

**Rule \_\_\_\_\_. Case Management for Adjudicatory Trials**

- (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. Issues relating to correspondent statements/adjudication;
  - vi. Severance of respondent parents trials;
  - vii. Seating arrangements for defendants and counsel;
  - viii. Conduct of jury examination, including any issues related to confidentiality of juror locating information;
  - ix. Number and use of peremptory challenges;
  - x. Procedure on objections where there are multiple or respondents;
  - xi. Order of presentation of evidence and arguments when there are multiple counsel or respondents;
  - xii. Order of cross-examination where there are multiple respondents;
  - xiii. Resolution of any motions or evidentiary issues in a manner least likely to inconvenience jurors to the extent possible; and
  - xiv. 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 trial, 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.
- (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. 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 of all parties.

(e) Juror Notebooks. Juror notebooks shall be available during the adjudication trial 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 are:

- 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, eight 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 will provide for inclusion into the juror notebooks, the following items:

- i. Preliminary jury instructions which will include burden of proof, proof beyond a reasonable doubt, 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. Any other items the court believes to be appropriate.

- (f) Stipulations. 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 order shall be served in accordance with C.R.C.P. Rule 5. In addition to service pursuant to Rule 5, each filing of a motion, response, or notice shall also be delivered by email to all parties and the Court at the time the filing is made with the Court.
  
- (h) Local Rules. These rules may be modified by written rule to conform with local practice in each jurisdiction. If there is not a local rule to address the above issues, this rule shall apply.

#### 4.\_\_\_\_. Adjudicatory Hearings

- (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. [Source, CRS 19-3-104 and 19-3-505(3)].
- (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 child named in the petition who is alleged to be dependent or neglected, by and through his or her guardian ad litem and counsel, if any, appointed pursuant to section 19-1-105(2), Colorado Revised Statutes; and any respondent named in the petition shall be entitled to participate in an adjudicatory hearing.
- (c) **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. [Source, CRS 19-3-505(7)(a)]. 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. [Source, CRS 19-3-505(2)]. Facts admitted 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. [Source, CRS 19-3-501(1)(c)(I)(B)].
- (d) **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.
- (e) **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. [Source, CRS 19-3-505(4)(d)].
- (f) **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. [Source, CRS 19-3-505(1)].
- (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.
- (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.

*Note: This revised draft contains modifications discussed by the subcommittee on 1/21/14.*

#### **Rule 4.\_\_\_\_. Consolidation; Separate Trials**

- (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. A motion to consolidate cases shall be determined in accordance with Rule 121, § 1-8, of the Colorado Rules of Civil Procedure.
- (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 of any issue or of any party. [Source, CRCP 21 and 42(b)].

#### 4.\_\_\_\_. Continued (Deferred) Adjudications

- (a) **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. [Source, CRS 19-3-505(5)(a) and 19-5-501(1)(c)]
- (b) **Findings.** The court must find that an allegation alleged in the petition is supported by a preponderance of the evidence. The court shall specify the facts that support an adjudication, unless the Respondents have specifically stipulated to a waiver of a factual basis but concede there is a basis to enter an adjudication. [Source, CRS 19-3-505(5) and 19-3-505(7)(a)].
- (c) **Terms and Conditions.** During the period of continuance (deferral), the court may review the matter from time to time, allowing the child to remain in his or her home or in the temporary custody of another person or agency.
- 1) After the parties have consented to the continued (deferred) adjudication, 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. [Source, CRS 19-3-505(5)]
  - 2) Any decree vesting legal custody of a child shall continue to be reviewed pursuant to C.R.S. 19-3-115 during the continued (deferred) adjudication.
- (d) **Duration of Continuance (Deferral).** The continuance (deferral) of adjudication shall not extend longer than six (6) months. The court shall review the matter and upon review may continue the case for another period not to exceed an additional six (6) months. [Source, CRS 19-3-505(5)(b)]
- (e) **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.
- 1) A hearing on the revocation of a continued (deferred) adjudication shall determine, by a preponderance of the evidence, whether the Respondent has failed to comply with the terms and conditions of the continued (deferred) adjudication. The court should also consider the ongoing probative value of any parental admission and any new evidence in not available at the time of the original admissions.
  - 2) 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. [Source, *People ex rel. T.E.H.*, 168 P.3d 5 (Colo. App. 2007)]

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

- 1) Waiver of the procedural right to enter adjudication prior to entry of permanent custody orders may only be made after a motion to enter adjudication has been filed.

