AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, December 6, 2024 at 9 a.m.
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report

A. Minutes for August 2, 2024 Meeting [pages 2–4]

B. Plan for Feedback on Rule 4.6

III. New Business

A. Drafting Subcommittee

- Memo on C.R.J.P. 2.3 & 2.4 [pages 5–7]

B. Draft Rules Proposal [pages 8–40]

- Written Feedback [pages 41-43]
- Approve Proposal

IV. Future Meetings: February 7, 2025; April 4; June 6; August 1; October 3 & December 5, 2025 (Webex invite has already been sent)

V. Adjourn

Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 2, 2024 Meeting (Unofficial)

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:00 AM via videoconference.

Members present for the meeting were: Judge Craig R. Welling, Chair; Judge Karen A. Ashby; David P. Ayraud; Jerin Damo; Traci Engdol-Fruhwirth; Magistrate Randall Lococo; Judge Pax L. Moultrie; Professor Colene Robinson; Angela Rose; Zaven (Z) Saroyan; Lisa Shellenberger; Judge Theresa Slade; Anna Ulrich; Pamela Gordon Wakefield; and Abigail Young.

Terri Morrison and J.J. Wallace were also present as non-voting members.

Members excused from the meeting were: Judge David Furman; Judge Priscilla Loew; Judge Ann Meinster; and Justice Richard Gabriel, Liaison Justice and non-voting member.

Meeting Materials:

(1) Draft Minutes of 6/7/2024 meeting
(2) Memo on C.R.J.P. 2 Series Rules
(3) Draft Rules (emailed to committee members)

II. Chair's Report

A. The 6/7/24 meeting minutes were approved.

B. Implementation of C.R.J.P. 4.6.
Chair asked for feedback on implementation of new C.R.J.P. 4.6.

A member from ORPC related that his office had held a training. He also received feedback that the timeline for disclosure of experts was causing some difficulties because 7 days before a hearing or trial does not align with depositions being 21 due days before the hearing or trial. He related that some parties were viewing the deadlines as set-in-stone requirements and were not acting in the spirit of cooperation.

Another member indicated that Boulder has continued to use their case management order establishing discovery practices, so as a GAL in that jurisdiction, the member had not seen actual implementation of the rule.

A county attorney reported that he had not heard complaints and thought he would, so he was pleasantly surprised.

III. New Business

A. **Drafting Subcommittee:**

1) **Memo on C.R.J.P. 2 Series Rules**

The chair recapped the changes to the 2 series rules outlined in the memo at page 4 of the meeting materials. It's anticipated that these changes would go through at the same time as the changes to the 4 series of rules applying to dependency and neglect cases.

No member raised any objection to the recommendations of the drafting subcommittee.

A member of the drafting subcommittee invited members to think critically about the impact of the 2 series rules on other case types because the subcommittee doesn't have extensive experience with the breath of Children Code's case types.

A motion to adopt the rule 2 series amendments was made by a member. Another member seconded the motion. No further discussion was held. The motion passed with unanimous approval. These amendments will be included in the big rules package.

2) **Any general feedback?**

Next up for the Drafting Subcommittee is flyspecking the rules—looking for consistency, redundancies, and making all the final touches. It's getting very close. It's possible that the October meeting will be the time to discuss a final packet. Hopefully there will be no surprises because the subcommittee has tried to come back to the full committee with questions, to show their work, and to keep the full committee updated.

The Chair indicated that the draft rules are at a point where a close read would be worthwhile. No committee members had feedback today, but the Chair asked members to start looking at the rules. If members see something in the draft that has been circulated, please email the chair or J.J. Wallace to address it as soon as possible. Fresh eyes will be invaluable.

J.J. will attach the most recent rules draft to the October meeting invite.

A member asked about logistics for feedback. The Chair asked committee members to email by Sept 13th to give the Drafting Subcommittee a chance to look at feedback.

If the Drafting Subcommittee finishes its work, the Chair expects that the October meeting to be longer.

IV. Old Business [none]

V. Adjourn

2024 Meeting Schedule: December 6.

Respectfully Submitted,

J.J. Wallace
Staff Attorney, Colorado Supreme Court

TO: JUVENILE RULES COMMITTEE
FROM: DRAFTING SUBCOMMITTEE
RE: Amendments to the C.R.J.P. 2.3 & 2.4 series
DATE: October 4, 2024

As discussed at the August meeting, the Drafting Subcommittee has been reviewing all the current Colorado Rules of Juvenile Procedure to consider whether any amendments are needed. The subcommittee recommends making a few additional changes to rules in the 2 Series.

C.R.J.P 2.3

The Drafting Subcommittee recommends substantially reducing C.R.J.P. 2.3. The subcommittee examined the history of the rule dating back to 1975. *See* Attachment 1 (Rule 13). It appeared that, over time, the rule has been pared down with the passage of legislation covering various emergency circumstances. In looking at the rule, the language outlining the court's powers is far too broad. The rule neglects to mention important procedural protections outlined in various statutes and sometimes conflicted with statutes. Thus, the subcommittee recommends amending C.R.J.P. 2.3 as follows:

Rule 2.3. Emergency Orders

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

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

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

The juvenile court may issue emergency or ex parte orders, either verbally or in writing, subject to statutory limitations, including but not limited to, the subject matter, procedural requirements, and the duration of the orders.

COMMENTS

Statutory provisions governing emergency orders in juvenile cases include, but are not limited to, sections 19-1-104(3)(b), C.R.S.; 19-1-113, C.R.S.; 19-3-405, C.R.S.

C.R.J.P. 2.4

The Drafting Subcommittee recommends amending the title of this rule to clearly explain that this rule is one, very specific limitation on juvenile magistrates. The subcommittee also recommends adding a comment to C.R.J.P. 2.4 to alert parties that juvenile court magistrates are guided by section 19-1-108, C.R.S.

Rule 2.4. Limitation on Authority of Juvenile Magistrates to Address Constitutional Challenges

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

Commented [jw1]: This language in C.R.M. is before the civil committee with a recommendation for a slight change "the first time on appeal or review".

COMMENTS

Section 19-1-108, C.R.S., governs duties and qualifications of juvenile court magistrates and procedures for review of juvenile magistrates' decisions.

Attachment 1

RULE 13. EMERGENCY ORDERS

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

(b) Where the need for emergency orders arises, and the court is not in regular session, the judge or referee may give oral or telephone authorization to place a child in protective custody, which authorization shall have the same force and

effect as if written, the same to be followed by a written order to enter on the first regular court day thereafter.

(c) If a child has been taken into protective custody by a law enforcement officer or other authorized person, said officer or person shall promptly notify the court.

(d) Whenever a child is placed in protective custody, as above provided, the court shall conduct a detention hearing within 48 hours, exclusive of Saturdays, Sundays, and court holidays; and the parents, guardian or other legal custodian, or person with whom the child was residing at the time the child was taken into protective custody, shall be so notified of the time and place of said detention hearing.

(e) Whenever, pursuant to such detention hearing, protective custody is continued, the court shall direct that a petition be filed without undue delay.

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

Contents

Part One—Applicability

Rule 1. Applicability and Citation

(a) **Applicability.** These rules govern proceedings brought in the juvenile court under Title 19, also hereinafter referred to as the Children's Code. All statutory references herein are to the Children's Code as amended.
(b) Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19 shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.
(c) **Citation.** These rules are known and cited as the Colorado Rules of Juvenile Procedure or C.R.J.P.

Part Two—General Provisions

Rule 2. Purpose and Construction

These rules are intended to provide for the just determination of juvenile proceedings. These rules must be liberally construed to achieve the purposes of the Children's Code.

Rule 2.1. Attorney of Record

(a) An attorney will be deemed of record when the attorney appears personally before the court, files a written entry of appearance or signed pleading, or has been appointed by the court.
(b) The clerk must notify an attorney appointed by the court. An order of appointment must appear in the court's electronic case management system.

Rule 2.2. Summons—Content and Service

(a) Juvenile Delinquency Proceedings.
(1) The summons served in juvenile delinquency proceedings shall contain the notifications required by § 19-2.5-501(1), C.R.S. The summons and petition shall be served upon the juvenile in the manner provided in § 19-2.5-501(8), C.R.S.
(2) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.
(3) If a juvenile is issued a promise to appear pursuant to § 19-2.5-303(5), C.R.S., the promise to appear shall contain the notifications required by § 19-2.5-501(1), C.R.S.
(b) Dependency and Neglect Proceedings.
(1) The content and service of the summons in dependency and neglect proceedings must be as set forth in C.R.J.P. 4.5.
(2) Subsequent pleadings and notice must be served as provided in C.R.J.P. 4.35.
(c) Relinquishment Proceedings.

(1) The summons served in relinquishment proceedings shall contain the notifications required by § 19-5-105(5), C.R.S.
(2) The summons and petition shall be served upon the non-relinquishing parent as follows:
A. As ordered by the court; or
B. In the same manner as a summons in a civil case; or
C. By mailing it to the respondent('s/s') last known address, not less than 14 days prior to the time the respondent(s) is/are required to appear, by registered mail return receipt requested or certified mail return receipt requested. Service by mail shall be complete upon return of the receipt signed by the respondent(s) or signed on behalf of the respondent(s) by one authorized by law.
(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).
(4) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.

(d) Truancy Proceedings.

(1) The summons served in truancy proceedings shall comply with the provisions of C.R.C.P. 4(c). If the summons is combined with the notice required by § 22-33-108(5)(c), C.R.S., it shall also comply with the provisions of that section. In any jurisdiction in which juvenile detention may be used as a sanction after a finding of a violation of a valid court order, the summons shall inform the juvenile served of his or her right to a hearing and to due process as guaranteed by the United States Constitution prior to the entry of a valid court order.
(2) The summons and petition shall be served upon the respondent(s) as required pursuant to C.R.C.P. 4.
(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g).
(4) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Civil Procedure, subsequent pleadings and notice may be served by regular mail.

