AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE COMMITTEE

Friday, June 6, 2025, 9 a.m.
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report

A. Minutes for the April 4, 2025 meeting. [pages 2–4]

B. Rule Change 2025(10) effective for cases filed on or after July 1, 2025. [pages 5–68]

III. Present/New Business

A. Anything?

IV. Old Business

A. Discovery and Disclosures Annual Review Subcommittee (update)

B. ICWA Annual Review Subcommittee (update)

1. HB25-1204 (Colo. ICWA) [pages 69-124]

C. Truancy Rules Subcommittee (update)

V. Future Meetings: August 1st; October 3rd; December 5th

VI. Adjourn

Colorado Supreme Court
Rules of Juvenile Procedure Committee
Meeting Minutes: April 4, 2025

I. Call to Order

A quorum being present, the Colorado Supreme Court Rules of Juvenile Procedure Committee was called to order by the Chair, Judge Craig R. Welling, at around 9:00 a.m. via videoconference on April 4, 2025.

The following members were present at the meeting: Judge Craig R. Welling, chair of the committee; David Ayraud; Jerin T. Damo; Traci Engdol-Fruhwirth; Magistrate Randall Lococo; Judge Pax L. Moultrie; Angela Rose; Z Saroyan; Lisa Shellenberger; Anna Ulrich; Pam Gordon Wakefield; and J.J. Wallace, non-voting member.

The following members were absent from the meeting: Judge Karen A. Ashby; Judge David Furman; Judge Priscilla J. Loew; Judge Ann Meinster; Professor Colene Robison; Judge Traci Slade; Abby Young; and non-voting members Justice Richard L. Gabriel, liaison justice; and Terri Morrison.

The following materials were used during the meeting:

1. 2.7.2025 C.R.J.P. Committee Draft Meeting Minutes
2. Public Comment on Proposed Changes to the D&N Rules
3. Truancy Rules Subcommittee Update email

II. Chair's Report

A. Approval of Minutes for February 7, 2025 Meeting

The minutes of the February 7, 2025 meeting were approved without amendment.

B. Membership Term Renewals

J.J. Wallace will send emails on Monday to members with expiring terms. The chair hopes that everyone will renew but understands if the press of other business does not allow for continuing with the committee's work.

III. Present/New Business

A. Review of Public Comment

The chair thanked Anna Ulrich for submitting such a thoughtful written comment to the supreme court. The comment provided a comprehensive review of the history of the committee's work and its process.

The chair asked committee members about feedback they had received and whether he should take the lack of comments as tacit approval of the proposed rules. A county attorney member related that the comments he received focused on discovery. He's received feedback that many county attorneys feel buried in discovery requests but are making good faith efforts to deal with the requests. He heard no other comments and analogized the new rules to buying clothes online. It's possible feedback will come after the rules are in place.

An OCR member indicated that she received only one comment about other rules that should have been included. The member invited the commentator to submit a written comment to the court, but no comment was submitted.

An ORPC member related that he had not heard much feedback and interpreted the lack of feedback as "quiet acquiescence." A trial RPC and members from other stakeholder groups who reached out to their colleagues, such as CASAs, private counsel, and judicial officers, have similarly heard nothing. A private counsel mentioned she submitted a discovery request to a department and had no problems with the request being met.

Judge Welling thanked the members for their comments. He said he would pass them along to the supreme court at the public hearing next week. He added that the proposed rules were a product of all stakeholders being at the table and participating in the spirit of compromise.

IV. Old Business

A. Disclosure and Discovery Annual Review Subcommittee

Z indicated the subcommittee will find meeting dates soon. Once the meeting is set, David Ayraud will recruit a county attorney or two from a different jurisdiction. Magistrate Lococo also offered to put the subcommittee in touch with the lead county attorney in his jurisdiction, who may be a helpful voice.

B. ICWA Annual Review Subcommittee

Judge Moultrie explained that the subcommittee met. Members of the subcommittee related that the primary feedback on the new rules seemed to be focused on the rules being a helpful resource/research tool. There also seemed to be an awareness that the

ICWA rules existed because a member had received several inquiries about where to find them.

Magistrate Lococo added that he had offered to do a presentation on ICWA's application in JD cases at judicial conference but had not heard back yet. Although ICWA would only apply in a tiny sliver of JD cases, when it applies, it can become an issue.

The subcommittee also discussed HB25-1204, which is a proposed law codifying federal ICWA and creating new state requirements. The chair asked those on the committee who were involved with the bill whether preemption would be an issue. Members replied that the bill expands ICWA, which ICWA allows, but the bill was drafted to avoid direct conflicts where preemption would be an issue.

Judge Moultrie indicated that the committee will next meet in mid-May, after the legislative session is over.

C. Truancy Rules Subcommittee

Abby Young was unable to attend today but sent an update via email.

V. Future Meetings

The next meeting is June 6, 2025. Additional meetings are scheduled for: August 1st, October 3rd, and December 5th.

VI. Adjourn

The committee meeting adjourned at around 10 a.m.

RULE CHANGE 2025(10)

THE COLORADO RULES OF JUVENILE PROCEDURE

Rules 1, 2, 2.1, 2.2, 2.3, 2.4, 4, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, 4.27, 4.28, 4.29, 4.30, 4.31, 4.32, 4.33, 4.34, and 4.35

Part One—Applicability

Rule 1. Applicability and Citation

(a) **Applicability.** These rules govern proceedings brought in the juvenile court under Title 19, ~~8B C.R.S. (1987 Supp.),~~ also hereinafter referred to as the Children's Code. ~~All statutory references herein are to the Children's Code as amended.~~

(b) Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19, ~~8B C.R.S. (1987 Supp.),~~ shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.

~~(b)~~**(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. ~~They shall be construed to secure simplicity in procedure and fairness in administration.~~

Rule 2.1. Attorney of Record

(a) An attorney shall 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 shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

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)~~19-2-514~~, C.R.S. The summons and petition shall be served upon the juvenile in the manner provided in § 19-2.5-501(8)~~19-2-514~~, C.R.S.
(2) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.
(3) If a juvenile is issued a promise to appear pursuant to § 19-2.5-303(5)~~19-2-507(5)~~, C.R.S., the promise to appear shall contain the notifications required by § 19-2.5-501(1)~~19-2-507(5)~~, 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.
~~(1) The summons served in dependency and neglect proceedings shall contain the notifications required by § 19-3-503, C.R.S. The summons and petition shall be served upon respondent(s) in the manner provided in § 19-3-503(7) and (8), C.R.S.~~
~~(2) When the court has acquired jurisdiction over the parties as provided in the Children's Code or pursuant to the Colorado Rules of Juvenile Procedure, subsequent pleadings and notice may be served by regular mail.~~
(c) - (h) [NO CHANGE]

~~COMMITTEE~~ COMMENTS

Under Rule 2.2, a single publication is sufficient. There is no need for four weeks of publication.

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.

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.

