP cases). The committee decided that the rules should avoid pure best practices and focus on procedures. As a general FYI, Sheri Danz mentioned that the NCJFCJ has provided Enhanced Resource Guidelines that provide useful best practices. J.J. Wallace will email the committee a [link](#) to the guidelines.

At the close of the meeting, the committee offered the following general guidance for the subcommittee to use in developing a new draft to present to the committee (sometime in early 2019):

- Think about the structure of the proposal keeping in mind consistency with other rules;
- Think about the procedures followed in dispositional review and focus on grouping the procedures into rules with related subsections by topics e.g., Hearing (Purpose, Notice, Timing, Advisement, Findings).

B. PreAdjudication-Judge Slade & Traci Engdol-Fruhworth and special guests Allison Bettenberg & Blair McCarthy

Tabled to the December 7, 2018 meeting.

C. Review Present C.R.J.P 4 through 4.5

Tabled to the December 7, 2018 meeting.

D. Next Meeting

The committee chair is unavailable for the meeting scheduled for December 14, 2018, and she asked if committee members would be available to meet on December 7th instead. Most committee members were available the afternoon of December 7th, so the meeting was changed to December 7, 2018 from 1 PM to 4 PM. The meeting will still be held in the supreme court conference room.

The chair also told the members that the 2019 meeting schedule will be set soon and committee members will be notified of the schedule by email.

V. Adjourn

The Committee adjourned at 11:48 PM.

*Respectfully Submitted,
J.J. Wallace*

Unofficial

Rule Petition Initiation, Form and Content.

- (a) 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;
- (b) The petition shall be initiated by the designated County or City Attorney in the proper city or county pursuant to 19-3-201, C.R. S. The County or City Attorney shall be the Petitioner;
- (c) The Petition shall name the child or children at issue;
- (d) The Petition shall name as Respondents:
 - A) Any and all parents of the child(ren);
 - B) Any legal guardian or custodian;
 - C) Any person who a court of competent jurisdiction has allocated any legal responsibility for the child(ren);
- (e) The Petition may name as a Special Respondent, a person who resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child(ren).
- (f) Service shall conform with 19-3-503.

Commented [st1]: 19-3-503 says conform with CRCP (cant change)

Rule Responsive Pleadings

No written responsive pleadings to the Petition in Dependency and Neglect are required.

Rule Pre-Trial Motions

Any issue, except an adjudicatory finding, may be raised by motion All motions shall be in writing and signed by the moving party or counsel and supported by legal authority. If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned

and may enter an order denying the motion. The court may grant permission for oral motions. All pleading shall include a certificate of service listing manner of delivery to the County Attorney, all named respondents, the guardian ad litem, and any **intervenor**s.

Commented [st2]: Needed to define because GAL does not get pleadings sometimes and to clearly define SR not always entitled to pleadings.

- a) **Duty to Confer.** Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel or unrepresented moving party shall have a duty to confer with non-moving counsel or pro se parties prior to filing any motions. To verify this requirement has been met, every motion to which the rule applies shall contain a brief statement at the beginning summarizing the moving party's efforts to confer with or notify all other parties. The outcome of that contact shall also be summarized. The Court may strike any motion that does not have the required statement concerning consultation.

Commented [st3]: We stuck with Pre-adj, but should be consistent throughout rules.

OR

Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties shall not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, shall be stated.

- b) **Timing:** All pre-trial motions must be filed at least 21 days prior to trial or within 7 days of setting trial whichever is later. Responses are due no later than 7 days after filing of the motion. Any motions to amend the Petition shall be filed no later than 10 days prior to trial unless good cause is shown.

Forthwith or Emergency Motions may be filed when there is an issue that requires immediate determination by the **court**. The movant must state with particularity the need for an immediate **determination**. Any objection or response shall be filed within 72 hours. No reply is permitted unless otherwise ordered by the court.

Commented [st4]: (a) Struggled with this: when a child's life, health, or safety is at risk.
a.

- a. Parties are still required to comply with (the conferral rule)

Commented [st5]: Want to still say there is a duty to confer

Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order. The proposed order complies with this provision if it states that the requested relief be granted or denied.

Service of Motions:

Commented [AB6]: The service of motions is not covered in 19-3-503 so this is a general provision for motions.