(e) Uniform Parentage Act Proceedings.

(1) The petition and summons served in Uniform Parentage Act proceedings shall comply with all requirements of Title 19, Article 4 of the Colorado Revised Statutes.
(2) The petition and summons, filed by one party, shall be personally served upon all other parties in accordance with § 19-4-105.5, C.R.S., or § 19-4-109(2), C.R.S., or the Colorado Rules of Civil Procedure.
(3) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g). Affidavits in support of motions for service by publication shall include a detailed statement of the specific efforts made to locate an absent parent.
(4) The summons issued upon commencement of a proceeding under Article 4 shall include the specified advisements and notice requirements of § 19-4-105.5(5), C.R.S.
(5) If the child support enforcement unit is initiating a proceeding under the Uniform Parentage Act, a delegate shall serve the petition and notice of financial responsibility in the manner identified in § 26-13.5-104, C.R.S.

(f) Adoption Proceedings.
(1) In adoption proceedings where either parent's parental rights have not been terminated or relinquished, that parent must be personally served with a copy of the petition for adoption.
(2) When the person to be served cannot be found after due diligence, service may be by a single publication pursuant to C.R.C.P. 4(g). Affidavits in support of motions for service by publication shall include a detailed statement of the specific efforts made to locate an absent parent.
(3) If the motion for service through publication is granted, the court shall order service by one publication of the notice in a newspaper of general circulation in the county in which the hearing is to be held. The hearing shall not be held sooner than 35 days after service of the notice is complete.
(4) If the subject child in the adoption proceeding is an enrolled member of a federally recognized American Indian Nation, the petition for adoption must be sent to the parent or Indian custodian of the Indian child and to the Indian child's tribe by registered mail, return receipt requested, pursuant to § 19-1-126, C.R.S., and § 19-5-208, C.R.S., and proof shall be filed with the court. Postal receipts, or copies thereof, shall be attached to the petition for adoption when it is filed with the court or filed within 10 days after the filing of the petition, as specified in § 19-1-126(1)(c), C.R.S.
(5) Service of petition and notice requirements do not apply to validation of a foreign adoption decree proceedings.
(6) A petition for adult adoption shall be filed in accordance with § 19-5-208, C.R.S. The petition and summons shall be served on the identified adult adoptee by the petitioner.
(g) Support Proceedings under the Children's Code.
(1) Upon filing of the petition for support, the clerk of court, petitioner, or child support enforcement unit shall issue a summons stating the hearing date and the substance of the petition. A copy of the petition may be attached to the summons in lieu of stating the substance of the petition in the summons.
(2) Service of the summons shall be by personal service pursuant to C.R.C.P. 4(e). If the obligor is a nonresident of this state, the summons and petition may be served by sending the copies by certified mail with proof of actual receipt by the individual.
(3) The hearing to establish support shall occur at least 10 days after service is completed, or any later date the court orders.
(h) Administrative Procedure for Establishing Child Support by the Child Support Enforcement Unit.
(1) The child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes child support.
(2) The child support enforcement unit shall serve the notice of financial responsibility on the obligor not less than 10 days prior to the date stated in the notice for the negotiation conference. Service can be accomplished in accordance with the Colorado Rules of Civil Procedure, by an employee appointed by the child support enforcement unit to serve process, or by certified mail, return receipt requested, signed by the obligor only. The receipt will be prima facie evidence of service.
(3) If process is served through the administrative process, there will be no additional service necessary if the case is referred to court for further review.

Rule 2.3. Emergency Orders

The juvenile court may issue emergency or ex parte orders, either verbally or in writing, subject to statutory limitations, including but not limited to, the subject matter, procedural requirements, and the duration of the orders.

COMMENTS

Statutory provisions governing emergency orders in juvenile cases include, but are not limited to, sections 19-1-104(3)(b), C.R.S.; 19-1-113, C.R.S.; 19-3-405, C.R.S.

Rule 2.4. Limitation on Authority of Juvenile Magistrates to Address Constitutional Challenges

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

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COMMENTS

Section 19-1-108, C.R.S., governs duties and qualifications of juvenile court magistrates and procedures for review of juvenile magistrates' decisions.

Part Four—Dependency and Neglect

Subpart A: Scope, Purpose & Definitions

Commented [wj2]: We are presuming that these rules are limited to Article 3 proceedings.

Commented [wj3]: Come back to this at the end

Rule 4.1. Procedure Governed, Scope and Purpose of Rules

(a) Scope. These rules in part 4 apply to dependency and neglect cases under article 3 of title 19 of the Children's Code.

(b) Purposes of these Rules.

(1) Dependency and neglect cases are unique civil cases requiring an intricate balance of the important and interrelated rights and interests of parents, legal guardians and/or legal custodians; children and youth; and the government.

(2) In light of the purposes of the Children's Code and to avoid unnecessary delay, dependency and neglect cases require a particularized approach, which is reflected in these rules.

(3) Where not governed by the Rules of Juvenile Procedure or the procedures set forth in the Colorado Children's Code, dependency and neglect cases must be conducted according to the Colorado Rules of Civil Procedure.

Rule 4.2. Definitions

The words and phrases used in the rules in this part four have the same meanings as the definitions contained in the Children's Code, and if not in the Children's Code, then other applicable statutes.

Subpart B: Parties & Participation

Rule 4.3. Parties and Participants; Joinder

(a) Petitioner. A dependency and neglect case must 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 case must be brought in the interest of a child or youth who is alleged to be dependent or neglected. The petitioner is a party to the case.

(b) Child or Youth. A child or youth named in the petition is a party to the case as set forth in C.R.J.P. 4.4.

(c) Respondents. Any parent, guardian, or legal custodian alleged to have abused or neglected the child or youth must be named as a respondent in the petition. Any other parent, guardian, custodian, stepparent, or spousal equivalent may be named as a respondent in the petition if the attorney who brought the case determines that it is in the best interests of the child or youth to do so. Respondents are parties to the case and have the right and responsibility to attend and fully participate as set forth in section 19-3-502(5.5), C.R.S. A guardian ad litem appointed by the juvenile court for a respondent is not a party to the case.

(d) Intervenors. A court may permit a person or entity to intervene in accordance with C.R.J.P. 4.8.

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

(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 case and may authorize the issuance of a summons directed to such person.

(g) Misjoinder, Nonjoinder, Designation, and Alignment of Parties. Misjoinder and nonjoinder of parties are not grounds for dismissal of a dependency and neglect case. Parties may be dropped, added, 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 of its own initiative at any stage of the case on such terms as are just.

Commented [wj4]: Move to closer to the top (also note that intervention is a separate rule)

Commented [wj5]: Language comes from 19-3-502(5)

Commented [fs6]: are?

Commented [wj7]: Question for Z: Is there a reason we can't say "Respondents ARE parties to the case."?

Commented [wj8]: Not in 19-1-103(129) or 19-3-502(6)

Commented [wj9]: 19-3-503(4)

Rule 4.4. Child and Youth Attendance and Participation

(a) Right to Attend and Fully Participate. Each child and youth named in the petition must be a party to the proceedings and have the right to attend and fully and meaningfully participate in all hearings related to the child's or youth's case.

(b) Notice of Hearing. The child's guardian ad litem or counsel for youth must provide developmentally appropriate notice to the child or youth of all hearings related to the child's or youth's case.

(c) Inquiry. If a child or youth is not in attendance at a hearing, the juvenile court must inquire whether the child or youth wished to attend the hearing, whether the child or youth had the means to attend, and what barriers, if any, prevented the child or youth from attending.

(d) Separate Hearings. The child, parents, guardian, or other custodian may be heard separately when deemed necessary by the court, as provided for by section 19-1-106(5), C.R.S. The court must make an on the record finding of the necessity of the hearing and must make a verbatim record of the separate hearing. The court must make a record available to other parties, upon request.

COMMENTS

[1] Section 19-3-502(4.5), C.R.S., amended by H.B. 22-1038, establishes a right for children and youth to attend and fully participate in all hearings related to their case. This statutory right recognizes that every child or youth has a liberty interest in their own health, safety, well-being, and family relationships, that these interests may be directly impacted by dependency and neglect proceedings, and that children and youth deserve to have a voice when important and life-altering decisions are made about their lives. *See* Ch. 92, sec. 1, 2022 Colo. Sess. Laws, 430, 430–31.

[2] National organizations, such as the American Bar Association, the National Association of Counsel for Children, and the National Council of Juvenile and Family Court Judges, have developed policies, protocols, and resources to support youth participation in court. The American Bar Association's Center on Children and the Law, for example, has developed a series of judicial bench cards to support effective judicial engagement with children, youth, and their caregivers at each developmental stage. *See https://www.ncjfcj.org/wp-content/uploads/2021/03/ABA_Child-Engagement-Benchcards.pdf*. Courts may find additional resources and supports on the Office of the Child's Representative's Youth Webpage Resources for Professionals Section. *See* https://coloradochildrep.org/youth/.

[3] The inquiry required by these rules assists the court in determining whether to take any measures to secure the appearance of a child or youth who wishes to attend. Examples of such measures may include, but are not limited to, scheduling hearing dates and times when the child is available or at times least likely to disrupt the child's or youth's routine, setting specific hearing times to prevent the child or youth from having to wait, making courtrooms and courtroom waiting areas child friendly, entering orders to ensure the child or youth will be transported to and from each hearing by the appropriate responsible persons or parties, and, for

Commented [wj10]: Approved at 10/6/2023 C.R.J.P. committee meeting. The subcommittee recommending this rule noted that issues around child/youth attendance and participation are also material to any rule involving HEARINGS or ADVISEMENT.

