Rule 4.2.1 Case Management for Adjudicatory Hearing *(Revised 3/8/17)*

(a) Discovery shall be accomplished by the provisions and deadlines of Rule _____.

(b) Pretrial Conference. The court may hold one or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. Matters which might be considered include:

i. Making stipulations as to facts about which there can be no dispute;
ii. Marking for identification various documents and other exhibits of the parties;
iii. Excerpting or highlighting exhibits;
iv. Waivers of foundation as to such exhibits;
v. Severance of respondent parents trials;
vi. Seating arrangements for respondents and counsel;
vii. Conduct of jury examination, including any issues related to confidentiality of juror locating information;
viii. Number and use of peremptory challenges;
ix. Procedure on objections where there are multiple counsel or respondents;
x. Order of presentation of evidence and arguments when there are multiple counsel or respondents;
xi. Order of cross-examination where there are multiple respondents;
xii. Resolution of any motions or evidentiary issues in a manner least likely to inconvenience jurors to the extent possible; and
xiii. Submission of items to be included in a juror notebook.

(c) Exhibits. Counsel shall mark for identification all proposed exhibits which may be offered at hearing, and furnish copies, if not already furnished, together with a list of such proposed exhibits, at least seven (7) days prior to trial to opposing counsel or as ordered by court.

(d) Witnesses. Counsel shall exchange witness lists, including names, addresses and phone numbers of all witnesses no later than seven (7) days prior to trial or as ordered by court. Witness lists shall include a detailed statement regarding the content of each witness's testimony. Expert witness lists shall include a summary of qualifications/experience, in addition to the detailed statement regarding the content of each witness's testimony. In the event a party does not intend to call witnesses or introduce exhibits, a statement to that effect must be filed no later than seven (7) business days prior to trial. Witness lists/statements must be accompanied by proof of service on all parties.

(e) Juror Notebooks. Juror notebooks may be available during the adjudication hearing and deliberations to aid jurors in the performance of their duties. The parties shall confer about the items to be included in juror notebooks, and, by the pretrial conference or other date set by the court, shall make a joint submission to the court of items to be included in a juror notebook.

a. The items to be included from the parties may include:

i. Joint statement of the case. If the parties are unable to agree upon a joint statement, each side is to submit its own version to the court and the court will draft the statement.
ii. Elemental jury instructions, legal definitions and any affirmative defense instructions applicable to the case.
iii. Any documentary or photographic exhibits that will be stipulated into evidence. In addition, if counsel anticipates asking that an exhibit be published to the jury, sufficient copies of that exhibit are to be made so they may be provided to the jury, if and when it is admitted. The court has the discretion to determine that exhibits may be excerpted, highlighted or otherwise marked.
iv. The court and counsel may agree upon other items to be included in the notebook.
v. For all of the above items, counsel is responsible for providing a sufficient number of copies, eight, to the court, all of which must be three-hole punched and organized to permit easy insertion into the notebooks, i.e. everything for each notebook is to be collated and clipped together. Counsel should confer with each other regarding the submissions. The county attorney is to prepare the elemental jury instructions, and the legal definitions, and respondents counsel the affirmative defense instructions.

b. The Court may provide for inclusion into the juror notebooks, the following items:

i. Preliminary jury instructions which will include burden of proof, credibility of witnesses, expert witnesses, juror note-taking and juror conduct.
ii. Additional jury instructions given during the trial and final jury instructions as appropriate and at the appropriate times.
iii. Paper or pads and pens for juror note-taking.
iv. A welcoming and thank you letter from the Chief Justice.
v. Introductory remarks outlining a Dependency and Neglect case.
vi. Any other items the court believes to be appropriate.

(f) Stipulations. Pre-trial stipulations must be in writing, and signed by all necessary parties. Stipulations must be provided to the court within three (3) days of the first day of trial, unless this timeframe is modified by the court.

(g) Any motions, notices, discovery, instructions, or other documents required to be served under this case management rule shall be served in accordance with Rule XX.