**(g) 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.* [Source, CRS 19-3-702 and 19-3-703]

#### **Rule 4.\_\_\_\_. Adjudication by Default**

- (a) **Application.** When a respondent has failed to appear or failed to defend in the action a petitioner may apply to the court for adjudication by default by filing a motion and supporting documentation in accordance with this rule.
- (b) **Supporting Documentation.** The following documents must be submitted with a motion for adjudication by default: (a) The original summons showing valid service on the particular respondent; (b) an affidavit stating facts sufficient to show that venue of the action is proper; (c) an affidavit stating facts sufficient to show that the particular respondent is not a minor, an incompetent person, or in the military service; (d) 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 (e) 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. Except as otherwise provided in this subsection (c), a court is not required to conduct a hearing on a motion for adjudication by default if all necessary elements for adjudication by default are shown by the motion and supporting documentation. If adjudication by default is sought against a party who has appeared but who has failed to defend in the action, the court shall set the motion for hearing and petitioner shall serve written notice of the application for adjudication by default on the particular respondent or his or her attorney of record, if he or she is represented in the action, at least 7 days prior to a hearing on such application.
- (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 (SCRA), 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. Adjudication by default is subject to the limitations prescribed by Rule 54(a) of the Colorado Rules of Civil Procedure.

- (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) **Relief from Adjudication.** 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 was revised after the subcommittee meeting on 4/20/16 to address some of the points discussed at that meeting. This proposed rule raises a number of questions for the subcommittee to consider: (1) Should the rule include a provision for entry of default in like manner as CRCP 55(a)? (2) Should the rule require the moving party to demonstrate the existence of a factual basis for a finding of dependency or neglect? (3) Is compliance with the UCCJEA a necessary condition to adjudication by default? (4) Is compliance with the SCRA a necessary condition to adjudication by default? (5) Should the rule require a hearing as contemplated by (d) or should a court be permitted to resolve the motion on the basis of written argument? (6) Is (g) necessary? (7) If adjudication by default does not resolve the petition as to all respondents, should the rule expressly permit certification of finality pursuant to CRCP 54(b)?*

#### **Rule 4. \_\_. Evidence**

- (a) Applicability of Civil Rules.** Evidentiary rules contained in the Colorado Rules of Civil Procedure, including Rules 43, 44, and 44.1, shall apply to dependency or neglect actions.
- (b) Absentee Testimony.** Requests for absentee testimony shall be made and determined according to Rule 43(i) of the Colorado Rules of Civil Procedure except that the court may permit a request for absentee testimony to be made orally in open court.
- (c) Applicability of Rules of Evidence; Exceptions.** The Colorado Rules of Evidence shall apply to dependency or neglect actions except:
- (1) At a temporary custody hearing conducted pursuant to section 19-3-403, Colorado Revised Statutes, any information having probative value may be received by the court, 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 received by the court 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 received by the court in accordance with section 19-3-307(4), Colorado Revised Statutes;
  - (4) Out-of court statements of a child witness or victim may be received by the court in accordance with section 13-25-129, Colorado Revised Statutes;
  - (5) Out-of-court statements of persons with intellectual or developmental disabilities may be received by the court 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.
- (d) Testimony of Report Writers.** 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 opposing 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. [Source, CRS 19-1-107(2), (4)].

*Note: This revised draft contains modifications discussed by the subcommittee on 1/21/14. The subcommittee deferred for further consideration the time line proposed in subsection (d). The proposed rule governing time would allow a court to shorten or enlarge presumptive time lines.*

#### **Rule 4. \_\_\_\_\_. Informal Adjustment**

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 and the child, if the child is of sufficient age and understanding. Facts admitted in support of an informal adjustment shall not be used in evidence if a petition is filed. Efforts to effect informal adjustment may extend no longer than six months. [Source, CRS 19-3-501(1)(c)].

*Note: The above draft was revised after the subcommittee meeting on 4/20/16. Regarding voluntary dismissal, see CRCP 41(a).*

#### 4. \_\_\_\_\_. **Intervention** (6/15/16)

- (a) Intervention of Right; General Grounds.** Upon timely application a court shall permit a person or entity to intervene in a dependency or neglect action when (1) a statute confers an unconditional right to intervene or (2) the applicant claims an interest in the care and protection of a child who is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede his, her, or its ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
- (b) Intervention of Right; Particular Statutes.**
- (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 pursuant to section 19-3-507(5)(a), Colorado Revised Statutes.
- (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 pursuant to section 19-3-507(5)(a), Colorado Revised Statutes.
- (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 point in the proceeding pursuant to 25 U.S.C. § 1911(c).
- (c) Permissive Intervention; Grounds.** Upon timely application a court may permit a person or entity to intervene in a dependency or neglect action 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.
- (d) Procedure.** A person or entity desiring to intervene in a dependency or neglect action shall serve a motion to intervene upon the parties as provided in Rule \_\_\_\_\_. 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). This rule is most likely to apply to 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 (5) a tribe acting pursuant to the ICWA, 25 U.S.C. § 1911(c).*