Commented [SD11]: For DRAFTING Committee: Note that this comes from other state examples rather than statute. OCR's memo provides more detailed background information in case drafting committee needs context. The 1038 group considered all the possibilities outlined in the memo and decided to include inquiry in the rule and the remaining practices as suggestions in the comments.

Commented [SD12]: For drafting Committee: Is this language necessary? What types of findings would not be on the record?

Commented [jw13]: Should these be perma links?

closed hearings, entering orders permitting court attendance by persons the child or youth wishes to be present. *See* American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings *Commentary*, and § 19-1-106(2), C.R.S. The court's duty to inquire does not supersede or abrogate counsel's duty of confidentiality under Colo. RPC 1.6 or the attorney-client privilege.

[4] Under section (d) of this rule, once the court has determined that a separate hearing is necessary, due process considerations must inform the procedures the court uses to conduct the hearing. If the court speaks separately with a party, the court has the discretion to determine whether to allow counsel for other parties and guardians ad litem for other children to be present. In determining whether to allow the presence of other attorneys during a separate hearing of a child or youth, the court should consider, in addition to any other relevant factors, the age and maturity of the child or youth, the nature of the information to be obtained from the child or youth, the relationship between the parents, the child's or youth's relationship with the parents, any potential harm to the child or youth, and any impact on the court's ability to obtain information from the child or youth. The court should allow other parties to submit questions in advance of the separate hearing, which the court may ask in its discretion.

Subpart C: Pleadings, Consolidation & Intervention

Rule 4.5. Petition and Summons: Form, Content, and Service

(a) A petition and summons concerning a child or youth who is alleged to be dependent and neglected must be initiated in accordance with sections 19-3-501 and 19-3-503, C.R.S.

(b) The petition and summons must conform to the requirements set forth in sections 19-3-502 and 19-3-503, C.R.S.

(c) The petition must be filed within 14 days from the day a child or youth is taken into custody, unless otherwise directed by the court.

(d) Service of the petition and summons must conform with section 19-3-503, C.R.S.

Rule 4.6. Responsive Pleadings

(a) Pleadings. A written responsive pleading to the petition in dependency and neglect is not required.

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

(c) No Damages Claims by a Respondent. No counterclaim, cross claim, or other claim for damages may be asserted by a respondent in a case alleging the dependency or neglect of a child or youth but nothing in this rule must be construed to prohibit a respondent from asserting a claim for damages in a case independent of a case alleging the dependency or neglect of a child or youth.

Commented [wj14]: From C.R.J.P. 4.

Commented [wj15]: We've removed the language from 19-3-505(1) about "jurisdictional matters are deemed admitted" because it seemed more a matter of proof at the adj hearing rather than a jurisdictional matter that can be waived.

Commented [jw16]: Based on existing C.R.J.P. 4.1(c) except that we changed "institution" to "initiation" because institution was confusing.

Commented [wj17]: 19-3-502(4)

Rule 4.7. Consolidation; Separate Trials

(a) Consolidation of Cases. When two or more dependency and neglect cases involving a common question of law or fact and a common party or parties are pending before the same court, the juvenile court on its own motion or on the motion of any party may order consolidation of the pending cases, 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. A party seeking consolidation must file a motion to consolidate in each case sought to be consolidated. The motion should be determined in the case first filed, in accordance with C.R.J.P. 4.30. If consolidation is ordered, all subsequent filings must 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.

(b) Separate Trials and Proceedings. Any allegation against a party may be severed and proceeded with separately. 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. In determining whether a separate hearing or trial should be ordered, the court must 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; 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.

Rule 4.8. Intervention

(a) Intervention; Procedure. A person or entity desiring to intervene in a dependency and neglect case must file a motion to intervene and serve the motion upon the parties. The motion must state the grounds and legal authority therefor.

(b) Intervention of Right; Grounds.

(1) **Parents, Grandparents, Relatives, and Kin Caregivers.** Upon motion after adjudication, parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child or youth or kin caregiver who has the child or youth in the caregiver's care for more than three months may intervene as a matter of right.

(2) **Foster Parents.** Foster parents who have the child or youth in their care for twelve months or more may intervene, as a matter of right, following adjudication.

(3) **Indian Custodians and Indian Tribes.** In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe has a right to intervene at any point in the proceeding.

Commented [wj18]: This seems broader than just adjudication and more a general rule, so the drafting subcommittee moved the rule to general rules (from adjudication). It also may be swept up a catch all if we refer to the civil rules. Also, under separate trials, there are listed factors and we are uncertain where those factors come from. Come back to this rule at the end.

Commented [wj19R18]: The factors may come from: Gaede v. District Court In and For Eighth Judicial Dist., 676 P.2d 1186 (Colo. 1984)

Commented [wj20]: Added by HB23-1024

COMMENTS

This rule is intended to operate in conjunction with C.R.J.P. 4.3.

Subpart D: Disclosure and Discovery

Rule 4.9. Disclosure and Discovery in Dependency and Neglect Cases

(a) Purposes of This Rule. This rule provides a uniform procedure for resolution of all disclosure and discovery issues in dependency and neglect cases in a manner that furthers the purposes of the Children's Code.

(b) Active Case Management. It is incumbent upon the juvenile court to actively manage dependency and neglect cases to eliminate delay, including actively monitoring disclosures and discovery.

(c) Persons Exempted from Disclosures and Discovery. Non-parties and guardians or custodians whose legal rights have not been established are exempted from obtaining and providing disclosures and discovery, unless the court orders otherwise.

(d) Other Case Participants. Upon request and consistent with the purposes outlined in section (a) of this rule and for good cause shown, the court may authorize other case participants to engage in or be subject to disclosures and discovery.

(e) Automatic Disclosures.

(1) *Before an Expedited Hearing Pursuant to Sections 19-3-403 or 19-3-217, C.R.S.* All parties must disclose to all other parties as soon as practicable, but no later than prior to the commencement of an expedited hearing pursuant to section 19-3-403, C.R.S., or a hearing after an emergency order suspending, reducing, or restricting family time pursuant to section 19-3-217, C.R.S., all exhibits it intends to introduce and all witnesses it intends to call in its case in chief at the expedited hearing.

(2) No later than the first appearance after the expedited hearing pursuant to sections 19-3-403 or 19-3-217, C.R.S., all parties must disclose to all other parties:

(A) any information and documentation related to a parent's, child's, youth's, or other family member's potential Native American heritage, including, but not limited, to tribal identity cards;

(B) information relevant to jurisdictional determinations under the Uniform Child-custody Jurisdiction and Enforcement Act, sections 14-13-101 to -403, C.R.S.; and

(C) information about any parentage, custody, guardianship, child support, or protection order cases, and any other court case relevant to the court's jurisdiction.

(3) Parents must disclose relative information pursuant to section 19-3-403(3.6)(a), C.R.S.

(f) Disclosures Upon Written Request.

(1) *By Petitioner.* Upon written request at any time, the petitioner must disclose to the requesting respondent, child through their guardian ad litem, or youth through their counsel, the following

items related to the case in its possession or custody. Disclosures must be made no later than 21 days after the request is made, or such other time as the parties agree or the court determines reasonable. If any of the following items are in the petitioner's custody or control but are not disclosed, the petitioner must provide the requesting party a brief explanation of the reason for withholding the item. Nothing in this rule prevents the court from prohibiting or limiting disclosure of the items listed below for good cause shown.

(A) Safety and risk assessments;
(B) TRAILS entries relevant to the case, including Record of Contact ("ROC") notes;
(C) Handwritten notes, if any, relevant to the case;
(D) Confirmation of county referrals to service providers;
(E) Reports and notes from family or team decision meetings convened by or on behalf of the department;
(F) Family time assessments, reports, and notes;
(G) Law enforcement reports;
(H) Photographs and videos;
(I) Forensic interviews; and
(J) When permitted under state and federal law or when an appropriate waiver of privilege or confidentiality has been provided:
(I) All court ordered evaluations, treatment records, and service provider notes of any child, youth, or respondent;
(II) Educational, medical, dental, mental health, substance abuse, and domestic violence documents and information; and
(III) Any item in the file of the department if requested with specificity.

(2) *By Respondents.* Upon written request by the petitioner, child through their guardian ad litem, or youth through their counsel, respondents must disclose to requesting parties the following documents that are in the respondent's possession: a copy of the child's or youth's birth certificate, a copy of the child's or youth's social security card, and information related to Medicaid or health insurance coverage. These disclosures must be made no later than 21 days after the request is made or such other time as the parties agree or the court orders.

(g) Disclosures for a Contested Trial or Hearing. Except for hearings governed by section (e) of this rule, parties and others required by the court in accordance with law must disclose the following no later than 7 days before a contested trial or hearing, or at such other time as the parties agree or the court orders:

(1) Names, addresses, and telephone numbers of all witnesses who will or may be offered at the contested trial or hearing and a short summary of their anticipated testimony;
(2) Curricula vitae, résumé, or statement of the qualifications of each witness who will or may be offered as an expert;
(3) Written reports of witnesses who will or may be offered as an expert. If no written report has been prepared, a summary of any expert witness's opinion that will be introduced at the contested trial or hearing; and

(4) A list of all exhibits intended to be presented at the contested trial or hearing. Copies of exhibits that will or may be offered at the contested trial or hearing must be provided if not previously disclosed.

(h) Other Disclosures. Other disclosures may be obtained and provided as ordered by the court.