4.2.2 Adjudicatory Hearing *(revised 3/8/17)*

(a) Prompt Hearing. An adjudicatory hearing shall be held within ninety days after service of the petition or within sixty days after service of the petition if a child alleged in the petition to be dependent or neglected was under six years of age when the petition was filed. Unless modified pursuant to Rule 4.2.14

(b) Right to Participate. The county attorney, city attorney of a city and county, or special county attorney who brought the petition in the name of the people of the state of Colorado; any respondent named in the petition; a guardian ad litem appointed for a child who is alleged to be dependent or neglected; and counsel, if any, appointed pursuant to section 19-1-105(2), Colorado Revised Statutes, to represent a child who is alleged to be dependent or neglected shall have the right to participate in an adjudicatory hearing to the extent provided by law. The court may permit special respondents and intervenors to participate in an adjudicatory hearing, to an extent that the court determines is reasonable and consistent with these rules.

(c) Burden of Proof. At an adjudicatory hearing the petitioner has the burden of proving the allegations of the petition by a preponderance of the evidence, subject to Rule XX [ICWA]

(d) Evidence. Evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is dependent or neglected, and such evidence shall be sufficient to support adjudication. Evidence tending to establish the necessity of separating the child from the parents or guardian may be admitted at an adjudicatory hearing but shall not be required to support an order of adjudication. Admissions by a party in support of an informal adjustment shall not be used as evidence at a subsequent adjudicatory hearing involving the same parties and the same facts or circumstances.

(e) Amendment to Conform to the Evidence. When evidence presented at an adjudicatory hearing discloses facts not alleged in the petition, the court shall proceed in accordance with section 19-3-505(4), Colorado Revised Statutes.

(f) Evidence of Mental Illness or Developmental Disability. When evidence presented at an adjudicatory hearing shows that the child may have a mental illness or a developmental disability, the court shall proceed in accordance with section 19-3-506, Colorado Revised Statutes.

(g) Adjudication. When the allegations of the petition are supported by a preponderance of the evidence, the court shall proceed in accordance with section 19-3-505(7), Colorado Revised Statutes, subject to Rule XX [ICWA].

(h) Dismissal. When the allegations of the petition are not supported by a preponderance of the evidence, the court shall proceed in accordance with section 19-3-505(6), Colorado Revised Statutes, subject to Rule XX [ICWA].

Comment: *Paragraph (b) of this rule acknowledges that a child could be represented simultaneously by both a court appointed guardian ad litem and a court appointed attorney. For example, a court may choose to make a dual appointment for a child who allegedly abused a sibling. This rule allows both attorneys to participate in the trial process even though their positions may differ. However, it pursuant to CRS 19-1-111(1), (3), party status is accorded to the child's guardian ad litem. Accordingly, counsel for a child would not have the right to demand a jury trial or exercise peremptory challenges. However, counsel for a child would have the right to present evidence, cross-examine witnesses, object to evidence and argue issues of law, tender proposed jury instructions, present an opening statement, and make a closing argument. Paragraph (b) also allows a judicial officer discretion to permit other parties, including special respondents and intervenors, to participate in and adjudicatory hearing if such participation will serve the best interests of the child. The parameters of that participation is left to the discretion of the court.*

RULE 4.2.3 ADMISSIONS *(Revised 3/8/17)*

(a) Admission; Acceptance. After being advised in accordance with Rule _____, each respondent shall admit or deny the allegations of the petition. If a respondent admits the allegations contained in the petition, the court may accept the admission after making the following findings: (1) The respondent understands his or her rights, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary. The court may accept a written admission to the petition if the respondent has affirmed under oath that he or she 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 above.

(b) Adjudication. After accepting an admission, unless proceeding under Rule 4.2.5, the court shall determine in accordance with section 19-3-505(7)(a), Colorado Revised Statutes, whether the petition should be sustained and whether an order adjudicating the child or children named in the petition to be dependent or neglected should be entered.

(c) Factual Basis. At the time of admission, the court shall find a factual basis sufficient to support the admission, unless the respondent has stipulated or waived a factual basis.