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

~~Rule 4. Petition Initiation, Form and Content~~

~~A petition concerning a child who is alleged to be dependent and neglected shall be initiated in accordance with Section 19-3-501, C.R.S., and shall be in the form set forth in Section 19-3-502, C.R.S. Said petition shall be filed within 14 days from the day a child is taken into custody, unless otherwise directed by the court.~~

~~Rule 4.1. Responsive Pleadings and Motions~~

~~**(a)** No written responsive pleadings are required. Jurisdictional matters of age and residence of the child which shall be deemed admitted unless specifically denied.~~
~~**(b)** Any defense or objection which is capable of determination without trial of the general issues may be raised by motion.~~
~~**(c)** Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, shall be raised only by motion filed prior to the entry of an admission or denial of the allegations of the petition. Failure to present any such defense or objection constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction shall be noticed by the court at any time during the proceeding.~~
~~**(d)** All motions shall be in writing and signed by the moving party or counsel, except those made orally by leave of court.~~

~~Rule 4.2. Advisement--Dependency and Neglect~~

~~**(a)** At the first appearance before the court, the respondent(s) shall be fully advised by the court as to all rights and the possible consequences of a finding that a child is dependent or neglected. The court shall make certain that the respondent(s) understand the following:~~
~~(1) The nature of the allegations contained in the petition;~~
~~(2) As a party to the proceeding, the right to counsel;~~
~~(3) That if the respondent(s) is a parent, guardian, or legal custodian, and is indigent, the respondent may be assigned counsel as provided by law;~~
~~(4) The right to a trial by jury;~~
~~(5) That any admission to the petition must be voluntary;~~
~~(6) The general dispositional alternatives available to the court if the petition is sustained, as set forth in Section 19-3-508, C.R.S.;~~

~~(7) That termination of the parent-child legal relationship is a possible remedy which is available if the petition is sustained;~~
~~(8) That if a motion to terminate the parent-child legal relationship is filed, the court will set a separate hearing at which the allegations of the motion must be proven by clear and convincing evidence;~~
~~(9) That termination of the parent-child legal relationship means that the subject child would be available for adoption;~~
~~(10) That any party has the right to appeal any final decision made by the court; and~~
~~(11) That if the petition is admitted, the court is not bound by any promises or representations made by anyone about dispositional alternatives selected by the court.~~
~~**(b)** The respondent(s), after being advised, shall admit or deny the allegations of the petition.~~
~~**(c)** If a respondent(s) admits the allegations in the petition, the court may accept the admission after making the following findings:~~
~~(1) That the respondent(s) understand his or her rights, the allegations contained in the petition, and the effect of the admission;~~
~~(2) That the admission is voluntary.~~
~~**(d)** Notwithstanding any provision of this Rule to the contrary, the court may advise a non-appearing respondent(s) pursuant to this Rule in writing and may accept a written admission to the petition if the respondent has affirmed under oath that the respondent(s) understands the advisement and the consequences of the admission, and if, based upon such sworn statement, the court is able to make the findings set forth in part (c) of this Rule.~~

~~Rule 4.3. Jury Trial~~

~~**(a)** At the time the allegations of a petition are denied, a respondent, petitioner, or a child through their guardian ad litem or counsel for youth may demand or the court, on its own motion may order, a jury of not more than six. Unless a jury is demanded or ordered, it shall be deemed waived.~~
~~**(b)** Examination, selection, and challenges for jurors in such cases shall be as provided by C.R.C.P. 47, except that the following three groups shall each have three peremptory challenges: the petitioner; all respondents; and all the children (through their guardian ad litem or counsel for youth). No more than nine peremptory challenges are authorized.~~

~~Rule 4.4. Certification of Custody Matters to Juvenile Court~~

~~**(a)** Any party to a dependency or neglect action who becomes aware of any other proceeding in which the custody of a subject child is at issue shall file in such other proceedings a notice that an action is pending in juvenile court together with a request that such other court certify the issue of legal custody to the juvenile court pursuant to Section 19-1-104(4) and (5), C.R.S.~~
~~**(b)** When the custody issue is certified to the juvenile court, a copy of the order certifying the issue to juvenile court shall be filed in the dependency or neglect case.~~

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

Rule 4.5. Contempt in Dependency and Neglect Cases

The citation, copy of the motion, affidavit, and order in contempt proceedings pursuant to C.R.C.P. 107, shall be served personally upon any respondent or party to the dependency and neglect action, at least 14 days before the time designated for the person to appear before the court. Proceedings in contempt shall be conducted pursuant to C.R.C.P. 107, except that the time for service under subsection (c) shall be not less than 14 days before the time designated for the person to appear.

COMMITTEE COMMENT

The old rule read twenty days; however, given the new time constraints imposed by other statutes and policies in dependency and neglect cases, contempt proceedings should be dealt with accordingly. The committee believes that this will not infringe upon the respondents' ability to respond. Respondents' counsel can always request more time in exceptional cases.

Rule 4.6. Disclosure and Discovery in Dependency and Neglect Cases

(a) Purposes of This Rule.

(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 to discovery, which is reflected in this rule.

(3) 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 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 subsection (a) 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 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, section 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 on Written Request.
(1) *By Petitioner.* At any time and upon written request, 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. Written notice of any of the following items that are not disclosed and a brief explanation of the reason for withholding them must be given by the petitioner to the requesting respondent, child through their guardian ad litem, or youth through their counsel. 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 subsection (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 protection 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 shall be propounded at least 35 days before a contested hearing;

(B) all oral depositions and depositions by written examination shall be completed at least 21 days before a contested 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 shall 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) *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:
(A) that the disclosure or discovery not be had;
(B) 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;
(C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
(D) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
(E) that discovery be conducted with no one present except persons designated by the court; and
(F) that a deposition, after being sealed, be opened only by order of the court.
(10) *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 juvenile 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) 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 subsection (a).

~~**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 juvenile 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.~~

Subpart A: Scope, Purpose & Definitions

Rule 4.1. Procedure Governed, Scope and Purpose of Rules

(a) Scope. These rules in part 4 apply to dependency and neglect cases brought 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.

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 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.

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 as defined in 25

U.S.C. § 1903(4), the Indian custodian of the child and the Indian child's tribe has a right to intervene at any point in the proceeding.

COMMENTS

This rule is intended to operate in conjunction with C.R.J.P. 4.3 and the Colorado Rules of ICWA Procedures.

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

Rule 4.10. Search Warrants for the Protection of Children or Youth

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.

COMMENTS

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.

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.

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

[1] 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.

[2] The court should consider inquiring of the county department whether it has provided notice to a foster child or youth regarding their rights under the Foster Youth Bill of Rights and Foster Youth Siblings Bill of Rights, sections 19-7-104 and 19-7-203, C.R.S., where appropriate.

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.

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.

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

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.

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.

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.

(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, 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 respondent parent has lost the right to a jury trial and convert the trial to a court trial if:

(1) a respondent parent entitled to demand a trial by jury fails to make a timely jury demand, either personally or through counsel, after being advised pursuant to C.R.J.P. 4.15;

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

(3) a respondent parent 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 respondent parent's failure to appear at the pretrial readiness conference will result in loss of the right to trial by jury; or

(4) a respondent parent 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, joint placement of siblings, 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.