### **Rule 4.3. Trial by Jury**

- (a) **Demand.** At the time the allegations of the petition are denied the petitioner, any respondent, the guardian ad litem, 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 the adjudicatory hearing will be to the court.
- (b) **Waiver; Withdrawal.** Trial by jury shall be deemed waived if (1) all parties entitled to demand a trial by jury fail to make a timely jury demand, (2) all parties who demanded a trial by jury fail to appear at the adjudicatory hearing, or (3) all parties who demanded a trial by jury consent to withdraw jury demands before the adjudicatory hearing. (4) Prior to adjudication, if a Respondent has requested a jury trial and fails to appear for mandatory court appearances, such failure may be considered a waiver of the request for a jury, but shall not be deemed an admission to the allegations of the petition. The Respondent must be given notice that failure to appear for mandatory court appearances may request in a waiver of a jury request. Once waived a request for a jury may not be re-instated.
- (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 and Rule 48 of the Colorado Rules of Civil Procedure.
- (d) **Peremptory Challenges:** The petitioner, all respondents, and the guardian ad litem shall each 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. In adjudicatory hearings in which more than two respondents appear and contest adjudication, additional peremptory challenges in such number as the court may see fit may be allowed to each side if the court in its discretion determines that the ends of justice so require but no more than \_\_\_ peremptory challenges are authorized.
- (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: After the subcommittee discussion on 1/21/16, this proposed rule was revised to delete proposed language from subsection (a) that would have restricted the ability of certain respondents to demand a trial by jury. Subsection (a) and subsection (c) track provisions of existing CRJP 4.3. Other subsections add provisions not contained in existing CRJP 4.3.*

#### 4.1. Responsive Pleadings and Motions

**(a) Pleadings; Jurisdictional Matters.** No written responsive pleadings are required. 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 no later than \_\_\_\_ days after service of the petition.

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

**(e) Applicability of Civil Rule 121.** 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.\_\_\_\_, 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]

*Note: Changes to the first draft were made as a result of discussion during the subcommittee's meeting of 1/21/16.*

**Rule 4. Parties, Intervention, and Joinder** *(revised 3/11/16)*

- (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.<sup>i</sup>
- (b) **Guardian ad litem.** 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.<sup>ii</sup>
- (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.<sup>iii</sup>
- (d) **Intervenors.** A court may permit a person to intervene in accordance Rule 24 of the Colorado Rules of Civil Procedure. Upon application after adjudication, parents, grandparents, relatives, or 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 may intervene as a matter of right.<sup>iv</sup>
- (e) **Special Respondents.** A person who is not a parent, guardian, or legal custodian of a child may be involuntarily 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.<sup>v</sup>
- (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.<sup>vi</sup> 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.<sup>vii</sup>
- (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.<sup>viii</sup>

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<sup>i</sup> CRS 19-3-502(1); CRCP 17(a)

<sup>ii</sup> CRS 19-1-111(1), (3)

<sup>iii</sup> CRS 19-3-502(5) and 19-3-312(2)

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<sup>iv</sup> CRCP 24; CRS 19-3-507(5)(a)

<sup>v</sup> CRS 19-1-103(100) and 19-3-502(6)

<sup>vi</sup> CRS 19-3-503(4)

<sup>vii</sup> CRS 19-3-502(7)

<sup>viii</sup> CRCP 21

**Rule 4.\_\_(d), Alternative Version**

**(d) Intervenors.** A court may permit a person or entity to intervene in accordance Rule

\_\_\_\_\_.

#### **Rule 4. \_\_. Summary Judgment**

Summary judgment proceedings in dependency or neglect actions shall be conducted according to Rule 56 and Rule 121, § 1-15, of the Colorado Rules of Civil Procedure except:

- (a) A party may file a motion for summary judgment after the expiration of \_\_\_ days from the filing of the petition;
- (b) Unless otherwise ordered by the court, a motion for summary judgment shall be filed no later than \_\_\_ days (\_\_\_ weeks) before adjudicatory hearing;
- (c) The responding party shall have \_\_\_ days after the filing of the motion in which to file a response;
- (d) The moving party shall have \_\_\_ days after the filing of the responsive brief in which to file a reply;
- (e) Any motion, response, or reply involving a contested issue of law shall be supported by a recitation of legal authority incorporated therein; and,
- (f) If facts not appearing of record may be considered in disposition of a motion for summary judgment the moving party shall file affidavits with the motion and the responding party may file affidavits with the response.

**Rule 4.\_\_\_\_. Time; Continuances** (*revised draft, 2/26/16*)

- (a) **Time.** Rule 6 of the Colorado Rules of Civil Procedure applies to dependency or neglect actions and governs computation any period of time prescribed or allowed by these rules.
- (b) **Enlargement and Reduction of Time.** Rule 6 of the Colorado Rules of Civil Procedure applies to dependency or neglect actions and governs enlargement of any period of time prescribed or allowed by these rules. A request for extension of time will not be considered without a certificate that a copy of the motion has also been served upon the moving attorney’s client. [Source, CRCP 121, § 1-11]. Upon a finding of good cause and notice to all affected parties a court may reduce any period of time prescribed or allowed by these rules.
- (c) **Continuances.** Stipulations for continuance shall not be effective unless and until approved by the court. A motion for continuance will not be considered without a certificate that a copy of the motion has also been served upon the moving attorney’s client. [Source, CRCP 121, § 1-11]. 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 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 revised draft contains modifications discussed by the subcommittee on 1/21/14 and additional modifications proposed by the chair. Revised language appears in italics. Neither this draft nor the first draft incorporates the “manifest injustice” standard contained in CJD 96-08. CRCP 6 does not mention reduction of time. This revised draft has been modified to expressly authorize a court to reduce any prescribed period of time.*