Comment: *The language of (b) is intended to allow judicial officers discretion in determining when a case is ripe for entry of an order of adjudication. The statutory language requiring a court to determine whether "the petition is supported by a preponderance of the evidence" has not been included. Such a finding is unnecessary when a respondent is admitting the allegations of a petition.*

Rule 4.2.4 Consolidation; Separate Trials *(3/2/17)*

(a) Consolidation of Proceedings. When more than one child is named in a petition alleging dependency or neglect, hearings may be consolidated except that separate hearings may be held with respect to disposition. [Source, CRS 19-1-106(4)]

(b) Consolidation of Actions. When two or more dependency or neglect actions involving a common question of law or fact and a common party or parties are pending before the same court, the court on its own motion or on the motion of any party may order consolidation of the pending actions, a joint adjudicatory hearing of any or all matters in issue, and such further measures concerning proceedings therein as may tend to avoid unnecessary delay or expense. [Source, CRCP 42(a)]. A party seeking consolidation shall file a motion to consolidate in each case sought to be consolidated. The motion shall be determined in the case first filed in accordance with Rule [4.1(e)]. If consolidation is ordered, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases placed together under that case number, unless otherwise ordered by the court. [Source, CRCP 121, § 1-8]

(c) Separate Trials and Proceedings. Any allegation against a party may be severed and proceeded with separately. [Source, CRCP 21]. The court, in furtherance of convenience, expedition, or economy or to avoid prejudice, may order a separate hearing or trial of any issue or of any party. [Source, CRCP 21 and 42(b)]. In determining whether a separate hearing or trial should be ordered, the court shall consider all relevant factors including, but not limited to, the risk of inconsistent decisions with respect to material issues of fact; whether any party intends to present evidence, other than reputation or character testimony, which would not be admissible in a separate hearing or trial and which would be prejudicial to a party against whom it is not admissible [Source, Crim.P. 14]; whether conducting a separate hearing or trial would result in unnecessary delay; and whether conducting a separate hearing or trial would facilitate early engagement in treatment.

4.2.5 Continued (Deferred) Adjudications *(revised 3/8/17)*

(i) Advisement. Prior to parties consenting to a continued (deferred) adjudication, the parent, guardian or other legal custodian must be informed of their rights in the proceeding, including the right to have a hearing either dismissing or sustaining the petition, and that they are waiving their right to contest their admissions 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, Guardian *ad litem*, and the Respondent.

(j) 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 Respondents have specifically stipulated to a waiver of a factual basis but concede there is a basis to enter an adjudication.

(k) 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.

a. 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.
b. 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.

(l) 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.

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

a. 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. The court should also consider the ongoing probative value of any parental admission and any new evidence not available at the time of the original admissions.
b. If the court has adopted a treatment plan as a term and condition 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.

(n) 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.

(o) Permanency During and Following Continued (Deferred) Adjudication. A continued (deferred) adjudication shall not delay or toll any period for permanency under C.R.S. 19-3-701 *et seq.*

Rule 4.2.6 Default *(revised 3/8/17)*

(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) **Supporting Documentation.** A party entitled to an adjudication by default shall 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 fact 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. 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 Substituted Service**. Service of process by publication, mail, or personal service out of the state, 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.

Note: *This draft more closely tracks the provisions of CRCP 55. It permits entry of default as a separate and distinct procedural step in the case. This may be a useful case management option where, for example, there is an absent parent and the proposed case disposition for the custodial parent involves either an informal adjustment or a continued adjudication. 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. The subcommittee discussed but did not resolve whether the language "or refuses" should be deleted from the last sentence of paragraph (a). A refusal may connote appearance and participation in the case. For example, a respondent parent may appear in the case but refuse to respond to the allegations, claiming that the government has no authority to intervene in his or her family affairs. In such a case, should a judicial officer enter default against the recalcitrant respondent or, instead, enter a denial on his or her behalf? Similarly, the subcommittee discussed but did not resolve whether paragraph (b) should require the moving party to provide an affidavit setting forth a factual basis sufficient to demonstrate that a child is dependent or neglected. Some guidance may be gleaned from People ex rel. K.L.B., 342 P.3d 597 (Colo. App. 2014). Finally, the subcommittee acknowledges that further revisions to this proposed rule may be necessary to comport with the ICWA.*

Rule 4.2.7 Evidence *(revised draft, 10/12/16)*

(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:

(A) Whether there is a statutory right to absentee testimony.

(B) The cost savings to the parties of having absentee testimony versus the cost of the witness appearing in person.

(C) The availability of appropriate equipment at the court to permit the presentation of absentee testimony.

(D) The availability of the witness to appear personally in court.

(E) The relative importance of the issue or issues for which the witness is offered to testify.

(F) If credibility of the witness is an issue.

(G) Whether the case is to be tried to the court or to a jury.

(H) Whether the presentation of absentee testimony would inhibit the ability to cross examine the witness.