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.

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.

(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.

(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 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.

(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.

(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.;

(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) **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.

(d) **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.

(e) **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.

(f) **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

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) **Responses.** Written responses to any 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 14 days of the filing of the motion or as otherwise ordered by the court.

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

(c) **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.

(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.

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

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.

(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.

THE COLORADO RULES OF JUVENILE PROCEDURE

Rules 1, 2, 2.1, 2.2, 2.3, 2.4, 4, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, 4.27, 4.28, 4.29, 4.30, 4.31, 4.32, 4.33, 4.34, and 4.35

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.

(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.

Rule 2.1. Attorney of Record

(a) An attorney shall 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 shall notify an attorney appointed by the court. An order of appointment shall appear in the file.

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) - (h) [NO CHANGE]

COMMENTS

Under Rule 2.2, a single publication is sufficient. There is no need for four weeks of publication.

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.

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

Rule 4.1. Procedure Governed, Scope and Purpose of Rules

(a) Scope. These rules in part 4 apply to dependency and neglect cases brought 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.

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 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.

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 as defined in 25

U.S.C. § 1903(4), the Indian custodian of the child and the Indian child's tribe has a right to intervene at any point in the proceeding.

COMMENTS

This rule is intended to operate in conjunction with C.R.J.P. 4.3 and the Colorado Rules of ICWA Procedures.

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

Rule 4.10. Search Warrants for the Protection of Children or Youth

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.

COMMENTS

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.

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.

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

[1] 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.

[2] The court should consider inquiring of the county department whether it has provided notice to a foster child or youth regarding their rights under the Foster Youth Bill of Rights and Foster Youth Siblings Bill of Rights, sections 19-7-104 and 19-7-203, C.R.S., where appropriate.

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.

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.

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

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.

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.

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.

(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, 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 respondent parent has lost the right to a jury trial and convert the trial to a court trial if:

(1) a respondent parent entitled to demand a trial by jury fails to make a timely jury demand, either personally or through counsel, after being advised pursuant to C.R.J.P. 4.15;

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

(3) a respondent parent 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 respondent parent's failure to appear at the pretrial readiness conference will result in loss of the right to trial by jury; or

(4) a respondent parent 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, joint placement of siblings, 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.

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.

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.

(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.

(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 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.

(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.

(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.;

(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) 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.

(d) 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.

(e) 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.

(f) 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

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) Responses. Written responses to any 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 14 days of the filing of the motion or as otherwise ordered by the court.

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

(c) 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.

(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.

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

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.

(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.

Amended and Adopted by the Court, En Banc, April 21, 2025, effective for cases filed on or after July 1, 2025.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

HOUSE BILL 25-1204

BY REPRESENTATIVE(S) Duran and Joseph, Bacon, Bird, Boesenecker, Brown, Camacho, Espenoza, Garcia, Gilchrist, Hamrick, Jackson, Lieder, Lindsay, Lindstedt, Lukens, Mabrey, Martinez, McCormick, Phillips, Ricks, Rutinel, Rydin, Sirota, Stewart K., Story, Titone, Valdez, Velasco, Willford, Woodrow, McCluskie, Clifford, English, Froelich;
also SENATOR(S) Danielson, Amabile, Bridges, Carson, Cutter, Daugherty, Exum, Frizell, Gonzales J., Jodeh, Kipp, Lundeen, Marchman, Michaelson Jenet, Mullica, Roberts, Simpson, Snyder, Sullivan, Wallace, Weissman, Winter F., Coleman.

CONCERNING THE CODIFICATION OF THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" AS THE "COLORADO INDIAN CHILD WELFARE ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal** 19-1-126 as follows:

19-1-126. Compliance with the federal "Indian Child Welfare Act of 1978". ~~(1) In each case filed pursuant to this title 19 that constitutes a child custody proceeding, as defined in the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and therefore to which the terms~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., apply, the court and each party to the proceeding shall comply with the federal implementing regulations, and any modifications thereof, of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., located in 25 CFR 23, which outline the minimum federal standards governing the implementation of the "Indian Child Welfare Act of 1978" to ensure the statute is applied in Colorado consistent with the act's express language, congress's intent in enacting the statute, and to promote the stability and security of Indian children, tribes, and families. In each child-custody proceeding filed pursuant to this title 19 to which the terms of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., apply:~~

~~(a) (I) The court shall make inquiries to determine whether the child who is the subject of the proceeding is an Indian child, and, if so, shall determine the identity of the Indian child's tribe. In determining the Indian child's tribe:~~

~~(A) The court shall ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is to be made at the commencement of the proceeding, and all responses must be on the record. The court shall instruct the participants to inform the court if any participant subsequently receives information that provides reason to know the child is an Indian child.~~

~~(B) Any party to the proceeding shall disclose any information indicating that the child is an Indian child or provide an identification card indicating membership in a tribe to the petitioning and filing parties and the court in a timely manner. The court shall order the party to provide the information no later than seven business days after the date of the hearing or prior to the next hearing on the matter, whichever occurs first. The information should be filed with the court and provided to the county department of human or social services and each party no later than seven business days after the date of the hearing.~~

~~(II) The court, upon conducting the inquiry described in subsection (1)(a)(I) of this section, has reason to know that a child is an Indian child if:~~

~~(A) Any participant in the child-custody proceeding, officer of the court involved in the child-custody proceeding, Indian tribe, Indian organization, or agency informs the court that the child is an Indian child;~~

~~(B) Any participant in the child-custody proceeding, officer of the court involved in the child-custody proceeding, Indian tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;~~

~~(C) The child who is the subject of the child-custody proceeding gives the court reason to know he or she is an Indian child;~~

~~(D) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska native village;~~

~~(E) The court is informed that the child is or has been a ward of a tribal court, as defined in 25 U.S.C. sec. 1903; or~~

~~(F) The court is informed that the child or the child's parent possesses an identification card indicating membership in an Indian tribe.~~

~~(b) If the court knows or has reason to know, as defined in subsection (1)(a)(II) of this section, that the child who is the subject of the proceeding is an Indian child, the petitioning or filing party shall send notice by registered or certified mail, return receipt requested, to the parent or parents, the Indian custodian or Indian custodians of the child and to the tribal agent of the Indian child's tribe as designated in 25 CFR 23, or, if there is no designated tribal agent, the petitioning or filing party shall contact the tribe to be directed to the appropriate office or individual. In providing notice, the court and each party shall comply with 25 CFR 23.111.~~

~~(c) The petitioning or filing party shall disclose in the complaint, petition, or other commencing pleading filed with the court that the child who is the subject of the proceeding is an Indian child and the identity of the Indian child's tribe or what efforts the petitioning or filing party has made in determining whether the child is an Indian child. If the child who is the subject of the proceeding is determined to be an Indian child, the petitioning or filing party shall further identify what reasonable efforts have~~