(i) Discovery.

(1) *Scope.*

(A) Discovery may be obtained and provided regarding any matter not privileged, relevant to any matter presented to the court for resolution in the case, and proportional to the needs of the case.

(B) Guardians ad litem and children under 12 are not required to produce discovery unless ordered by the court for good cause shown.

(2) *Resolution of Discovery Disputes.* Discovery disputes must be resolved as quickly and informally as possible. Before bringing a discovery dispute to the court, including a request for protective orders, the parties must confer or attempt to confer in good faith to resolve the dispute. If a discovery dispute is brought to the attention of the court, the court must exercise due diligence to resolve the discovery dispute within 48 hours, or as soon as practicable.

(3) *Deadlines.* Unless otherwise agreed to by the parties or ordered by the court:

(A) all requests for admissions, interrogatories, and requests for production must be propounded at least 35 days before a contested trial or hearing;

(B) all oral depositions and depositions by written examination must be completed at least 21 days before a contested trial or hearing; and

(C) notice for depositions must be provided at least 7 days before the deposition. Before serving a notice to take a deposition, the party seeking the deposition must make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent and all parties. Prior to scheduling or noticing any deposition, all parties must confer in a good faith effort to agree on a reasonable means of limiting the time and expense of that deposition.

(4) *Oral Depositions.* Throughout a case, a party may take depositions of up to 4 persons. Depositions of incarcerated individuals or repeat depositions of the same person may not occur without court order. It is presumed that depositions of children or youth are not in their best interests and require a court order supported by good cause shown. Each deposition must be limited to two hours. Subpoenas may be issued to compel attendance at depositions.

(5) *Depositions by Written Examination.* Throughout a case, a party may take up to 4 depositions by written examination for the purposes of obtaining or authenticating documents.

(6) *Requests for Admission.* Throughout a case, a party may serve on each party no more than 20 discrete requests for admissions. Complete responses must be served on the requesting party no

later than 21 days after service of the requests, or within the time agreed to by the parties or ordered by the court.

(7) *Interrogatories.* Throughout a case, a party may serve on each party no more than 20 discrete interrogatories. Complete responses must be served on the requesting party no later than 21 days after service of the requests, or within the time agreed to by the parties or ordered by the court.

(8) *Requests for Production.* Throughout a case, a party may serve on each party no more than 20 discrete requests for production of documents. Complete responses must be served on the requesting party no later than 21 days after service of the requests, or within the time agreed to by the parties or ordered by the court.

(9) *Expansion or Limitation for Good Cause.* The court may limit or expand discovery for good cause considering factors such as the purposes of the Children's Code, the complexity of the case, the importance of the issues at stake, the parties' alternative access to the relevant information, the importance of discovery in resolving the issues before the court, and whether the burden or delay associated with the proposed discovery outweighs its likely benefits.

(j) Duty to Supplement Disclosures and Discovery. Parties are required to provide complete and correct information in disclosures and discovery. A party who has provided disclosures or discovery who subsequently learns that the information provided was not complete or accurate in some material respect at the time it was conveyed has a duty to supplement the disclosures or discovery with any corrective information that has not been otherwise made known to the parties through additional disclosures or discovery as soon as reasonably practicable. This obligation exists unless expressly waived by the receiving party. The duty to supplement or correct extends to the production of expert reports disclosed pursuant to these rules.

(k) *Protective Orders.* For good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
(1) that the disclosure or discovery not be had;
(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;
(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
(5) that discovery be conducted with no one present except persons designated by the court; and
(6) that a deposition, after being sealed, be opened only by order of the court.

(l) Sanctions and Other Remedial Measures. The court may exercise its discretion to impose sanctions and other remedial measures for disclosure and discovery violations in a manner consistent with the purposes outlined in section (a) of this rule.

COMMENTS

[1] Notwithstanding the adoption of this rule, informal information sharing between parties should continue to occur. This rule is not intended to impede those informal practices.

[2] This rule should not be used to justify an extension beyond statutory timeframes except as authorized by statute.

[3] The court may utilize a standing Case Management Order but should tailor it to address the specific circumstances of each case.

[4] Good cause findings for expanding or limiting discovery should be made with specificity and on the record. A court should be cautious in limiting discovery. *See Silva v. Basin W., Inc.*, 47 P.3d 1184, 1188 (Colo. 2002) ("We liberally construe discovery rules to eliminate surprise at trial, discover relevant evidence, simplify issues, and promote the expeditious settlement of cases."); *Cameron v. Dist. Ct. In & For First Jud. Dist.*, 193 Colo. 286, 290, 565 P.2d 925, 928 (1977) (Discovery rules "should be construed liberally to effectuate the full extent of their truth-seeking purpose.").

[5] Courts should consider modifying discovery timeframes from those set forth in this rule to comply with expedited timeframes, such as those involving adjudicatory hearings.

[6] When feasible and appropriate, aligned parties should coordinate and consolidate their discovery requests and responses.

[7] When determining sanctions for discovery or disclosure violations, courts are encouraged to consider the facts and circumstances of each case, taking care to avoid unnecessary delay or disproportionate penalties that may impair the ability of any party to fairly present a case or defense.

[8] Nothing in this rule, including the limitations on the number of oral depositions, depositions by written deposition, interrogatories, requests for admissions, and requests for production is intended to create a minimum practice standard for attorneys. Instead, attorneys should consider the individual needs and circumstances of each case when deciding the scope and type of discovery to pursue.

[9] This rule was previously numbered as C.R.J.P. 4.6.

Subpart E: Emergency Provisions

Commented [wj21]: Maybe put this rule first.

Rule 4.10. Search Warrants for the Protection of Children

A search warrant for the recovery of a child or youth must comply with section 19-1-112, C.R.S.

Rule 4.11. Order to Interview or Examine Child or Youth

(a) The department may apply for an order to interview or examine a child or youth or to conduct an investigation pursuant to section 19-3-308, C.R.S., by submitting a sworn statement to the juvenile court.

(b) The sworn statement must, at a minimum:

(1) provide identifying information about the child or youth;

(2) identify the entity, person or persons responsible for refusing the interview, examination, or investigation; and

(3) demonstrate good cause.

(c) If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.

(d) The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

Rule 4.12. Temporary Custody

(a) Orders. The juvenile court may issue verbal or written temporary protective custody orders as provided in section 19-3-405(2)(a), C.R.S.

(b) Verbal Orders Must be Reduced to Writing. Verbal orders must be followed promptly by a written order entered on the next day that is not a Saturday, Sunday, or legal holiday. Such written order must include the grounds upon which the court relied in granting the order.

(c) Without Court Order. The child or youth may be taken into temporary custody by a law enforcement officer without court order as provided in section 19-3-401, C.R.S. The court must be notified as soon as practicable after a child or youth is taken into temporary custody without a prior court order.

(d) Timing of Hearing.

(1) If a child or youth has been taken from the child's or youth's home and placed in temporary protective custody with the county department of human services, the court must hold a hearing within 72 hours after placement, excluding Saturdays, Sundays, and legal holidays, to determine further custody of the child or youth or whether the emergency protection order should continue.

(2) If the child or youth has been placed in a shelter facility or a temporary holding facility not operated by the department of human services, the hearing must be held within 48 hours, excluding Saturdays, Sundays, and legal holidays.

(e) Hearing. The hearing must be conducted as provided in section 19-3-403, C.R.S.

(f) Duration. Temporary protective custody orders must not exceed 72 hours, excluding Saturdays, Sundays, and legal holidays.

COMMENTS

At the hearing, the court must order the parents of the child or youth who has been removed from the home to complete and file with the court the Relative Affidavit and Advisement Concerning the Child's Potential Placement (JDF 559) by the next hearing date or 7 days, whichever occurs first. The parents must provide a copy of the affidavit to the department of human services.

Rule 4.13. Emergency Protection Orders

(a) The juvenile court may issue verbal or written emergency protection orders as provided in section 19-3-405(2)(b), C.R.S.

(b) An emergency protection order may include, but is not limited to, an order:

(1) Restraining a person from threatening, molesting, or injuring the child or youth;

(2) Restraining a person from interfering with the supervision of the child or youth; or

(3) Restraining a person from having contact with the child or youth or the child's or youth's residence.

(c) If the court issues an emergency protection order that has not been initiated by the county department of human services, the court must immediately notify the county department of human services in order that child protection proceedings may be initiated.

(d) An emergency protection order must not exceed 72 hours, excluding Saturdays, Sundays, and legal holidays.

COMMENTS

This rule does not limit the court's authority to enter emergency orders under other statutes, including sections 19-1-104, 19-1-113, and 19-1-114, C.R.S.

Commented [jw22]: From 19-3-405(2)(b), (3): " Emergency protection orders may be requested by the county department of human or social services, a law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been neglected or abused is being treated, or any physician who has before him or her a child the physician reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if such person or department believes that the child is able to remain safely in the child's place of residence or in the care and custody of the person responsible for the child's care and custody only if certain emergency protection orders are entered."

Commented [jw23]: No statutory authority and appears to conflict with the 72 hour time limit. See also 19-3-403(3.5) (" to determine . . . whether the emergency protection order should continue")

Rule 4.14. Report of Suspected Child Abuse to the Court

(a) When a law enforcement officer or other person refers a matter to the juvenile court indicating that a neglected or dependent child or youth appears to be within the court's jurisdiction, the court must order a preliminary investigation as provided for in section 19-3-501(1), C.R.S. Based on this preliminary investigation, the court may take any case provided for in section 19-3-501(1) or (2), C.R.S.