(I) The efforts of the requesting parties to obtain the presence of the witness.

Note: *A substantial portion of this proposed rule is based on CRCP 43. The proposed rule governing time would allow a court to shorten or enlarge presumptive time lines. Paragraphs (b), (f), and (g) are intended to serve as reference tools. As drafted, the rule is not limited to adjudicatory proceedings but, instead, applies to all stages of a dependency or neglect case. Paragraph (e) is intended to provide some support for the common practice of allowing the parties to present "offers of proof" during evidentiary hearings. Paragraph (c) is derived from CRS 19-1-107(2), (4) and 19-3-604(3). The required advisement could be given at any stage of the case. By its terms section 19-3-604(3) applies to proceedings for termination of parental rights. The subcommittee does not take a position on the question of whether section 19-1-107(2) applies beyond the parameters of a dispositional hearing. On one hand, the statute is located in the "General Provisions" section of the Children's Code. On the other hand, the statute indicates that written reports and other materials may be admitted as evidence "For the purpose of determining proper disposition of a child . . . ."*

Rule 4.2.8 Informal Adjustment *(revised 10/4/16)*

On the basis of a preliminary investigation conducted pursuant to section 19-3-501(1), Colorado Revised Statutes, a court may make whatever informal adjustment is practicable in accordance with this rule. An informal adjustment may be made before a petition is filed or after filing if the petition is voluntarily dismissed. A court may approve an informal adjustment if (1) the child and his or her parents, guardian, or other legal custodian were informed of their constitutional and legal rights, including the right to be represented by counsel at every stage of the proceedings; (2) the parents, guardian, or other legal custodian admit facts that are sufficient to establish prima facie jurisdiction; and (3) written consent is obtained from the parents, guardian, or other legal custodian, the child's guardian ad litem, and the child, if the child is of sufficient age and understanding. Efforts to effect informal adjustment may extend no longer than six months. Facts admitted in support of an informal adjustment shall not be used in evidence if a petition is subsequently filed. [Source, CRS 19-3-501(1)(c)].

Note: *The second sentence was revised to make the rule congruent with CRCP 41(a), regarding voluntary dismissal. Item (3) was revised to require consent of the child's GAL.*

4.2.9 Intervention *(3/2/17)*

(a) Intervention of Right; Grounds.

(1) Parents, Grandparents, and Relatives. Upon application 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 [CRS 19-3-507(5)(a)].

(2) Foster Parents. Upon application 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 [*Id.*].

(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 [25 U.S.C. § 1911(c)].

(b) Permissive Intervention; Grounds. Upon timely application 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 applicant'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 statute, if any, that confers upon the applicant an unconditional or conditional right to intervene.

Note: *This proposed rule is based primarily on CRCP 24, CRS 19-3-507(5)(a), and 25 USC § 1911(c). It is intended to operate in conjunction with a separate rule applicable to parties and joinder. This rule will apply to at least 6 categories of applicants: (1) Parents, grandparents, and relatives of the child who have not been joined as parties; (2) foster parents of the child; (3) a person who does not fall within either of the foregoing categories but who would have standing to petition a court for allocation of parental responsibilities pursuant to § 14-10-123(1), CRS; (4) a person appointed by a parent to act as guardian for a child pursuant to 15-14-201, -202, CRS; (5) a person to whom a parent has delegated by a power of attorney any power regarding care, custody, or property of a minor for a period of not more than 12 months pursuant to CRS 15-14-105; and (6) a tribe acting pursuant to the ICWA, 25 U.S.C. § 1911(c). The subcommittee discussed the language of paragraph (b)(1) in light of People ex rel. O.C., 2013 CO 56, 308 P.3d 1218, and ultimately determined that the issues should be referred to the Advisory Committee for further consideration.*

Rule 4.2.10 Trial by Jury *(Revised 3/2/17)*

(a) Demand. At the time the allegations of the petition are denied or within such additional time as the court may allow, the petitioner, any respondent, any guardian ad litem for a child, or the court, on its own motion, may demand an adjudicatory hearing by a jury of six persons. If a jury trial is not demanded in a timely manner the adjudicatory hearing will be to the court.

