



March 27, 2025

Colorado Supreme Court
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Denver, CO 80202
Email: supremecourtrules@judicial.state.co.us

Sent via Email

Dear Justices of the Colorado Supreme Court:

On behalf of the Office of the Child's Representative ("OCR"), I am writing this letter in support of the proposed changes to the Colorado Rule of Juvenile Procedure in its current form, <https://www.coloradojudicial.gov/sites/default/files/2025-01/CRJP%20Rules%20for%20Public%20Comment.pdf> ("Proposed Juvenile Rules"). These rules were the product of extensive compromise and collaboration by various individuals and groups involved in dependency and neglect cases across the state, including the OCR. The OCR believes the proposed rules appropriately implement the purposes of the Children's Code and balance the interests of the various parties to dependency and neglect proceedings, including the interests of children and youth who face immediate and lifelong impacts from these cases.

I. BACKGROUND TO THE PROPOSED RULES

In 2014, Justice Nancy Rice, the Chief Justice of the Colorado Supreme Court at the time, established the Colorado Rules of Juvenile Procedure Revisions Committee ("Committee"), and tasked the Committee with reviewing and updating the Colorado Rules of Juvenile Procedure based upon legislative and practice changes. After some initial changes were considered, proposed, and adopted in 2015, the Committee undertook a large-scale revision of the Rules by creating subcommittees who would propose rules regarding various stages of dependency and neglect cases. Between 2015 and 2021, these subcommittees met and drafted proposed rules, and the Committee reviewed these proposals periodically. In 2021, a drafting subcommittee was organized and began reviewing the draft set of rules in detail and making comprehensive changes. The drafting subcommittee met frequently between 2021 and 2024 to finalize the package of proposed rules. On December 6, 2024, the Committee reviewed and discussed the proposed rules, made minor modifications, and ultimately approved sending the proposed rule package to the Colorado Supreme Court for consideration. The Colorado Supreme Court is accepting comments on the Proposed Juvenile Rules through March 31, 2025, and this letter reflects the OCR's comments on the Proposed Rules.

II. THE OCR APPROACH

The OCR's enabling legislation and mandate require the OCR to ensure the provision of uniform, high-quality legal representation to children and youth involved in judicial proceedings in Colorado. See C.R.S. § 13-91-105. Like its statutory mandate, the OCR's mission is to "give children and youth a voice in Colorado legal proceedings through high-quality legal representation that protects and promotes their safety, interests, and rights." *General Assembly Report Fiscal Year 2024*, Colorado OCR at 9 (unnumbered), <https://coloradochildrep.org/download/fy24-general-assembly-report-ocr/?wpdmdl=18333&refresh=673292d7152281731367639>.



As a member of the Committee and various subcommittees involved in the creation of the Proposed Juvenile Rules, the OCR approached the process of drafting and finalizing the Proposed Rules with a spirit of collaboration, informed by its mandate and mission. Specifically, OCR focused its work on ensuring that the rights and interests of children and youth involved in dependency and neglect cases are represented in the procedural rules that govern such cases. The OCR also advocated for changes to the existing rules necessitated by legislation enacted in Colorado reflecting the independent interests of children and youth such as H.B. 22-1038, discussed in more detail below. Although the Proposed Juvenile Rules do not align perfectly with the OCR's preferences, the OCR acknowledges that the Proposed Juvenile Rules are near completion only through the collaborative process and compromises made by the representatives of various stakeholder groups involved in the Committee and subcommittees.

III. PROVISIONS SUPPORTING THE INTERESTS OF CHILDREN AND YOUTH

As noted above, the OCR focused its work on the Committee and subcommittees on ensuring that the Proposed Juvenile Rules account for the unique needs of children and youth in dependency and neglect cases. The OCR believes that the following provisions are examples of how the Proposed Juvenile Rules sufficiently incorporate the interests of children and youth. If considering modifications to the Proposed Juvenile Rules, the OCR requests that the Supreme Court take special care to ensure the protective provisions described below remain or expand in favor of children and youth's interests.

Purposes of the Children's Code

The purposes of the Children's Code as described in C.R.S. § 19-1-102 are multi-faceted, however, taking the purposes together as a whole, the clear intent of the Children's Code is to ensure that children and youth's best interests are the primary focus of all actions taken under the Code. "The overriding purpose of the Children's Code is to protect the welfare and safety of children in Colorado by providing procedures through which their best interests can be ascertained and served." *A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013) (citing *L.G. v. People*, 890 P.2d 647, 654 (Colo. 1995); see also *People in Interest of S.N.*, 329 P.3d 276, 279 (Colo. 2014). "To carry out these purposes, the provisions of [the Children's Code] shall be liberally construed to serve the welfare of children and the best interests of society." C.R.S. § 19-1-102(2).

Rule 4.1(b) of the Proposed Juvenile Rules include three specific purposes which cumulative effect is to direct judges and practitioners in dependency and neglect cases to consider the rules in conjunction with the purposes of the Children's Code described above. Specifically, section (b)(1) states that dependency and neglect cases are unique civil cases requiring an intricate balance of the important and interrelated rights and interests of various parties to dependency and neglect cases, including the interests of children and youth. It is important that the stated purposes of the Proposed Juvenile Rules include a specific reference to the interests the children and youth in these cases, as they are the reasons such cases exist and are both the most vulnerable parties and the least able to assert their own interests.