(b) When a law enforcement agency or any person required to report suspected child abuse submits a report to the court indicating that a child or youth has suffered abuse as defined in section 19-1-103(1), C.R.S., and that the best interests of the child require that the child or youth be protected from risk of further abuse, the court must follow the requirements provided for in section 19-3-501(2), C.R.S.

Subpart F: First Appearance to Adjudication

Rule 4.15. First Appearance Advisement Upon Service of Petition

(a) At the first appearance before the juvenile court, the court must inquire of all parties and counsel regarding the applicability of the Indian Child Welfare Act pursuant to section 19-1-126, C.R.S., and Rule 3 of the Colorado Rules of ICWA Procedures by asking each participant whether the participant knows or has reason to know that any child or youth

who is the subject of the proceeding is an Indian child. The court must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child or youth is an Indian child.

(b) The court must require the respondent, or others as ordered by the court, to complete and file an Affidavit as To Children (*see* JDF 404) to assist the court in making a jurisdictional determination under the Uniform Child-custody Jurisdiction and Enforcement Act, sections 14-13-101 to -403, C.R.S.

(c) **Advisement at First Appearance**. At the first appearance before the court, the court must fully advise the respondent as to all rights and the possible consequences of a finding that a child or youth is dependent or neglected. The court must make certain that the respondent understands the following:

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

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

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

(4) The right to an adjudicatory trial by jury;

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

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

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

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

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

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

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

(d) **Advisement Upon Filing the Petition**. Upon the filing of the petition, the court must advise the respondent of the nature of the allegations in the petition and all other rights set forth in section (c) of this rule, if the respondent has not previously been advised of such rights.

(e) Notwithstanding any provision of this rule to the contrary, the court may advise a non-appearing respondent pursuant to this rule in writing.

COMMENTS

If the court receives information that a child or youth may be an Indian child or may have Indian heritage, then the court must proceed in compliance with Rule 3 of the Colorado Rules of ICWA Procedures.

Commented [wj24]: JDF 404 (Need to adapt form for D&N cases)
https://www.courts.state.co.us/Forms/PDF/JDF404.pdf

Rule 4.16. Admission or Denial

(a) Response to the Petition's Allegations. After being advised in accordance with C.R.J.P. 4.15, each respondent must admit or deny the allegations of the petition.

(b) Admission.

(1) In Person. If a respondent admits the allegations contained in the petition, and if no party demands a jury trial pursuant to section 19-3-202(2), C.R.S., then the juvenile court may accept the admission after making the following findings: (1) the respondent understands the advisement of rights and possible consequences required by C.R.J.P. 4.15, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary.

(2) In Writing. Absent a demand for a jury trial pursuant to section 19-3-202(2), C.R.S., the court may accept a written admission to the petition if the respondent has affirmed under oath that the respondent understands the advisement required by C.R.C.P. 4.15 and possible consequences of the admission, and if, based upon such sworn statement, the court is able to make the findings set forth in subsection (b)(1) of this rule.

(c) Adjudication. After accepting an admission, unless proceeding under C.R.J.P. 4.18, the court must determine, in accordance with section 19-3-505(7)(a), C.R.S., that at least one allegation of dependency or neglect in the petition is supported by a preponderance of the evidence. If so, the court must sustain the petition and make an order of adjudication. The court's determinations pursuant to this section (c) of this rule must be on the record.

Commented [wj25]: Deferred adjudication rule

COMMENTS

The language of (b) of this rule is intended to allow judicial officers discretion in determining when a case is ripe for entry of an order of adjudication.

Rule 4.17. Adjudicating a Non-Appearing or Non-Defending Respondent

(a) Failing to Appear or Defend.

(1) If after notice, the respondent does not appear before the juvenile court for the adjudicatory hearing, in person or through counsel, the party seeking adjudication may proceed as set forth in section (b) of this rule.

(2) If, after being duly served with process or waiving service of process, the respondent fails or refuses to admit or deny the allegations contained in the petition in person or through counsel at the date and time set by the court, the party seeking adjudication may proceed as set forth in section (b) of this rule.

(b) Motion. A party seeking an adjudication as authorized by section (a) of this rule may request adjudication be entered either upon written or verbal motion supported by witness testimony or other appropriate evidence stating facts sufficient to support at least one of the statutory grounds for adjudication contained in the petition.

Commented [AU26]: Removed. . . . This sentence confused the heck out of me - and I don't know what it added

(c) Criteria. Before a motion pursuant to section (b) of this rule is granted, the court:

(1) must be satisfied that it has jurisdiction over the parties and the subject matter of the case, and that venue of the case is proper; and

Commented [AU27]: Removed. . . . I don't know where this came from; seems to state the obvious (the court can hold a hearing when warranted). I would note that, by the use of the word "may" in (c)(2) below, the court necessarily has the discretion to grant the adjudication, deny it, or hold a hearing and then grant/deny.

(2) finds that at least one statutory ground for adjudication contained in the petition is supported by a preponderance of the evidence.

Commented [AU28]: Pulled from (b) above. Adapted from CRS 19-3-505(7)(a)

COMMENTS

This rule is intended to apply to respondents who have never appeared in the case and obstreperous respondents who fail or refuse to admit or deny the allegations. C.R.J.P. 4.21(b) addresses situations where a party has demanded a jury trial but fails to appear as directed by the court at a pretrial readiness conference or adjudicatory trial without good cause.

Commented [jw29]: IS there a better way to phrase this?

Rule 4.18. Continued (Deferred) Adjudications

(a) Advisement. Before consent to a continuation (deferral) is given, all parties must be advised of their rights in the proceeding, including a right to have an adjudication made either dismissing or sustaining the petition, and of the proposed terms and conditions of the continuation (deferral).

(b) Consent. Once advised, consent to a continued (deferred) adjudication must be given by the petitioner, children through their guardian ad litem, youth through their counsel for youth, and the respondent.

(c) Findings. Before the juvenile court may accept the continued (deferred) adjudication, the court must find that an allegation alleged in the petition is supported by a preponderance of the evidence.

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

(1) After consent has been obtained pursuant to section (b) of this rule, the court must adopt terms and conditions for the parties.

(2) Any decree vesting legal custody of a child or youth out of the home must be reviewed pursuant to section 19-1-115, C.R.S., during the continued (deferred) adjudication.

(e) Duration. The continued (deferred) adjudication must not exceed 6 months without review by the court. Upon review, the court may extend the continued (deferred) adjudication for an additional 6 months, after which the petition must either be dismissed or sustained.

(f) Motion to Revoke a Continued (Deferred) Adjudication. Upon the filing of a motion to revoke the continued (deferred) adjudication and enter the adjudication, the court must:

(1) permit a hearing to determine whether the respondent has failed to comply with the terms and conditions of the continued (deferred) adjudication and any other relevant factors required by law; and

(2) determine whether to:

(i) grant the motion, revoke the continued (deferred) adjudication, enter the adjudication, and proceed to disposition;

(ii) deny the motion and proceed with the continued (deferred) adjudication under the existing terms and conditions; or

(iii) dismiss the matter.

(g) Waiver of Procedural Rights. A respondent may waive the right to a hearing or other procedural right under this rule, after being advised of the consequences of such waiver.

Commented [jw30]: Does this need to be limited to this rule? Is it too broad?

COMMENTS

[1] The terms and conditions of a continued (deferred) adjudication may include, but are not limited to, a treatment plan, family time, conditions of conduct, or other requirements as the court may prescribe.

[2] In determining whether to revoke a continued (deferred) adjudication, the court must consider the child's or youth's current status before entering the adjudicatory order, and such consideration should be accompanied by any additional findings required to address new evidence and the child's or youth's current status. *See People in Interest of N.G.*, 2012 COA 131, ¶¶ 20–21, 303 P.3d 1207, 1213; *People in Interest of A.E.L.*, 181 P.3d 1186, 1192 (Colo. App. 2008).

[3] Nothing in this rule prohibits the parties from reaching an agreement to modify the terms and conditions of a continued (deferred) adjudication before or after the filing of a motion to revoke.

Rule 4.19. Case Management for Adjudicatory Hearing

(a) Discovery should be accomplished by the provisions and deadlines of C.R.J.P. 4.9.

(b) Pretrial Conference. The juvenile 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 may be considered include but are not limited to:

(1) stipulations as to facts about which there can be no dispute;
(2) identification and marking of exhibits and other documents;
(3) excerpting, highlighting, or redacting exhibits;
(4) waivers of foundation for exhibits;
(5) severance of trials;
(6) seating arrangements for parties and counsel;
(7) accommodations for participants, including language access as required by section 19-3-218, C.R.S.;
(8) jury examination, including confidentiality of juror information;
(9) number and use of peremptory challenges;
(10) trial schedule and order of presentation of evidence and arguments;
(11) procedure for and order of objections;
(12) order of cross-examination;
(13) resolution of motions or evidentiary issues to limit inconvenience to jurors; and
(14) submission of items to be included in the juror notebook, if any.

Commented [wj31]: 24-34-805

(c) Exhibits and Witnesses. Exhibit lists and witness lists must be provided in accordance with C.R.J.P. 4.9(g). At least 7 days prior to the hearing, or such other time as the parties agree or the court orders, counsel and unrepresented parties must mark for identification all proposed exhibits which may be offered at the hearing and furnish marked copies together with a list of such proposed exhibits to counsel and unrepresented parties.

(d) Juror Notebooks. At the court's discretion, juror notebooks may be provided during the adjudicatory hearing and deliberations to aid jurors in the performance of their duties. If juror notebooks are going to be provided at the hearing, the parties must confer about the items to be included in juror notebooks, and, by the pretrial conference or other date set by the court, must make a joint submission to the court of items to be included in a juror notebook.