(b) Waiver. The right of a party to a trial by jury shall be deemed waived if (1) a party entitled to demand a trial by jury fails to make a timely jury demand; (2) a party who demanded a trial by jury consents in writing or on the record to withdraw his or her jury demand before the adjudicatory hearing; (3) a party who demanded a trial by jury fails to appear in person at a court-ordered pretrial conference; or (4) a party who demanded a trial by jury fails to appear at the adjudicatory hearing.

(c) Examination, Selection, and Challenges: Except as otherwise provided in this rule, examination, selection, and challenges for jurors in dependency or neglect actions shall be as provided by Rule 47 of the Colorado Rules of Civil Procedure.

(d) Peremptory Challenges: There shall be three sides to an adjudicatory hearing to a jury: petitioner, all respondents, and the guardian ad litem or guardians ad litem for the child or children. The petitioner shall be entitled to exercise three peremptory challenges, the respondent or respondents shall be entitled to exercise three peremptory challenges, and the guardian ad litem or guardians ad litem for the child or children shall be entitled to exercise three peremptory challenges. If the court directs that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors, each side is entitled to one peremptory challenge in addition to those otherwise allowed. If more than two respondents appear and contest adjudication, the court may allow additional peremptory challenges to each side in such number as the court may see fit if the court in its discretion determines that the ends of justice so require. If there is more than one party to a side they must share peremptory challenges.

(e) Unanimity: Unless otherwise agreed by the parties pursuant to Rule 48 of the Colorado Rules of Civil Procedure, any verdict of a jury in an adjudicatory hearing shall be unanimous.

Note: *Subsection (a) and subsection (c) track provisions of existing CRJP 4.3. Other subsections add provisions not contained in existing CRJP 4.3. Subsection (b) does not contain a "good cause" exception because a party's omission to act is adequately protected by CRCP 60(b) and the proposed rule concerning enlargement of time. Existing CRJP 4.3 limits the number of peremptory challenges to 9; this proposed rule does not set a maximum number of challenges. This rule, like existing CRJP 4.3 incorporates CRCP 47 by reference.*

4.2.11 Responsive Pleadings and Motions *(Revised 10/25/16)*

(a) Pleadings; Jurisdictional Matters. No written responsive pleadings are required. No counterclaim, cross claim, or other claim for damages may be asserted by a respondent in an action alleging the dependency or neglect of a child. Jurisdictional matters of age and residence of the child shall be deemed admitted unless specifically denied by a party in writing or orally on the record prior to the adjudicatory hearing, admission under Rule 4.2.3, or a continued adjudication under Rule 4.2.5.

(b) Motions. Any defense or objection which is capable of determination without trial of the general issues may be raised by motion. A motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. [Source, CRCP 7(b)].

(c) Defenses and Objections; Waiver; Lack of Jurisdiction. 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 to or denial of the allegations of the petition. Failure to present any such defense or objection by motion, including a defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process, constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction of the subject matter and lack of jurisdiction over the person shall be noticed by the court at any time during the proceedings. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. [Source, CRCP 12(b), (h)(1), (h)(3)]

(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 than 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.

(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 ___ days after the filing of the motion in which to file a responsive brief, (2) the moving party shall have ___ days after the filing of a responsive brief in which to file a reply brief, (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 ___ days from the date of the order. [Source of proposed subsection (e), CRCP 121§ 1-15] *[See alternative version, below.]*

Alternative Draft, Rule 4.2.11(e):

(e) Determination of Motions.

1. Motions and Briefs; When Required; Time for Serving and Filing--Length.

(a) Except motions during trial or where the court orders that certain or all non-dispositive motions be made orally, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. Unless the court orders otherwise,

motions and responsive briefs are limited to 15 pages (but not more than 4,000 words), and reply briefs to 10 pages (but not more than 2,500 words), not including the case caption, signature block, certificate of service and attachments. All motions and briefs shall be double-spaced, except for footnotes and quotes.

(b) The responding party shall have _____ days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief.

(c) The moving party shall have _____ days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief.

(d) A motion shall not be included in a response or reply to the original motion.

2. Affidavits. If facts not appearing of record may be considered in disposition of the motion, the parties may file affidavits with the motion or as otherwise ordered by the court. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

3. Effect of Failure to File Legal Authority. If the moving party fails to incorporate legal authority into a motion, the court may deem the motion abandoned and may enter an order denying the motion. Failure of a responding party to file a responsive brief may be considered a confession of the motion.