~~been made to send notice to the persons identified in subsection (1)(b) of this section. The postal receipts indicating that notice was properly sent by the petitioning or filing party to the parent or Indian custodian of the Indian child and to the Indian child's tribe must be attached to the complaint, petition, or other commencing pleading filed with the court; except that, if notification has not been perfected at the time the initial complaint, petition, or other commencing pleading is filed with the court or if the postal receipts have not been received back from the post office, the petitioning or filing party shall file the postal receipts with the court. Any responses sent by the tribal agents to the petitioning or filing party, the county department of human or social services, or the court must be distributed to the parties and deposited with the court.~~

~~(2) If there is reason to know the child is an Indian child but the court does not have sufficient evidence to determine that the child is or is not an Indian child, the court shall:~~

~~(a) Confirm, by way of a report, declaration, or testimony included in the record, that the petitioning or filing party used due diligence to identify and work with all of the tribes of which there is reason to know the child may be a member, or eligible for membership, to verify whether the child is in fact a member, or a biological parent is a member and the child is eligible for membership; and~~

~~(b) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an Indian child.~~

~~(3) If the court receives information that the child may have Indian heritage but does not have sufficient information to determine that there is reason to know that the child is an Indian child pursuant to subsection (1)(a)(II) of this section, the court shall direct the petitioning or filing party to exercise due diligence in gathering additional information that would assist the court in determining whether there is reason to know that the child is an Indian child. The court shall direct the petitioning or filing party to make a record of the effort taken to determine whether or not there is reason to know that the child is an Indian child.~~

~~(4) The requirements of the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., in effect as of February 9, 2003, and the~~

~~related regulations located at 25 CFR 23, in effect as of February 9, 2023, are incorporated into and adopted as state law.~~

SECTION 2. In Colorado Revised Statutes, **add** article 1.2 to title 19 as follows:

ARTICLE 1.2
Colorado Indian Child Welfare Act

19-1.2-101. Short title. THE SHORT TITLE OF THIS ARTICLE 1.2 IS THE "COLORADO INDIAN CHILD WELFARE ACT".

19-1.2-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) HISTORICALLY, AN ALARMINGLY HIGH PERCENTAGE OF INDIAN FAMILIES WERE DISRUPTED BY THE REMOVAL, OFTEN UNWARRANTED, OF THEIR CHILDREN BY NON-TRIBAL PUBLIC AND PRIVATE AGENCIES, AND THAT A DISTURBINGLY HIGH PERCENTAGE OF THOSE INDIAN CHILDREN WERE PLACED IN NON-INDIAN FOSTER AND ADOPTIVE HOMES AND INSTITUTIONS;

(b) AS A RESULT OF THESE ACTIONS, THOUSANDS OF INDIAN FAMILIES, TRIBAL NATIONS, AND ENTIRE CULTURES WERE DEVASTATED;

(c) THE STATES, IN EXERCISING THEIR RECOGNIZED JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS THROUGH ADMINISTRATIVE AND JUDICIAL BODIES, HISTORICALLY FAILED TO RECOGNIZE THE ESSENTIAL TRIBAL RELATIONS OF INDIAN PEOPLE AND THE CULTURAL AND SOCIAL STANDARDS PREVAILING IN INDIAN COMMUNITIES AND CULTURES;

(d) IN RESPONSE TO THESE CIRCUMSTANCES, THE UNITED STATES CONGRESS PASSED THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978", 25 U.S.C. SEC. 1901 ET SEQ., KNOWN AS "ICWA", TO PROTECT THE BEST INTERESTS OF INDIAN CHILDREN AND TO PROMOTE THE STABILITY AND SECURITY OF INDIAN TRIBES AND FAMILIES BY ESTABLISHING MINIMUM FEDERAL STANDARDS FOR THE REMOVAL OF INDIAN CHILDREN FROM THEIR FAMILIES AND FOR THE PLACEMENT OF THOSE INDIAN CHILDREN IN FOSTER OR ADOPTIVE HOMES THAT WOULD REFLECT THE UNIQUE VALUES OF INDIAN CULTURE. THE ACT PROVIDES ASSISTANCE TO INDIAN TRIBES IN THE OPERATION OF CHILD AND FAMILY SERVICE PROGRAMS.

(e) ICWA HAS BEEN THE SUBJECT OF TARGETED ATTACKS IN THE FEDERAL COURTS, INCLUDING MOST RECENTLY IN *HAALAND V. BRACKEEN*, 599 U.S. 255 (2023), IN WHICH THE UNITED STATES SUPREME COURT UPHELD ICWA IN ITS ENTIRETY. EVEN WITH *HAALAND V. BRACKEEN* UPHOLDING ICWA, THE LAW REMAINS SUBJECT TO CHALLENGE.

(f) THE COLORADO GENERAL ASSEMBLY CAN COMBAT CHALLENGES TO ICWA BY UPHOLDING ICWA'S RECOGNIZED "GOLD STANDARD" IN CHILD WELFARE PROTECTION;

(g) AS OF 2025, SEVENTEEN STATES HAVE PASSED COMPREHENSIVE STATE ICWA LAWS WHILE COLORADO HAS ADOPTED PARTS OF THE FEDERAL LAW AND, MOST RECENTLY IN SENATE BILL 23-211, ADOPTED AND INCORPORATED ICWA AND ITS REGULATIONS BY REFERENCE AS COLORADO LAW;

(h) A CRITICAL ELEMENT OF ICWA IS THE REQUIREMENT TO NOTIFY AN INDIAN CHILD'S TRIBE WHEN A STATE COURT PROCEEDING IS COMMENCED THAT COULD RESULT IN THE PLACEMENT OF THE INDIAN CHILD OUT OF THE INDIAN CHILD'S HOME. THE PURPOSE OF THE NOTICE IS TO PROVIDE THE INDIAN CHILD'S TRIBE THE OPPORTUNITY TO TRANSFER THE CASE TO A TRIBAL COURT OR OTHERWISE PARTICIPATE IN THE STATE COURT PROCEEDING.

(i) TO ACHIEVE THESE GOALS, IT IS CRUCIAL TO DETERMINE, CONSISTENTLY AND FAITHFULLY, WHETHER A CHILD WHO IS THE SUBJECT OF THESE TYPES OF STATE COURT PROCEEDINGS IS AN INDIAN CHILD AND TO ENSURE THAT, IF SO, APPROPRIATE AND TIMELY NOTICE IS PROVIDED, PARTICULARLY NOTICE TO THE RELEVANT TRIBES WHEN THE COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES RECEIVES INFORMATION THAT A CHILD MAY BE AN INDIAN CHILD;

(j) THE STATE OF COLORADO HAS PREVIOUSLY RECOGNIZED THAT INDIAN TRIBES HAVE A COMPELLING INTEREST IN PROMOTING AND MAINTAINING THEIR INTEGRITY AND CULTURE BY ENTERING INTO FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" AGREEMENTS WITH THE SOUTHERN UTE INDIAN TRIBE AND THE UTE MOUNTAIN UTE INDIAN TRIBE. THE AGREEMENTS, AMONG OTHER THINGS, PLACE STRINGENT NOTICE REQUIREMENTS ON THE STATE IN PROCEEDINGS INVOLVING INDIAN CHILDREN AND PROVIDE FOR THE DELAY OF PROCEEDINGS UNTIL THE

REQUIRED NOTICE HAS BEEN PROVIDED TO THE TRIBE IN QUESTION. THE STATE OF COLORADO FURTHER RECOGNIZES THAT THE DEPARTMENT OF HUMAN SERVICES MAY ALSO ENTER INTO A TRIBAL-STATE AGREEMENT WITH TRIBES OUTSIDE OF COLORADO THAT HAVE SIGNIFICANT NUMBERS OF MEMBER INDIAN CHILDREN OR MEMBERSHIP-ELIGIBLE INDIAN CHILDREN RESIDING IN COLORADO.