COMMENTS

For guidance regarding preparation and use of juror notebooks, the court and parties should consider the comment to Rule 47 of the Colorado Rules of Civil Procedure.

Rule 4.20. Adjudicatory Hearing

(a) Prompt Hearing. An adjudicatory hearing must be held within the timeframes set forth in section 19-3-505, C.R.S.

(b) Burden of Proof. For the purposes of an adjudicatory hearing, the petitioner has the burden of proving the allegations of the petition by a preponderance of the evidence.

(c) Amendment to Conform to the Evidence. When evidence presented at an adjudicatory hearing discloses facts not alleged in the petition, the juvenile court must proceed in accordance with section 19-3-505(4), C.R.S.

(d) Evidence of a Child or Youth with Mental Health Disorder or Intellectual and Developmental Disability. When evidence presented at an adjudicatory hearing shows that the child or youth may have a mental health disorder or an intellectual and developmental disability, the court must proceed in accordance with section 19-3-506, C.R.S.

(e) Adjudication. When the allegations of the petition are supported by a preponderance of the evidence, the court must proceed in accordance with section 19-3-505(7), C.R.S.

(f) Dismissal. When the allegations of the petition are not supported by a preponderance of the evidence, the court must proceed in accordance with section 19-3-505(6), C.R.S.

Rule 4.21. Trial by Jury

(a) Demand for Jury Trial. At the time the allegations of a petition are denied, a respondent, petitioner, or a child through their guardian ad litem, or a youth through their counsel for youth, may demand or the juvenile court, on its own motion may order, a jury trial.

(b) Loss of Right to Jury Trial. The court may find that a party has lost the right to a jury trial and convert the trial to a court trial if:

(1) a party entitled to demand a trial by jury fails to make a timely jury demand after being advised pursuant to C.R.J.P. 4.15;

(2) a party who demanded a trial by jury consents in writing or on the record to withdraw the jury demand before the adjudicatory trial;

(3) a party who demanded a trial by jury fails to appear as directed by the court at the pretrial readiness conference, without good cause, when ordered by the court and advised that the party's failure to appear at the pretrial readiness conference will result in loss of the right to trial by jury; or

Commented [wj32]: Removed "in person" at February 2023 C.R.J.P. Committe Meeting. The committee also posed the question: Should we consider defining pretrial conference?

(4) a party who demanded a trial by jury fails to appear as directed by the court at the adjudicatory trial, without good cause.

(c) Jurors. Rule 47 of the Colorado Rules of Civil Procedure applies to adjudicatory jury trials except with respect to peremptory challenges.

(d) Peremptory Challenges. The following three groups each have three peremptory challenges: the petitioner; all respondents; and all the children and youth (through their guardian ad litem or counsel for youth). No more than nine peremptory challenges are authorized.

(e) Number of Jurors and Unanimity of Verdict. The jury consists of 6 persons, unless the parties agree to a smaller number, not less than three. Any verdict in an adjudicatory trial must be unanimous unless all parties agree before the verdict is returned that a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury.

Subpart G: Disposition & Post-Disposition

Rule 4.22. Disposition

Dispositional hearing procedures and requirements must be accomplished as set forth in sections 19-3-507 and 508, C.R.S.

Rule 4.23. Advisement After Disposition

(a) The juvenile court must advise the parties in writing in the initial dispositional order of the right to appeal the order adjudicating a child or youth dependent and neglected and the initial dispositional order, upon the entry of the initial dispositional order. The advisement must include the time limit for filing a notice of appeal and a statement that all claims arising out of the adjudication and the initial dispositional order must be raised in a timely appeal or will be waived.

(b) If a respondent is pro se, the court must inform that respondent of the right to appointed counsel through the Office of Respondent Parents' Counsel if that respondent is found to be indigent. If a pro se respondent informs the court of the desire to appeal, the court must notify the Office of Respondent Parents' Counsel in accordance with any applicable chief justice directive within 7 calendar days.

Rule 4.24. Permanency

Permanency hearing procedures and requirements must be accomplished as set forth in section 19-3-702, C.R.S.

COMMENTS

[1] Permanency hearing procedures and requirements addressed in section 19-3-702, C.R.S., include, but are not limited to, timeframes for hearing, notice, advisements, permanency goals, children and youth consultation, permanent home determinations, contested placement hearings, and special considerations for parents who are incarcerated.

[2] In cases where there is a continued (deferred) adjudication or an informal adjustment, but no adjudication has entered, and where the child or youth is placed out of the home, the juvenile court should consider permanency within timelines consistent with state and federal laws.

Commented [jw33]: Take to larger committee whether this section should be changed.

Commented [jw34]: April 2024: The subcommittee recommends cross-referencing the statute. The statute is dense and covers several areas (checking boxes for social services funding; making custody determinations;, participation by children; advisements and notices for children and parents; reviewing permanency goals; etc.). The subcommittee felt that highlighting only some of the important features of the statute may give those features undue weight and not highlighting other aspects of the statute may unintentionally minimize those aspects.

Commented [jw35R34]: Approved by committee at 6/7/2024 meeting

Commented [wj36]: From Melanie Jordan at 6/28/23 1038 subcom meeting: Flagging that we need to update comment 1 from permanency rule to reflect statutory change from HB 23-1027

Rule 4.25. Termination

Termination procedures and requirements must be accomplished as set forth in the Parent-Child Legal Relationship Termination Act of 1987, sections 19-3-601 to -609, C.R.S.

Rule 4.26. Review Hearing Following Termination of the Parent-Child Legal Relationship

The juvenile court must hold a review hearing as set forth in section 19-3-606, C.R.S., no later than 90 days following the hearing at which the court terminated parental rights. All reports and statements of a youth's position, required by section 19-3-606(1), C.R.S., must be filed at least 7 days before the hearing unless a greater or lesser time is ordered by the court.

Commented [jw37]: April 2024: Subcommittee recommends removing this rule—it reads like a best practice rather than a rule; there is no sources of authority for some of the granular elements (like the things that should be in the GAL's report).

Could replace with a cross-reference to statute or a simple outline of the statute.

Will take to the larger committee

Commented [jw38R37]: Approved by committee on 6/7/24 with modification. Substitute "statements of a youth's position" for "Counsel for Youth's position statement."

Subpart H: General Provisions & Special Proceedings

Rule 4.27. Attorney of Record

(a) Attorney of Record.

(1) Entry of Appearance. An attorney will be deemed of record when the attorney appears personally before the juvenile court, files a written entry of appearance or signed pleading, or has been appointed.

(2) Appointment by Court. When an attorney who has been appointed by the court is not present at the time of appointment, court staff must timely notify the attorney.

(3) Appointment by Other Appointing Authority. When an attorney has been appointed by an agency with appointment authority, the agency must timely notify the court of the appointment.

(4) Any order of appointment must be entered into the court's electronic case management system.

Commented [wj39]: The subcommittee added this subsection to acknowledge that some agencies, like ORPC, have the authority to appoint attorneys. The larger committee did not include this, but the subcommittee was prompted to include it here because the larger committee included RPC's appointment authority in (b)(2).

(b) Respondent Counsel.

(1) Advisement and Appointment. If a respondent appears in court without counsel, the court must advise the respondent of the right to counsel. If the court finds that the respondent meets the requirements set out in chief justice directive or statute, the court must appoint counsel to represent the respondent unless the respondent affirmatively declines the appointment of counsel on the record. In the interests of justice, the court may provisionally appoint counsel for a respondent.

(2) Appointment of Counsel for In-custody Respondents. The court must appoint counsel for a respondent who is incarcerated, being held in federal custody, or involuntarily committed, as such a respondent is presumed indigent absent a specific judicial determination to the contrary.

Commented [wj40]: Comes from CJD 16-02(VI)(c)

(3) Substitution of Respondent Counsel.

(A) **Substitution by Respondent Counsel.** New counsel may substitute for respondent counsel upon the filing of a notice of substitution of counsel that complies with Rule 121 section1-1(2)(a) of the Colorado Rules of Civil Procedure or by court order.

(B) **Substitution by Office of Respondent Parents' Counsel.** With the authorization of the Office of Respondent Parents' Counsel pursuant to chief justice directive, an appointed attorney can be substituted for another appointed attorney by filing a "Notice of Substitution of Counsel by the Office of Respondent Parents' Counsel."

(4) Withdrawal of Respondent Counsel.

(A) Respondent counsel may seek to withdraw from a case by filing a motion to withdraw. A motion to withdraw as respondent counsel must comply with Rule 121 section 1-1(2)(b) of the Colorado Rules of Civil Procedure unless the appointment is a provisional appointment pursuant to Chief Justice Directive 16-02.

(B) The court must address the motion to withdraw as respondent counsel at the next previously scheduled hearing date or set the request for hearing. Before granting the motion to withdraw, the court must advise the respondent of the right to counsel.

(5) Termination of Appointment of Provisionally Appointed Counsel. Provisionally appointed counsel may request termination of the appointment upon written or oral motion to the court stating: that the respondent is not indigent, the respondent does not wish to have court-appointed counsel, or the respondent cannot be located after diligent search and direction from the respondent is unknown. The court may immediately terminate a provisional appointment of counsel.

(6) Termination of Representation. Absent an agreement between counsel and a respondent, counsel's representation of that respondent continues until:

(A) certification of an order allocating parental responsibilities, if no appeal is filed;

(B) entry of an order terminating the respondent's parental rights as to all of the respondent's children or youth who are parties to the case, if no appeal is filed;

(C) dismissal of the respondent from the case, if no appeal is filed;

(D) issuance of a mandate by the appellate court if such mandate terminates the juvenile court's jurisdiction over the respondent; or

(E) otherwise mandated by operation of law or by court order.