4. Determination of Motions; Motions Requiring Immediate Attention. Motions shall be determined promptly if possible. The court has discretion to order briefing or set a hearing on the motion. If possible, the court shall determine oral motions at the conclusion of the argument, but may take the motion under advisement or require briefing before ruling. Any motion requiring immediate disposition shall be called to the attention of the courtroom clerk by the party filing such motion.

5. Notification of Ruling; Setting of Argument or Hearing When Ordered. Whenever the court enters an order denying or granting a motion without a hearing, all parties shall be forthwith notified by the court of such order. If the court desires or authorizes oral argument or an evidentiary hearing, all parties shall be so notified by the court. After notification, it shall be the responsibility of the moving party to have the motion set for oral argument or hearing. Unless the court orders otherwise, a notice to set oral argument or hearing shall be filed within 7 days of notification that oral argument or hearing is required or authorized.

6. Effect of Failure to Appear at Oral Argument or Hearing. If any of the parties fails to appear at an oral argument or hearing, without prior showing of good cause for non-appearance, the court may proceed to hear and rule on the motion.

8. Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred

with opposing counsel 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 shall be stated.

9. Unopposed Motions. All unopposed motions shall be so designated in the title of the motion.

10. Proposed Order. Each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied.

11. Motions to Reconsider. Motions to reconsider interlocutory orders of the court, other than those governed by C.R.C.P. 59 or 60, are disfavored. A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. A motion to reconsider shall be filed within ___ days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. Good cause for not filing within ___ days from the date of the order includes newly available material evidence and an intervening change in the governing legal standard. The court may deny a motion to reconsider before receiving a responsive brief.

Note: *Paragraph (a) includes the language of CRS 19-3-502(4) barring respondents from asserting counterclaims, cross claims, and claims for damages. The alternative version of subparagraph (e) was prepared as a result of discussion during the advisory committee meeting of 5/6/16. The alternative version of (e) incorporates much of the language contained in CRCP 121, § 1-15, with minor editing. For the sake of brevity, the subcommittee prefers the first version of paragraph (e).*

Rule 4.2.12 Parties and Joinder *(revised 3/8/17)*

(a) Petitioner. A dependency or neglect action shall be brought by a county attorney, city attorney of a city and county, or special county attorney in the name of the People of the State of Colorado. The action shall be brought in the interests of a child or children who are alleged to be dependent or neglected. The Petitioner shall be a party to the case.

(b) The Child. The court shall appoint a guardian ad litem for the child in all dependency or neglect cases. A guardian ad litem for a child alleged to be dependent or neglected shall have the right to participate in all proceedings as a party and shall be considered a party for the purposes of these rules. In addition to a guardian ad litem, the court may appoint counsel for a child pursuant to section 19-1-105(2), Colorado Revised Statutes, if it finds that appointment of counsel is in the best interest and welfare of the child or if it deems representation by counsel necessary to protect the interests of the child or other parties. Counsel appointed to represent a child pursuant to section 19-1-105(2), Colorado Revised Statutes, shall have the right to participate in the proceedings to the extent provided by law.

(c) Respondents. Any parent, guardian, or legal custodian alleged to have abused or neglected the child shall be named as a respondent in the petition. Any other parent, guardian, custodian, stepparent, or spousal equivalent of the child may be named as a respondent in the petition if the attorney who brought the action determines that it is in the best interests of the child to do so. Respondents shall be parties to the case. A guardian ad litem appointed by the court for a respondent shall not be considered a party to the case.

(d) Intervenors. A court may permit a person or entity to intervene in accordance with Rule 4.2.9. An Intervenor shall be a party to the case.

(e) Special Respondents. A person who is not a parent, guardian, or legal custodian of a child may be joined in the action as a special respondent for the limited purposes of protective orders or inclusion in a treatment plan if such person resides with the child, has assumed a parenting role toward the child, has participated in whole or in part in the neglect or abuse of the child, or maintains a significant relationship with the child. Special Respondents shall not be considered a party to the case.

(f) Discretionary Joinder. The court on its own motion or on the motion of any party may join as a respondent or a special respondent or require the appearance of any person it deems necessary to the action and may authorize the issuance of a summons directed to such person. Foster parents, pre-adoptive parents, or relatives with whom a child is placed shall not be made a party to the action solely upon the basis of their right to notice and their right to be heard at hearings and reviews regarding the child.