(k) COLORADO IS COMMITTED TO THE CONSISTENT APPLICATION OF AND COMPLIANCE WITH THE FEDERAL ICWA THROUGHOUT THE STATE TO ENSURE THAT PROPER NOTICE IS PROVIDED AND PROCEDURES ARE FOLLOWED AS SPECIFIED BY ICWA WHEN STATE COURT ACTIONS INVOLVE INDIAN CHILDREN; AND

(l) NOTHING IS MORE VITAL TO THE CONTINUED EXISTENCE AND INTEGRITY OF INDIAN TRIBES THAN THEIR CHILDREN.

(2) THEREFORE, THE GENERAL ASSEMBLY DETERMINES AND DECLARES THAT:

(a) IT IS APPROPRIATE AND IN THE BEST INTERESTS OF THE INDIAN FAMILIES WHO ARE INTENDED TO BE PROTECTED BY THE TERMS OF THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" AND THE INDIAN CHILDREN REPRESENTED THEREBY THAT:

(I) THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" AGREEMENTS ENTERED INTO BETWEEN THE STATE OF COLORADO AND THE SOUTHERN UTE INDIAN TRIBE AND THE UTE MOUNTAIN UTE INDIAN TRIBE ARE REAFFIRMED; AND

(II) A COMPREHENSIVE COLORADO "INDIAN CHILD WELFARE ACT" IS ENACTED TO ENSURE CONSISTENT AND RELIABLE COMPLIANCE WITH THE FEDERAL ICWA FOR THE PROTECTION OF INDIAN CHILDREN WITHIN COLORADO AND TO ENSURE THAT INDIAN CHILDREN IN THIS STATE ARE PROTECTED AS STATED SHOULD THE FEDERAL LAW BE APPEALED, MODIFIED, OR OTHERWISE ANNULLED;

(b) THE STATE OF COLORADO RECOGNIZES ALL FEDERALLY RECOGNIZED INDIAN TRIBES AS HAVING THE INHERENT AUTHORITY TO DETERMINE THEIR OWN JURISDICTION FOR ANY AND ALL INDIAN CHILD CUSTODY OR CHILD PLACEMENT PROCEEDINGS, REGARDLESS OF WHETHER

THE TRIBE'S MEMBERS ARE ON OR OFF THE RESERVATION AND REGARDLESS OF THE PROCEDURAL POSTURE OF THE PROCEEDING;

(c) THE STATE OF COLORADO HAS LONG RECOGNIZED THE IMPORTANCE OF INDIAN CHILDREN TO THEIR TRIBES, NOT ONLY AS MEMBERS OF TRIBAL FAMILIES AND COMMUNITIES BUT ALSO AS THE TRIBE'S GREATEST RESOURCE AS FUTURE MEMBERS AND LEADERS OF THE TRIBE. THE VITALITY OF INDIAN CHILDREN IN COLORADO IS ESSENTIAL TO THE HEALTH AND WELFARE OF BOTH THE STATE AND TRIBES, AND IS ESSENTIAL TO THE FUTURE WELFARE AND CONTINUED EXISTENCE OF THE TRIBES.

(d) IT IS THE POLICY OF THE STATE TO COOPERATE FULLY WITH INDIAN TRIBES AND TRIBAL CITIZENS TO ENSURE THAT THE INTENT AND PROVISIONS OF THE FEDERAL ICWA ARE ENFORCED; AND

(e) ADVANCING ICWA IS CONSISTENT WITH THE "COLORADO CHILDREN'S CODE" AND WITH ARTICLE II OF THE STATE CONSTITUTION.

(3) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT THE PURPOSE OF THIS ARTICLE 1.2 IS TO CODIFY THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" INTO STATE LAW AND TO PROVIDE ADDITIONAL PROTECTIONS FOR INDIAN CHILDREN PURSUANT TO STATE LAW.

19-1.2-103. Definitions. AS USED IN THIS ARTICLE 1.2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ACTIVE EFFORTS" MEANS EFFORTS THAT ARE AFFIRMATIVE, ACTIVE, THOROUGH, TIMELY, AND INTENDED TO MAINTAIN OR REUNITE AN INDIAN CHILD WITH THE INDIAN CHILD'S FAMILY BY PROVIDING REMEDIAL SERVICES AND REHABILITATIVE PROGRAMS. "ACTIVE EFFORTS" REQUIRE MORE THAN A REFERRAL TO A SERVICE AND MUST BE CONDUCTED IN PARTNERSHIP WITH THE INDIAN CHILD, THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN, EXTENDED FAMILY MEMBERS, AND THE TRIBE.

(2) (a) "CHILD CUSTODY PROCEEDING" MEANS A CHILD CUSTODY PROCEEDING WITHIN THE COURT'S JURISDICTION AND INCLUDES:

(I) FOSTER CARE PLACEMENTS, INCLUDING ANY ACTION REMOVING AN INDIAN CHILD FROM THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN FOR TEMPORARY PLACEMENT IN A FOSTER HOME OR INSTITUTION, OR THE

HOME OF A GUARDIAN OR CONSERVATOR WHEN THE INDIAN PARENT OR INDIAN CUSTODIAN CANNOT HAVE THE INDIAN CHILD RETURNED UPON DEMAND BUT PARENTAL RIGHTS HAVE NOT BEEN TERMINATED, INCLUDING, BUT NOT LIMITED TO, A HEARING HELD PURSUANT TO SECTION 19-3-405, 19-3-507, 19-3-508, OR 19-3-702;

(II) TERMINATION OF PARENTAL RIGHTS, INCLUDING ANY ACTION RESULTING IN THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP;

(III) PRE-ADOPTIVE PLACEMENT, INCLUDING THE TEMPORARY PLACEMENT OF AN INDIAN CHILD IN A FOSTER HOME OR INSTITUTION AFTER THE TERMINATION OF PARENTAL RIGHTS BUT PRIOR TO OR IN LIEU OF ADOPTIVE PLACEMENT;

(IV) ADOPTIVE PLACEMENT, INCLUDING THE PERMANENT PLACEMENT OF AN INDIAN CHILD FOR ADOPTION AND ANY ACTION RESULTING IN A FINAL DECREE OF ADOPTION;

(V) A PARENTAGE DETERMINATION; AND

(VI) GUARDIANSHIP OR ALLOCATION OF PARENTAL RESPONSIBILITIES TO A NONPARENT, INCLUDING AN ACTION TAKEN IN A PROBATE OR DOMESTIC RELATIONS CASE REMOVING AN INDIAN CHILD FROM THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN FOR TEMPORARY PLACEMENT IN THE HOME OF A GUARDIAN, CONSERVATOR, OR NONPARENT WHEN THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN CANNOT HAVE THE INDIAN CHILD RETURNED UPON DEMAND BUT PARENTAL RIGHTS HAVE NOT BEEN TERMINATED.