Rule Reports, Filings and Other pleadings

- 1) Except as otherwise provided in these rules or pursuant to Title 19, every order required by its terms to be served, every pleading subsequent to the original Petition unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, designation of record on appeal, reports as prescribed in Title 19 and similar papers shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in 19-3-503.
- a) **Making Service:**
- i) Service on a party represented by an attorney is made upon the attorney unless the court orders personal service upon the party. A resident attorney, on whom pleadings and other papers may be served, shall be associated as attorney of record with any out-of-state attorney practicing in any courts of this state.
 - ii) Delivering a copy to the person by:
 - (1) handing it to the person;
 - (2) leaving it at the person's dwelling house or usual place of abode with someone 18 years of age or older residing there;
 - (3) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing;
 - (4) If the person served has no known address, leaving a copy with the clerk of the court; or
 - (5) Delivering a copy by any other means, including E-Service, other electronic means or a designated overnight courier, consented to in writing by the person served. Designation of a facsimile phone number or an email address in the filing effects consent in writing for such delivery. Parties who have subscribed to E-Filing. Service by other electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service by other electronic means or overnight courier is not effective if the party making service learns that the attempted service did not reach the person to be served.
- b) **Filing Certificate of Service.** All papers after the initial pleading required to be served upon a party, together with a certificate of service, must be filed with the court within a reasonable time after service.
- 2) **Inmate Filing and Service.** Except where personal service is required, a pleading or paper filed or served by an inmate confined to an institution is timely filed or served if deposited in

Commented [st7]: 1) May or may not want to address HOW to file (counter vs. e-filing as defined in 121) **ie CRCP 5**
Filing with Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A paper filed by E-Filing in compliance with [C.R.C.P. 121](#) Section 1-26 constitutes a written paper for the purpose of this Rule. The clerk shall not refuse to accept any paper presented for filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

Commented [st8]: This entire rule was adapted but copied from CRCP

Commented [AB9]: We are unable to change these provisions of the CRCP because 19-3-503 refers directly to the CRCP versus CRJP. We would make significant revisions of this section to make them apply to juvenile cases if this was not already part of the statute.

Commented [st10]: Maybe some day? Leave in or take out for now??

Commented [AB11]: Remove E-filing and E-Service from this because we currently do not have Colorado Court's E-Filing for juvenile cases.

Commented [AB12]: Suggest that this also be removed because there is not E-filing or E-Service yet.

the institution's internal mailing system on or before the last day for filing or serving. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

- 3) With the exception of reports filed pursuant to 19-1-107, Every pleading, motion, or any other document filed with the court (hereinafter “document”) shall conform with the following:
- 1) **Caption; Names of Parties.** Documents shall contain a caption setting forth the name of the court, the title of the action, the case number, if known to the person signing it, the name of the document and other applicable information in the format specified by paragraph ____ and the captions illustrated by paragraph ____ of this rule.

Illustration of Case Caption:

| | |
|---|--------------------------|
| DISTRICT COURT or DENVER JUVENILE COURT _____ COUNTY, STATE OF COLORADO (Court Address) | Court Use Only |
| PEOPLE OF THE STATE OF COLORADO IN THE INTEREST OF: child AND CONCERNING: Respondents, And concerning | |
| Filing party Name Address Phone Number Email Address Attorney Bar # | Case No. Division |

- 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.

Commented [st13]: Rule 121 (not pre adj, but entry of appearance is... withdrawal?)

4) 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.

5) Rule First Appearance Advisement Upon Filing of Petition

(a) At the first appearance before the court, the court shall inquire of all parties and counsel regarding the applicability of the Indian Child Welfare Act pursuant to 19-1-126.

(b) The court shall require the parties to complete and file an Affidavit as To Children (see form_____)

(c) The court shall fully advise the respondent(s) 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 an adjudicatory 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.

August 4, 2017- Committee directs Pre-Adjudication committee to consider a rule to appoint counsel whether a parent appears or not. (Default discussion)

- RPC cannot advocate for a non-existing client
- Right to counsel of choice, including pro se. What if there is a private attorney giving bad advice- advice none-the-less that contradicts RPC;
- How do you determine indigency if there is no application;

December 8 meeting directed Pre-Adjudication committee to consider a rule requiring all courts to adopt a uniform CMO in D&N cases:

- Procedural problems are addressed (hopefully) by rule. Counties may issue CMO if they want.

Rule Petition Initiation, Form and Content.

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- (b) The petition shall be initiated by the designated County or City Attorney in the proper city or county pursuant to 19-3-201, C.R. S. The County or City Attorney shall be the Petitioner;
- (c) The Petition shall name the child or children at issue;
- (d) The Petition shall name as Respondents:
 - A) Any and all parents of the child(ren);
 - B) Any legal guardian or custodian;
 - C) Any person who a court of competent jurisdiction has allocated any legal responsibility for the child(ren);
- (e) The Petition may name as a Special Respondent, a person who resides with, has assumed a parenting role toward, has participated in whole or in part in the neglect or abuse of, or maintains a significant relationship with the child(ren).
- (f) Service shall conform with 19-3-503.

Rule Responsive Pleadings

No written responsive pleadings to the Petition in Dependency and Neglect are required.