(c) Counsel for Youth and Guardians ad Litem for Children and Youth

(1) Counsel for Youth

(A) **Appointment of Counsel for Youth for Youth 12 and Older.** The court must appoint an attorney as counsel for youth for a youth age 12 and older.

(B) **Transition from Guardian ad Litem to Counsel for Youth at Age 12.** An appointed guardian ad litem in a dependency and neglect case must begin acting as counsel for youth upon the youth's 12th birthday. The attorney must notify the court and the parties of the change of

Commented [wj41]: Is this a new phrase not used elsewhere? Is a different phrase better?

Commented [wj42]: terminate on the counsel's client's dismissal (not just any respondent)

Commented [SD43]: Ask drafting committee for conventions around when to use acronyms and when to spell out.

Commented [wj44R43]: Spell out and don't use abbreviation

appointment to counsel for youth, and the court must issue a new order of appointment within 7 days of receiving notice.

(C) **Appointment of Counsel for Children Under 12.** The court may appoint counsel for a child under age 12 in addition to a guardian ad litem if the court finds representation by counsel is necessary to protect the interests of the child.

Commented [wj45]: 19-1-105(2)

(D) **No Waiver.** A child's or youth's right to counsel in a dependency and neglect case may not be waived.

(E) **Termination of Appointment as Counsel for Youth.** The appointment continues until the entry of a final decree of adoption or until the jurisdiction of the juvenile court is terminated.

(2) Guardians ad Litem

(A) **For Children under Age 12**. The court must appoint a guardian ad litem for a child under age 12.

(B) For Children and Youth Age 12 and older.

(I) The court may appoint a guardian ad litem or continue the guardian ad litem appointment if the court determines that the appointment is necessary due to the youth's diminished capacity. The youth's age or developmental maturity may not be the sole basis for a determination of diminished capacity.

(II) The court must not deem a guardian ad litem appointed for a youth over the age of 12 to be a substitute for the appointment of a counsel for youth.

(C) **Termination of Guardian ad Litem Appointment.** The guardian ad litem's appointment continues until the entry of a final decree of adoption, the guardian ad litem transitions to counsel for youth, or the jurisdiction of the juvenile court is terminated. For a youth age 12 or older, the guardian ad litem appointment may also be terminated by court order.

(3) Joint Representation of Siblings. The court may appoint the same attorney as guardian ad litem and as counsel for youth for members of a sibling group as long as the attorney does not assert that there is a conflict of interest. If the attorney asserts a conflict of interest, the court must appoint a new attorney as guardian ad litem or counsel for youth for some or all members of the sibling group.

(4) Substitution.

(A) A counsel for youth or guardian ad litem may substitute for appointed counsel for youth or guardian ad litem upon the filing of a notice of substitution that complies with Rule 121 section 1-1(2)(a) of the Colorado Rules of Civil Procedure or by court order, as long as the substitute counsel for youth or guardian ad litem is identified as qualified for Office of the Child's Representative-paid appointments on the Office of the Child's Representative's appointment eligibility list.

(B) With the authorization of the Office of the Child's Representative pursuant to chief justice directive, a counsel for youth or guardian ad litem can be substituted for another appointed counsel for youth or guardian ad litem by filing a "Notice of Substitution of Counsel by the Office of the Child's Representative."

(C) Although the substitution is effective upon the filing of the notice of substitution, the court must promptly issue an appointment order for substitute counsel for youth or guardian ad litem and enter the order in the case management system.

(d) Other Guardian ad Litem Appointments. The court may appoint a guardian ad litem for a parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, or spousal equivalent who, as provided in section 19-1-111(2)(c), C.R.S., has been determined to have a behavioral or mental health disorder or an intellectual and developmental disability by a court of competent jurisdiction.

(e) Counsel for Special Respondents or Intervenors. Entry of appearance, substitution, and withdrawal of counsel for special respondents or intervenors must be made pursuant to Rule 121 section 1-1 of the Colorado Rules of Civil Procedure.

COMMENTS

[1] Nothing in this rule limits the power of the court to appoint, for good cause, a respondent parent counsel, counsel for youth, or guardian ad litem prior to the filing of a petition.

[2] Nothing in subsection (b)(4) of this rule precludes respondent counsel from filing an ex parte motion requesting an in camera hearing in front of a different judge for the purpose of detailing the reasons why withdrawal is necessary.

[3] For guidance on guardian ad litem appointments under section (d) of this rule, *see People in Interest of M.M.*, 726 P.2d 1108, 1120 (Colo. 1986) ("If the parent is mentally impaired so as to be incapable of understanding the nature and significance of the proceeding or incapable of making those critical decisions that are the parent's right to make, then a court would clearly abuse its discretion in not appointing a guardian ad litem to act for and in the interest of the parent. A court would also abuse its discretion in not appointing a guardian ad litem in those situations in which it is clear that the parent lacks the intellectual capacity to communicate with counsel or is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in her own interest."); *accord People in Interest of T.M.S.*, 2019 COA 136, ¶ 9, 454 P.3d 375, 379.

Rule 4.28. CASA Rule

(a) Appointment. The juvenile court may appoint a Court Appointed Special Advocate ("CASA") volunteer by order of the court. If the court appoints a CASA volunteer, it should do so at the earliest opportunity.

Commented [jw46]: Drafting committee did not have strong feelings about using "authorization" or "approval."

Commented [wj47]: This word is in the statute CRS 19-3-203(1)

(b) Role, Responsibilities, and Access to Information. A CASA volunteer's role, responsibilities, and access to information are outlined by the statutes authorizing the CASA program, section 19-1-201 to -213, C.R.S., and in any local memorandum of understanding.

COMMENTS

Written appointment orders facilitate CASA volunteers' ability to effectively perform their responsibilities and constitute a best practice.

Rule 4.29. Evidence

(a) Form and Admissibility. In all trials and contested hearings, the testimony of witnesses must 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 apply to dependency and neglect cases except as otherwise provided by law, including but not limited to:

(1) At a temporary custody hearing conducted pursuant to section 19-3-403, C.R.S., any information having probative value may be received by the juvenile court, regardless of its admissibility under the Colorado Rules of Evidence, in accordance with section 19-3-403(3.6)(a)(II), C.R.S.;

(2) Written reports and other material relating to the child's mental, physical, and social history may be admitted as evidence in accordance with sections 19-1-107(2) and 19-3-604(3), C.R.S., and subject to the procedural requirements set forth in section (c) of this rule;

(3) Reports of known or suspected child abuse or neglect may be admitted as evidence in accordance with section 19-3-307(4), C.R.S.;

(4) Out-of-court statements of a child witness or victim may be admitted as evidence in accordance with section 13-25-129, C.R.S.;

(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, C.R.S.; and

(6) Certain evidentiary privileges may be rendered inapplicable by operation of section 19-3-311, C.R.S.

(c) Reports.

(1) Notice of Intent to Admit Reports and Other Material and Deadline. Except in emergency proceedings and temporary custody hearings under section 19-3-403, C.R.S., any party who intends to offer evidence in the form of a written report or other material relating to the child's or youth's mental, physical, and social history at a trial or hearing pursuant to section 19-1-107, C.R.S., must file a notice of intent to admit such report or other written material. The notice, together with a copy of the report or other material to be admitted, must be filed and served on all other parties at least 7 days before the trial or hearing unless a great or lesser time is ordered by the court.

Commented [wj48]: From [Source, CRS 19-3-403(3.6)(a)(II)]

Commented [wj49]: The language about "report and other material" comes from 19-3-604(3), 19-1-107(2); the subcommittee broke this subsection up into three parts.

(2) **Testimony of Person who Wrote the Report and Other Material.** Any party who wishes to 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 at the trial or hearing pursuant to 19-1-107, C.R.S., must file and serve such a request at least 72 hours before the trial or hearing. If such a request is made, the party seeking to admit the report or other material must secure the author's appearance at the trial or hearing. In the absence of such a request, the court may, at any time, order the person who wrote the report or prepared other material to appear at the proceeding if it finds that the interest of the child or youth so requires.

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

(e) Evidentiary Stipulations. In any dependency and neglect proceeding, the parties may stipulate or agree to the existence of any fact. The parties may also stipulate or agree to what a witness would have testified to if the witness were called to testify. Such a stipulation or agreement makes the presentation of any evidence to prove the matters agreed to or admitted unnecessary.

(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. The court may determine the law of a foreign country in accordance with Rule 44.1 of the Colorado Rules of Civil Procedure.

Rule 4.30. Motions

Commented [jw50]: Need to clarify the language of (b) and (d) to make clear that parties may file responses to motions, but responses are not required.

Any party may apply to the juvenile court for relief by motion. Except as otherwise specifically authorized by law, motions will be determined as set forth with Rule 121 section 1-15 of the Colorado Rules of Civil Procedure, except that:

(a) Pretrial and Prehearing Motions. Unless otherwise ordered by the court or for good cause shown, all pretrial motions must be filed at least 21 days prior to the trial or contested hearing or within 7 days of setting the trial or hearing, whichever is later.

(b) Responses. Written responses to a motion may be filed but are not required unless ordered by the court. Except for forthwith or emergency motions described below, any response filed must be filed within 7 days of the filing of the motion or as otherwise ordered by the court.

(c) Replies. A reply in support of motion may not be filed unless ordered or authorized by the court.

(d) Forthwith or Emergency Motions. A forthwith or emergency motion may be filed when there is an issue that requires immediate determination by the court. The movant must state with particularity the need for an immediate determination. The movant must call the filing of such motions to the attention of the courtroom clerk as soon as practicable. Although a written response is not required, any written response must be filed within 72 hours of the filing and service of the forthwith or emergency motion, unless a greater or lesser time is ordered by the court.