(b) AN ACTION THAT MAY CULMINATE IN ONE OF THE OUTCOMES DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION IS A SEPARATE CHILD CUSTODY PROCEEDING FROM AN ACTION THAT MAY CULMINATE IN A DIFFERENT ONE OF THE OUTCOMES. THERE MAY BE SEVERAL CHILD CUSTODY PROCEEDINGS INVOLVING AN INDIAN CHILD, AND WITHIN EACH CHILD CUSTODY PROCEEDING, THERE MAY BE SEVERAL SEPARATE HEARINGS.

(c) "CHILD CUSTODY PROCEEDING" DOES NOT INCLUDE:

(I) A PROCEEDING FOR THE CUSTODY OR SUPPORT OF, OR PARENTING TIME WITH, AN INDIAN CHILD THAT IS SOLELY BETWEEN TWO PARENTS;

(II) AN EMERGENCY PROCEEDING AS DESCRIBED IN SECTION 19-1.2-110; OR

(III) A DELINQUENCY PROCEEDING OTHER THAN THOSE BASED SOLELY ON A STATUS OFFENSE.

(3) "COURT" MEANS A DISTRICT COURT, JUVENILE COURT, OR PROBATE COURT THAT IS PRESIDING OVER A CHILD CUSTODY PROCEEDING.

(4) "CUSTODY" OR "CONTINUED CUSTODY" MEANS HAVING LEGAL OR PHYSICAL CUSTODY, OR BOTH, OF AN INDIAN CHILD PURSUANT TO APPLICABLE TRIBAL LAW, TRIBAL CUSTOM, OR STATE LAW. AN INDIVIDUAL HAS CUSTODY OF AN INDIAN CHILD IF THE INDIVIDUAL IS THE INDIAN CHILD'S PARENT, IF THE INDIVIDUAL HAS PHYSICAL CUSTODY THROUGH AN ARRANGEMENT WITH THE INDIAN CHILD'S PARENT OUTSIDE OF THE INVOLVEMENT OF A CHILD WELFARE OR CHILD PLACEMENT AGENCY, OR IF THE INDIVIDUAL HAS LEGAL CUSTODY OF THE INDIAN CHILD PURSUANT TO APPLICABLE TRIBAL LAW, TRIBAL CUSTOM, OR STATE LAW.

(5) (a) "DOMICILE" MEANS THE PLACE AN INDIVIDUAL REGARDS AS HOME, WHERE THE INDIVIDUAL INTENDS TO REMAIN, OR TO WHICH, IF ABSENT, THE INDIVIDUAL INTENDS TO RETURN.

(b) AN INDIAN CHILD'S DOMICILE, IN ORDER OF PRIORITY, IS THE DOMICILE OF:

(I) THE INDIAN CHILD'S PARENTS OR, IF THE INDIAN CHILD'S PARENTS DO NOT HAVE THE SAME DOMICILE, THE INDIAN CHILD'S PARENT WHO HAS PHYSICAL CUSTODY OF THE INDIAN CHILD;

(II) THE INDIAN CHILD'S INDIAN CUSTODIAN; OR

(III) THE INDIAN CHILD'S GUARDIAN.

(6) "DUE DILIGENCE" MEANS THE EARNEST ENDEAVOR OF THE COURT AND THE PETITIONING OR FILING PARTY TO INVESTIGATE THE BASIS FOR A PARTY'S OR OTHER INDIVIDUAL'S ASSERTION THAT A CHILD MAY BE AN INDIAN CHILD, AS DESCRIBED IN SECTION 19-1.2-107.

(7) "EMERGENCY PROCEEDING" MEANS ANY COURT ACTION THAT

INVOLVES THE EMERGENCY REMOVAL OR EMERGENCY PLACEMENT OF AN INDIAN CHILD, INCLUDING REMOVAL PURSUANT TO SECTION 19-1.2-110, 19-1.2-123, 19-3-405, 14-10-129 (4), OR 15-14-204 (5) WITH OR WITHOUT A PROTECTIVE CUSTODY ORDER, OR A TEMPORARY SHELTER CARE PROCEEDING PURSUANT TO SECTION 19-3-401 OR 19-3-403.

(8) (a) "EXTENDED FAMILY MEMBER" HAS THE SAME MEANING AS GIVEN IN THE TRIBAL LAW OR TRIBAL CUSTOM OF THE INDIAN CHILD'S TRIBE.

(b) IF THE MEANING OF "EXTENDED FAMILY MEMBER" CANNOT BE DETERMINED PURSUANT TO SUBSECTION (8)(a) OF THIS SECTION, "EXTENDED FAMILY MEMBER" MEANS AN INDIVIDUAL WHO HAS ATTAINED EIGHTEEN YEARS OF AGE AND WHO IS THE INDIAN CHILD'S GRANDPARENT, AUNT, UNCLE, BROTHER, SISTER, BROTHER-IN-LAW, SISTER-IN-LAW, NIECE, NEPHEW, FIRST OR SECOND COUSIN, GODPARENT, STEPPARENT, OR STEPGRANDPARENT, OR AS DETERMINED BY THE INDIAN CHILD'S TRIBE MEMBER. EVEN FOLLOWING TERMINATION OF A MARRIAGE, A GODPARENT, STEPPARENT, OR STEPGRANDPARENT IS CONSIDERED AN "EXTENDED FAMILY MEMBER".

(9) "INDIAN" MEANS AN INDIVIDUAL WHO IS A MEMBER OF AN INDIAN TRIBE OR WHO IS AN ALASKA NATIVE AND A MEMBER OF A REGIONAL CORPORATION, AS DEFINED IN THE "ALASKA NATIVE CLAIMS SETTLEMENT ACT", 43 U.S.C. SEC. 1606.

(10) "INDIAN CHILD" MEANS AN UNMARRIED INDIVIDUAL WHO HAS NOT ATTAINED EIGHTEEN YEARS OF AGE AND:

(a) IS A MEMBER OR CITIZEN OF AN INDIAN TRIBE; OR

(b) IS ELIGIBLE FOR MEMBERSHIP OR CITIZENSHIP IN AN INDIAN TRIBE AS DETERMINED BY THAT INDIAN TRIBE IN WRITING OR ORALLY ON THE RECORD AND IS THE BIOLOGICAL CHILD OF A MEMBER OF AN INDIAN TRIBE.

(11) "INDIAN CHILD WELFARE ACT OF 1978" OR "ICWA" MEANS THE FEDERAL LAW FOUND AT 25 U.S.C. SEC. 1901 ET SEQ. AND ITS IMPLEMENTING REGULATIONS.