(g) Misjoinder, Nonjoinder, Designation, and Alignment of Parties. Misjoinder and nonjoinder of parties are not grounds for dismissal of a dependency or neglect action. Parties may be dropped, added, substituted, designated as respondents or special respondents, or aligned according to their respective positions on the issues by order of

the court on motion of any party or on motion of the court at any stage of the action on such terms as are just.

Rule 4.2.13 Summary Judgment *(revised 10/25/16)*

(a) For Petitioner. After commencement of the action the petitioner or a guardian ad litem may move with or without supporting affidavits for adjudication by summary judgment in the petitioner's favor upon all or any part of the petition. Any other party may support or oppose a motion for summary judgment brought under this paragraph (a) by filing a responsive brief in accordance with this rule.

(b) For Respondent. A respondent or a guardian ad litem may move with or without supporting affidavits for a summary judgment in the respondent's favor as to all or any part of the petition. Any other party may support or oppose a motion for summary judgment brought under this paragraph (b) by filing a responsive brief in accordance with this rule.

(c) Motion and Proceedings Thereon. Unless otherwise ordered by the court, a motion for summary judgment shall be filed no later than 28 days (4 weeks) prior to trial; a responding party shall have 14 days (2 weeks) after service of the motion in which to file a responsive brief; and a moving party shall have 7 days (1 week) after service of a response in which to file a reply brief. Any motion, response, or reply involving a contested issue of law shall be supported by a recitation of legal authority incorporated therein. A responding party may file and serve affidavits within the time allowed for a responsive brief, unless the court orders some lesser or greater time. The motion may be determined without oral argument. The judgment sought shall be rendered forthwith if the petition, admissions on file, and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(d) Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is not rendered upon the whole case and a trial is necessary, the court, by examining the petition and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented by further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an opposing party may not rest upon mere denial. The opposing party's response by affidavits or as otherwise provided in this Rule must set forth specific facts showing that there is

a genuine issue for trial. If there is no response, summary judgment, if appropriate, shall be entered.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify its opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, any offending party or attorney may be adjudged guilty of contempt.

(h) Determination of a Question of Law. At any time after commencement of the action, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question.

Notes: *This draft was prepared in response to comments made during the advisory committee meeting of 5/6/16. It incorporates language utilized in CRCP 56 and CRCP 121, with some editing. It also expressly allows a guardian ad litem to initiate a motion for summary judgment. This proposed rule does not apply to summary judgment in proceedings to terminate parental rights. The subcommittee is mindful of the fact that both counsel and judicial officers may find it difficult to comply the presumptive briefing schedule set forth in paragraph (c). On the other hand, a truncated briefing schedule seems necessary because of the deadlines imposed by the Children's Code (especially those applicable to EPP cases). Paragraph (c) allows judicial officers discretion to modify the briefing schedule.*

Rule 4.2.14 Time; Continuances *(revised 10/12/16)*

(a) Computation. (1) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Thereafter, every day shall be counted, including holidays, Saturdays or Sundays. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event. (2) As used in this Rule, "Legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) Enlargement of Time. When by these rules or by a notice given thereunder or by an order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a pervious order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 59 and 60(b) of the Colorado Rules of Civil Procedure, except to the extent and under the conditions therein stated. [Source, CRCP 6(b)].

(c) Reduction of Time. When by these rules an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, with or without motion or notice, order the period of time reduced unless a substantial right of a party would be affected.

(d) Continuances. Stipulations for continuance shall not be effective unless and until approved by the court. A court shall not continue an adjudicatory hearing or other proceeding unless good cause is shown and the court finds that the best interests of the child will be served by granting a delay or continuance. If the hearing or proceeding concerns a child who was under six years of age at the time a petition is filed, the court shall set forth specific reasons necessitating the delay or continuance and shall schedule the matter at the earliest possible time within thirty days after the date of granting the delay or continuance. [Source CRS 19-3-104, EPP; 19-3-505(3), Adjud. Hrg; 19-3-505(7)(b) & 508(1), Dispo. Hrg,]

Notes: *This proposed rule is based on CRCP 6. This draft does not incorporate the "manifest injustice" standard contained in CJD 96-08. CRCP 6 does not mention reduction of time. This*

draft has been modified to expressly authorize a court to enlarge or reduce any prescribed period of time.