Children and Youth Party Status

In 2022, the Colorado legislature passed H.B. 22-1038 which clarified that all children and youth are parties to the dependency and neglect proceedings brought in their name, among other provisions. See C.R.S. § 19-3-502(4.5). Rule 4.3(b) of the Proposed Juvenile Rules reflects this clarified status. However, beyond simply



recognizing children and youth as parties to the cases involving them, the Proposed Juvenile Rules also recognize that children and youth are not situated exactly the same as the adults in the case, given the fact of the children and youth's minority and their status as dependent and neglected. This delicate balance is most apparent in the discovery rule, Rule 4.9, which, for example, includes the following provisions:

- 1) a presumption that depositions of children and youth are not in their best interests regardless of age, and that any deposition of a child or youth require a court order supported by good cause shown. Rule 4.9(i)(IV); and
- 2) an exemption from the requirements to produce discovery for GALs and children under 12 unless ordered by the court for good cause shown. Rule 4.9(i)(1)(b).¹

Children and Youth Attendance and Participation in Court Hearings

Also in response to H.B. 22-1038, Rule 4.4 of the Proposed Juvenile Rules addresses child and youth attendance and participation in court proceedings. Subsection (a) of Rule 4.4 reflects the language of C.R.S. § 19-3-502(4.5), which provides that children and youth have the right to attend and participate in court hearings, and subsection (b) states that their GAL or CFY must provide them with developmentally appropriate notice. The inquiry provision at subsection (c) ensures that the rights described in (a) and (b) are fully realized.

Because the right of children and youth to attend and participate in court proceedings reflects a substantial change to business-as-usual in some districts, albeit one that is now codified in state law, comment [1] includes the legislative purpose for this change and comment [2] identifies the national support for these procedures. Comments [3] and [4] identify best practices for implementing the procedures identified in Rule 4.4. This approach was informed by small workgroup consisting of representatives of all parties in dependency and neglect cases that studied other state examples, nationally recognized best practices, applicable law, and implementation considerations for courts. Like other provisions, the final proposed rule represents compromise on the part of the OCR and contains the minimum necessary procedures required to promote consistent participation of children and youth in their cases.

Right to Counsel

With H.B. 22-1038, the Colorado legislature changed the primary model of representation for older youth in dependency and neglect cases, requiring that each youth ages 12 and older have client-directed counsel. Children and youth's right to either a GAL or CFY, depending on age, is explicitly recognized in the Attorney of Record Rule, Rule 4.27, and subsection (c) describes the circumstances for the appointment of each. While these provisions are based in Colorado law, including them in the Proposed Juvenile Rules reinforces these important rights for children and youth and makes the parameters easily accessible to judges and practitioners.

Rule 4.35, the rule on filing and service, also recognizes the shift in party status and representation type for children and youth, providing that service on a party under 12 is made upon the child's GAL unless the child is represented by the CFY, in which case service is made upon the child's CFY. Like other parties to the proceedings, service for a youth over 12 is made upon their counsel, the CFY.

¹ The proposed discovery rule was fast-tracked and adopted by the Colorado Supreme Court as Rule 4.6 on May 16, 2024, effective July 1, 2024. See <https://www.coloradojudicial.gov/sites/default/files/2024-05/Rule%20Change%202024%2810%29.pdf>. The version which appears in the Proposed Juvenile Rules, Rule 4.9, is substantially the same as the recently adopted version.



Timely Court Proceedings

The length and depth of the Proposed Juvenile Rules, especially compared to the existing juvenile rules, exposes the reality that dependency and neglect cases have become significantly more complex since the original juvenile rules were adopted in 1997. Despite this increased complexity, children, youth and their families continue to need timely resolution to the issues that bring these cases to the attention of the court. Yet, parties to dependency and neglect cases also have important rights and interests that warrant due process. The Proposed Juvenile Rules attempt to strike a balance between these competing interests in a variety of ways, including:

- 1) The Purpose Rule at 4.1(b)(2) points to a need to avoid unnecessary delay as a reason to require a particularized approach to the Rules;
- 2) The Discovery Rule, Rule 4.9, states that it is “incumbent” that juvenile courts actively manage disclosures and discovery to “eliminate” delay, and the deadlines in the Discovery Rule are shorter than those found in the Colorado Rules of Civil Procedure; and
- 3) Other Rules expressing a need to consider potential delay include Rule 4.7(a) and (b) and 4.31(c) and (d).

The OCR believes that timely resolution of matters is important at all stages of the case, but particularly at the adjudication stage. Rule 4.20 reiterates the required timeframes for such a hearing as described in C.R.S. § 19-3-505. And Rule 4.21(b) should help address existing delays with reaching adjudication by clarifying when the right to a jury trial may be waived or lost.

Other Statutory Rights

In addition to the rights and interests described above, the Proposed Juvenile Rules reference other statutory rights that some children and youth have in dependency and neglect cases. Comment [2] of Rule 4.15 suggests that courts inquire with departments whether the department has fulfilled the statutory obligation to provide notice to a foster child or youth about their rights under the Foster Youth Bill of Rights and the Foster Youth Sibling Bill of Rights, when the child or youth is in foster care.

IV. ADOPTION OF THE PROPOSED JUVENILE RULES

Given the time, effort and compromises made by representatives of various stakeholder groups involved in creating the Proposed Juvenile Rules, the OCR asks the Colorado Supreme Court to adopt this rules package, including the provisions OCR has identified above as essential to protecting the unique interests of children and youth in dependency and neglect cases. To the extent that the Court is considering any amendments, we ask that the Court remember that the overriding purpose of the Children’s Code is to protect the welfare and safety of Colorado’s most vulnerable children and youth, and therefore, the procedural rules implementing the Code should also put children and youth’s interests front and center.



Sincerely,

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Office of the Child Representative