(12) "INDIAN CUSTODIAN" MEANS AN INDIAN, OTHER THAN THE INDIAN CHILD'S PARENT, WHO HAS BEEN GRANTED LEGAL CUSTODY OR GUARDIANSHIP OF THE INDIAN CHILD PURSUANT TO TRIBAL LAW, TRIBAL

CUSTOM, OR STATE LAW, OR TO WHOM TEMPORARY PHYSICAL CARE, CUSTODY, AND CONTROL HAS BEEN TRANSFERRED BY THE INDIAN CHILD'S PARENT OUTSIDE THE INVOLVEMENT OF A CHILD WELFARE OR CHILD PLACEMENT AGENCY.

(13) "INDIAN ORGANIZATION" MEANS A GROUP, ASSOCIATION, PARTNERSHIP, CORPORATION, OR OTHER LEGAL ENTITY OWNED OR CONTROLLED BY INDIANS OR WITH A MAJORITY OF INDIAN MEMBERS.

(14) "INDIAN TRIBE" OR "TRIBE" MEANS AN INDIAN TRIBE, CLAN, BAND, NATION, OR OTHER ORGANIZED GROUP OR COMMUNITY OF INDIANS FEDERALLY RECOGNIZED AS ELIGIBLE FOR THE SERVICES PROVIDED TO INDIANS BY THE UNITED STATES SECRETARY OF THE INTERIOR BECAUSE OF THEIR STATUS AS INDIANS, INCLUDING ANY ALASKA NATIVE VILLAGE AS DEFINED IN THE FEDERAL "ALASKA NATIVE CLAIMS SETTLEMENT ACT", 43 U.S.C. SEC. 1602 (c).

(15) "MEMBER" OR "MEMBERSHIP" MEANS A DETERMINATION BY AN INDIAN TRIBE THROUGH ITS TRIBAL LAW OR TRIBAL CUSTOM THAT AN INDIVIDUAL IS A MEMBER OR CITIZEN OF THAT INDIAN TRIBE.

(16) "PARENT" MEANS:

(a) A BIOLOGICAL PARENT OF AN INDIAN CHILD, EXCEPT FOR AN UNWED FATHER WHOSE PARENTAGE HAS NOT BEEN ACKNOWLEDGED OR ESTABLISHED PURSUANT TO SECTION 19-1.2-105, THE "UNIFORM PARENTAGE ACT", ARTICLE 4 OF THIS TITLE 19, OR TRIBAL LAW;

(b) AN INDIVIDUAL WHO HAS LAWFULLY ADOPTED AN INDIAN CHILD, INCLUDING AN ADOPTION MADE PURSUANT TO TRIBAL LAW OR TRIBAL CUSTOM; OR

(c) A PARENT WHOSE PARENTAGE HAS BEEN ACKNOWLEDGED OR ESTABLISHED PURSUANT TO SECTION 19-1.2-105, THE "UNIFORM PARENTAGE ACT", ARTICLE 4 OF THIS TITLE 19, OR TRIBAL LAW.

(17) "PARTY" OR "PARTIES" MEANS A PARTY TO A CHILD CUSTODY PROCEEDING.

(18) "REASON TO KNOW" MEANS THAT A COURT OR A PETITIONING

OR FILING PARTY HAS REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD, AS DESCRIBED IN SECTION 19-1.2-107.

(19) "RESERVATION" MEANS:

(a) INDIAN COUNTRY, AS DEFINED IN 18 U.S.C. SEC. 1151, AND ANY LANDS NOT COVERED PURSUANT TO THAT SECTION AND TITLE THAT ARE HELD BY THE UNITED STATES IN TRUST FOR THE BENEFIT OF AN INDIAN TRIBE OR INDIVIDUAL OR HELD BY AN INDIAN TRIBE OR INDIVIDUAL SUBJECT TO A RESTRICTION BY THE UNITED STATES AGAINST ALIENATION; OR

(b) FOR THE SOUTHERN UTE INDIAN RESERVATION, THOSE LANDS INCLUDE ANY LANDS CONFIRMED PURSUANT TO PUB.L. 98-290 AND ANY OTHER LAND SUBSEQUENTLY PLACED IN TRUST BY THE UNITED STATES FOR THE SOUTHERN UTE INDIAN TRIBE'S BENEFIT.

(20) "TERMINATION OF PARENTAL RIGHTS" INCLUDES THE TERMINATION OF PARENTAL RIGHTS PURSUANT TO SECTION 19-3-604 OR THE TERMINATION OF PARENTAL RIGHTS RESULTING FROM AN ADOPTION PROCEEDING PURSUANT TO SECTION 19-5-101, 19-5-105.5, OR 19-5-105.7.

(21) "TRIBAL COURT" MEANS A COURT WITH JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS THAT IS EITHER A COURT OF INDIAN OFFENSES, A COURT ESTABLISHED AND OPERATED UNDER THE LAW OR CUSTOM OF AN INDIAN TRIBE, OR ANY OTHER ADMINISTRATIVE BODY OF A TRIBE THAT IS VESTED WITH AUTHORITY OVER INDIAN CHILD CUSTODY PROCEEDINGS.

(22) "TRIBAL CUSTOMARY ADOPTION" MEANS THE ADOPTION OF AN INDIAN CHILD BY AND THROUGH TRIBAL LAW OR TRIBAL CUSTOM OF THE INDIAN CHILD'S TRIBE AND THAT MAY BE EFFECTED WITHOUT THE TERMINATION OF PARENTAL RIGHTS.

19-1.2-104. Applicability - incorporation of federal law. (1) UNLESS EXPLICITLY STATED OTHERWISE IN THIS ARTICLE 1.2, ALL PROVISIONS OF THIS ARTICLE 1.2 APPLY TO ALL CHILD CUSTODY PROCEEDINGS; ANY MATTER BROUGHT PURSUANT TO THE "UNIFORM DISSOLUTION OF MARRIAGE ACT", ARTICLE 10 OF TITLE 14; THE "COLORADO PROBATE CODE", ARTICLES 10 TO 17 OF TITLE 15; ALL OTHER PRIVATE MATTERS THAT MEET THE DEFINITION OF A CHILD CUSTODY PROCEEDING;

AND THE "COLORADO CHILDREN'S CODE", THIS TITLE 19.

(2) IN A CASE FILED PURSUANT TO THIS ARTICLE 1.2 THAT CONSTITUTES A CHILD CUSTODY PROCEEDING, THE COURT AND EACH PARTY TO THE PROCEEDING SHALL ALSO COMPLY WITH THE FEDERAL IMPLEMENTING REGULATIONS OF THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" THAT OUTLINE THE MINIMUM FEDERAL STANDARDS GOVERNING ICWA'S IMPLEMENTATION TO ENSURE THAT ICWA IS APPLIED IN COLORADO CONSISTENT WITH THE ICWA'S EXPRESS LANGUAGE, CONGRESS'S INTENT IN ENACTING ICWA, AND TO PROMOTE THE STABILITY AND SECURITY OF INDIAN CHILDREN, TRIBES, AND FAMILIES.