(e) Sanctions. Pursuant to section 13-17-102(8), C.R.S., sanctions as provided in Rule 121 section 1-15(7) of the Colorado Rules of Civil Procedure are not authorized in dependency and neglect cases.

Rule 4.31. Time; Continuances

(a) Computation and Legal Holidays. Computation and legal holidays are as set forth in Rule 6(a)(1)-(2) of the Colorado Rules of Civil Procedure.

(b) Enlargement of Time. Enlargement of time is as set forth in Rule 6(b) of the Colorado Rules of Civil Procedure.

(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 good cause shown may, at any time in its discretion, with or without motion or notice, order the period of time reduced unless prohibited by statute or a substantial right of a party would be adversely affected.

(d) Continuances. Stipulations for continuance will not be effective unless and until approved by the court. If the hearing concerns a child who was under 6 years of age at the time a petition was filed, the court must set forth specific reasons necessitating the delay or continuance and must schedule the matter at the earliest possible time within 30 days after the date of granting the delay or continuance.

Commented [wj51]: phrase borrowed from CRCP 61

Commented [jw52]: There are different standards for different hearings (e.g, adjudication and dispo) and our rules on adjudication 4.20 and dispo 4.22 refer to the statutes and thus incorporate the continuance standards found in the statute,

Rule 4.32. Certification of Custody Matters to Juvenile Court

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

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

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

COMMENTS

This rule was previously numbered as C.R.J.P. 4.4.

Rule 4.33. Contempt in Dependency and Neglect Cases

The citation, copy of the motion, affidavit, and order in contempt proceedings pursuant to Rule 107 of the Colorado Rules of Civil Procedure, must be served personally upon any respondent or party to the dependency and neglect case, at least 14 days before the time designated for the person to appear before the juvenile court. Proceedings in contempt must be conducted pursuant to Rule 107 of the Colorado Rules of Civil Procedure, except that the time for service under section (c) of Rule 107 of the Colorado Rules of Civil Procedure must be not less than 14 days before the time designated for the person to appear.

COMMENTS

2024

[1] This rule was previously numbered as C.R.J.P. 4.5.

Rule 4.34. Form of Documents Filed with the Court

Except for reports filed pursuant to section 19-1-107, C.R.S., every document filed with the juvenile court must conform to Rule 10(d)–(i) of the Colorado Rules of Civil Procedure and must contain a caption setting forth the name of the court; the title of the case; the case number, if known to the person signing it; and the name of the document.

Rule 4.35. Filing & Service

(a) Service. Except as otherwise provided in these rules or pursuant to the Children's Code or unless otherwise ordered by the juvenile court, every document filed with the court, including reports required by the Children's Code, must be served on the parties and any guardian ad litem. No service is required on unrepresented parties who have never appeared and for whom no contact information is known, except that pleadings asserting new or additional claims for relief against such person must be served upon that person in the manner provided in section 19-3-503, C.R.S.

(b) Making Service.

(1) Service on a party represented by an attorney is made upon the attorney unless the court orders personal service upon the party. Service on a party under 12 is made upon the child's guardian ad litem unless the child is represented by counsel for youth, in which case service is made upon the child's counsel for youth.

(2) Service under this rule is made by:

(I) Delivering an electronic copy by Colorado Courts E-filing;

(II) Delivering a copy by mailing it to the last known address of the person served;

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

(IV) Delivering a copy to the person by handing it to the person;

(V) Delivering a copy by any other electronic means, consented to in writing by the person served. Designation of a facsimile phone number or an email address in the filing constitutes consent in writing for such delivery; or

(VI) Delivering a copy by any other legally authorized means, including any means consented to by the parties or any means approved by the court.

(3) **Completion of Service.** Service by Colorado Courts E-filing or by other electronic means is complete on transmission. Service by mail is complete on mailing. Service by hand delivery, on the clerk of court, or by other consented means is complete on delivery. Service by other electronic means is not effective if the party making service learns that the attempted transmission failed or was otherwise unsuccessful.

Commented [wj53]: Suggestion for 1038 subcom: This may be a nice place to add reference to GALs

(4) **Certificate of Service.** All documents served pursuant to this rule must contain a signed certificate of service setting forth the party served and the means by which service was completed.

(c) Filing of Documents; Exceptions. All documents required to be served upon a party must be filed with the court within a reasonable time after service, except that disclosures under C.R.J.P. 4.9 and the following discovery requests and responses may not be filed until they are used in the proceeding or the court orders otherwise: depositions; interrogatories; requests for production; and requests for admission.

(d) Filing with Court Defined. Filing with the court is set forth as in Rule 5(e) of the Colorado Rules of Civil Procedure.

(e) Inmate Filing and Service. Inmate filing and service is as set forth as in Rule 5(f) of the Colorado Rules of Civil Procedure.

Part 1 – Applicability

Rule 1. Applicability and Citation

- I know this committee is primarily focused on rules relating to D&Ns, but the reference to truancy proceedings in Rule 2.2 made me wonder if it might be appropriate to add a reference to Article 33 of Title 22 (the School Attendance Law of 1963) in addition to proceedings under Title 19 since truancy proceedings are primarily governed by Article 33 of Title 22 rather than Title 19.
    - Title 19 only contains some cursory references to truancy proceedings:
        - Definitions of "assessment center for children" and "delinquent act" (§19-1-103)
        - CASA programs (§19-1-202)
        - Right to counsel (§19-1-105)
        - Warrants (§19-2.5-204)
        - Criminal justice agencies' access to truancy information (§19-1-103)
- Suggested language:
    - (a) These rules govern proceedings brought in the juvenile court under Title 19, also hereinafter referred to as the Children's Code, **and Article 33 of Title 22, also hereinafter referred to as the School Attendance Law of 1963**. All statutory references herein are to the Children's Code as amended.
    - (b) Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19 **or Article 33 of Title 22** shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.
- The incorporation of truancy proceedings into the juvenile rules may be a conversation for a later date, but I think it would be incredibly helpful to at least have some clarification through these rules that truancy proceedings are civil in nature and governed by the rules of civil procedure where not governed by these rules or statutes. The only procedural rules we seem to have for truancy at this point are contained in §22-33-108 and Rule 2.2.

Part 4 – Dependency & Neglect

Rule 4.8. Intervention

- I would suggest adding the following language to clarify the definition of Indian child:
    - (3) **Indian Custodians and Indian Tribes.** In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child **as defined by section 19-1-103(83), C.R.S.,** the Indian custodian of the child and the Indian child's tribe has a right to intervene at any point in the proceeding.
- This would simply provide additional clarification of what Indian child means. All the other references to an Indian child contain some form of reference to ICWA statutes in the rule, so I thought this one probably should too for purposes of clarity.

Rule 4.9. Disclosure and Discovery in D&N cases

- I'm sure we're not looking for any major substantive modifications to this rule at this point, but I did have an issue come up recently that led me to wonder if there should be some further clarification in this rule. Another D&N attorney asked me some questions about who needs to sign requests for admission and interrogatories. There is guidance in CRCP 36 (Requests for Admission) and CRCP 33 (Interrogatories) regarding who is to sign: Rule 36 allows signatures by either the party or their attorney and Rule 33 requires objections to be signed by the attorney and answers to be signed by the party.
- I think Rule 1(b) should direct attorneys to Rules 33 and 36 about this issue, but I just wondered if it might be helpful for Rule 4.9 to specifically reference the applicable civil rules for clarity about issues like this.

Rule 4.11. Order to Interview or Examine Child or Youth

- I wonder if it would be helpful to include a comment similar to comment [1] in Rule 4.27 (Attorney of Record), referencing the Court's ability to appoint, for good cause, a respondent parent counsel, counsel for youth, or guardian ad litem prior to the filing of a petition pursuant to §19-3-202(1).

Rule 4.15. First Appearance Advisement Upon Service of Petition

- I would suggest adding a comment under this Rule encouraging Courts to inquire as to whether the subject child/youth has been given notice of their rights pursuant to §§19-7-101(4)(Foster Youth Bill of Rights) and 19-7-203(1)(n)(Foster Youth Siblings' Bill of Rights) if applicable.
- Suggested comment:
    - Although Title 19 does not presently contain a requirement that the court advise the subject child or youth of their rights if the child or youth is present at the first appearance, the court should endeavor to ensure that the subject child/youth has been provided with notice of his or her rights under the Foster Youth Bill of Rights pursuant to §19-7-101(4), C.R.S., and the Foster Youth Siblings Bill of Rights pursuant to §19-7-203(1)(n), C.R.S. where applicable.

Rule 4.21. Trial by Jury

- I would suggest changing "or a youth through their counsel for youth" to "or a youth through their counsel." It's a very minor detail, but I think it makes the wording a little less cumbersome.

Rule 4.24. Permanency

- I would suggest adding joint placement of siblings as one of the topics listed in comment [1].
- Suggested comment:
    - [1] Permanency hearing procedures and requirements addressed in section 19-3-702, C.R.S., include, but are not limited to, timeframes for hearing, notice,

advisements, permanency goals, children and youth consultation, permanent home determinations, **joint placement of siblings**, contested placement hearings, and special considerations for parents who are incarcerated.

Rule 4.30. Motions

- Are the 7-day response deadlines and prohibition on replies intended to apply only to pretrial or prehearing motions?
    - I think that needs to be clarified because if not, I think this rule could be interpreted to apply to any motions, including those that are filed when there is no contested hearing set.
    - I don't see a need to shorten the response deadlines from 21 days under Rule 121 to 7 days if there is no pending hearing set. I also don't see a need to prohibit replies absent court order/authorization if there is no pending hearing set.