Rule Pre-Trial Motions

Any issue, except an adjudicatory finding, may be raised by motion All motions shall be in writing and signed by the moving party or counsel and supported by legal authority. If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned

and may enter an order denying the motion. The court may grant permission for oral motions. All pleading shall include a certificate of service listing manner of delivery to the County Attorney, all named respondents, the guardian ad litem, and any intervenors.

- a) **Duty to Confer.** Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel or unrepresented moving party shall have a duty to confer with non-moving counsel or pro se parties prior to filing any motions. To verify this requirement has been met, every motion to which the rule applies shall contain a brief statement at the beginning summarizing the moving party's efforts to confer with or notify all other parties. The outcome of that contact shall also be summarized. The Court may strike any motion that does not have the required statement concerning consultation.

OR

Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties shall not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, shall be stated.

- b) **Timing:** All pre-trial motions must be filed at least 21 days prior to trial or within 7 days of setting trial whichever is later. Responses are due no later than 7 days after filing of the motion. Any motions to amend the Petition shall be filed no later than 10 days prior to trial unless good cause is shown.

Forthwith or Emergency Motions may be filed when there is an issue that requires immediate determination by the court. The movant must state with particularity the need for an immediate determination. Any objection or response shall be filed within 72 hours. No reply is permitted unless otherwise ordered by the court.

- a. Parties are still required to comply with (the conferral rule)

Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order. The proposed order complies with this provision if it states that the requested relief be granted or denied.

Service of Motions:

Rule Reports, Filings and Other pleadings

1) Except as otherwise provided in these rules or pursuant to Title 19, every order required by its terms to be served, every pleading subsequent to the original Petition unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, designation of record on appeal, reports as prescribed in Title 19 and similar papers shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in 19-3-503.

a) **Making Service:**

i) Service on a party represented by an attorney is made upon the attorney unless the court orders personal service upon the party. A resident attorney, on whom pleadings and other papers may be served, shall be associated as attorney of record with any out-of-state attorney practicing in any courts of this state.

ii) Delivering a copy to the person by:

(1) handing it to the person;

(2) leaving it at the person's dwelling house or usual place of abode with someone 18 years of age or older residing there;

(3) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing;

(4) If the person served has no known address, leaving a copy with the clerk of the court; or

(5) Delivering a copy by any other means, including E-Service, other electronic means or a designated overnight courier, consented to in writing by the person served. Designation of a facsimile phone number or an email address in the filing effects consent in writing for such delivery. Parties who have subscribed to E-Filing. Service by other electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service by other electronic means or overnight courier is not effective if the party making service learns that the attempted service did not reach the person to be served.

b) **Filing Certificate of Service.** All papers after the initial pleading required to be served upon a party, together with a certificate of service, must be filed with the court within a reasonable time after service.

2) **Inmate Filing and Service.** Except where personal service is required, a pleading or paper filed or served by an inmate confined to an institution is timely filed or served if deposited in

the institution's internal mailing system on or before the last day for filing or serving. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

3) With the exception of reports filed pursuant to 19-1-107, Every pleading, motion, or any other document filed with the court (hereinafter “document”) shall conform with the following:

1) **Caption; Names of Parties.** Documents shall contain a caption setting forth the name of the court, the title of the action, the case number, if known to the person signing it, the name of the document and other applicable information in the format specified by paragraph ____ and the captions illustrated by paragraph ____ of this rule.

Illustration of Case Caption:

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| DISTRICT COURT or DENVER JUVENILE COURT _____ COUNTY, STATE OF COLORADO (Court Address) | Court Use Only |
| PEOPLE OF THE STATE OF COLORADO IN THE INTEREST OF: child AND CONCERNING: Respondents, And concerning | |
| Filing party Name Address Phone Number Email Address Attorney Bar # | Case No. Division |

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.
- 4) 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.
- 5) Rule First Appearance Advisement Upon Filing of Petition
 - (a) At the first appearance before the court, the court shall inquire of all parties and counsel regarding the applicability of the Indian Child Welfare Act pursuant to 19-1-126.
 - (b) The court shall require the parties to complete and file an Affidavit as To Children (see form_____)

- (c) The court shall fully advise the respondent(s) 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 an adjudicatory 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.

August 4, 2017- Committee directs Pre-Adjudication committee to consider a rule to appoint counsel whether a parent appears or not. (Default discussion)

- RPC cannot advocate for a non-existing client
- Right to counsel of choice, including pro se. What if there is a private attorney giving bad advice- advice none-the-less that contradicts RPC;
- How do you determine indigency if there is no application;

December 8 meeting directed Pre-Adjudication committee to consider a rule requiring all courts to adopt a uniform CMO in D&N cases:

- Procedural problems are addressed (hopefully) by rule. Counties may issue CMO if they want.

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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.

West's Colorado Revised Statutes Annotated
Title 19. Children's Code (Refs & Annos)
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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
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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.

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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.

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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

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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

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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

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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
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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.

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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
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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
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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.