(3) ALL PROVISIONS OF THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" ARE INCORPORATED INTO THIS ARTICLE 1.2, EVEN IF NOT SPECIFICALLY REFERENCED. THIS ARTICLE 1.2 MAY PROVIDE ADDITIONAL PROTECTIONS BEYOND THOSE REQUIRED BY THE FEDERAL ICWA, IN WHICH CASE THE PROVISIONS OF THIS ARTICLE 1.2 APPLY.

19-1.2-105. Parentage of an Indian child - acknowledged or established - applicability of article. (1) PARENTAGE OF AN INDIAN CHILD IS ACKNOWLEDGED OR ESTABLISHED FOR PURPOSES OF THIS ARTICLE 1.2 IF THE INDIVIDUAL'S PARENTAGE HAS BEEN:

(a) ESTABLISHED PURSUANT TO ARTICLE 4 OF THIS TITLE 19;

(b) ESTABLISHED PURSUANT TO TRIBAL LAW; OR

(c) RECOGNIZED IN ACCORDANCE WITH TRIBAL CUSTOM.

(2) (a) FOR PURPOSES OF DETERMINING THE BIOLOGICAL PARENT OF AN INDIAN CHILD, A COURT MAY ORDER GENETIC TESTS PURSUANT TO SECTION 19-4-112 OR 13-25-126.

(b) IF AN INDIVIDUAL FAILS TO COMPLY WITH THE COURT'S ORDER FOR GENETIC TESTS WITHIN A REASONABLE AMOUNT OF TIME, THE COURT MAY ISSUE A SUBPOENA PURSUANT TO SECTION 19-4-112 OR ISSUE AN ORDER TO COMPEL THE INDIVIDUAL TO APPEAR FOR GENETIC TESTS.

(c) IF THE GENETIC TESTS ORDERED PURSUANT TO THIS SUBSECTION (2) DO NOT CONFIRM THAT AN INDIVIDUAL IS THE BIOLOGICAL PARENT OF

THE CHILD AS PROVIDED IN SECTION 19-4-105 (1)(f), OR IF THE INDIVIDUAL HAS REFUSED TO CONSENT TO THE GENETIC TESTS, THE INDIVIDUAL IS NOT ESTABLISHED AS THE CHILD'S BIOLOGICAL PARENT.

(3) THIS ARTICLE 1.2 APPLIES IN ITS ENTIRETY IF AN INDIVIDUAL IS DETERMINED TO BE A PARENT OF AN INDIAN CHILD, REGARDLESS OF WHETHER THE PARENT HAS HAD PRIOR CUSTODY OF THE INDIAN CHILD.

19-1.2-106. Best interests of an Indian child - factors to consider. (1) IN A CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD, WHEN MAKING A DETERMINATION REGARDING THE BEST INTERESTS OF THE INDIAN CHILD, THE COURT SHALL, IN CONSULTATION WITH THE INDIAN CHILD'S TRIBE AND TRIBAL COMMUNITY, AS DETERMINED BY THE INDIAN CHILD'S TRIBE, CONSIDER THE FOLLOWING:

(a) THE INDIAN CHILD'S MENTAL, PHYSICAL, AND EMOTIONAL NEEDS, INCLUDING THE INDIAN CHILD'S PREFERENCES;

(b) THE PREVENTION OF UNNECESSARY OUT-OF-HOME PLACEMENT OF THE INDIAN CHILD;

(c) THE PRIORITIZATION OF PLACEMENT OF THE INDIAN CHILD IN ACCORDANCE WITH THE PLACEMENT PREFERENCES SET FORTH IN SECTION 19-1.2-120;

(d) THE VALUE TO THE INDIAN CHILD OF ESTABLISHING, DEVELOPING, OR MAINTAINING A POLITICAL, CULTURAL, SOCIAL, AND SPIRITUAL RELATIONSHIP WITH THE INDIAN CHILD'S TRIBE AND TRIBAL COMMUNITY; AND

(e) THE IMPORTANCE TO THE INDIAN CHILD OF THE INDIAN TRIBE'S OR TRIBAL COMMUNITY'S ABILITY TO MAINTAIN THE TRIBE'S OR TRIBAL COMMUNITY'S EXISTENCE AND INTEGRITY FOR THE STABILITY AND SECURITY OF INDIAN CHILDREN AND FAMILIES.

19-1.2-107. Initial disclosures - inquiry and determination - form of inquiry - due diligence - Indian child's tribe - written findings. (1) **Initial disclosures.** THE PETITIONING OR FILING PARTY SHALL DISCLOSE IN THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT THAT THE CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY

PROCEEDING IS AN INDIAN CHILD AND THE IDENTITY OF THE INDIAN CHILD'S TRIBE OR TRIBES, OR EFFORTS THE PETITIONING OR FILING PARTY HAS MADE IN DETERMINING WHETHER THE CHILD IS AN INDIAN CHILD, INCLUDING, BUT NOT LIMITED TO:

(a) IF THE PETITIONING OR FILING PARTY INDICATES IN THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING THAT THE CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL FURTHER IDENTIFY WHAT REASONABLE EFFORTS HAVE BEEN MADE TO SEND NOTICE TO THE INDIVIDUALS IDENTIFIED IN SUBSECTION (3)(d) OF THIS SECTION;

(b) THE POSTAL RECEIPTS OR COPIES OF POSTAL RECEIPTS FROM THE NOTICE SENT PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION INDICATING THAT THE NOTICE WAS PROPERLY SENT BY THE PETITIONING OR FILING PARTY TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN AND TO THE INDIAN CHILD'S TRIBE OR TRIBES. THE POSTAL RECEIPTS MUST BE ATTACHED TO THE COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING FILED WITH THE COURT; EXCEPT THAT, IF NOTIFICATION HAS NOT BEEN PERFECTED AT THE TIME THE INITIAL COMPLAINT, PETITION, OR OTHER COMMENCING PLEADING IS FILED WITH THE COURT, OR IF THE POSTAL RECEIPTS HAVE NOT BEEN RECEIVED BACK FROM THE POST OFFICE, THE PETITIONING OR FILING PARTY SHALL FILE THE POSTAL RECEIPTS WITH THE COURT UPON RECEIPT OF THE POSTAL RECEIPTS.

(c) ANY RESPONSES SENT BY A TRIBAL AGENT TO THE PETITIONING OR FILING PARTY, A COUNTY DEPARTMENT, OR THE COURT, WHICH RESPONSES MUST BE DISTRIBUTED TO THE PARTIES AND FILED WITH THE COURT.

(2) **Indian child inquiry and determination.** AT THE COMMENCEMENT OF EACH CHILD CUSTODY PROCEEDING, THE COURT SHALL MAKE INQUIRIES TO DETERMINE WHETHER THE CHILD WHO IS THE SUBJECT OF THE PROCEEDING IS AN INDIAN CHILD. IN DETERMINING WHETHER THE CHILD IS AN INDIAN CHILD:

(a) THE COURT SHALL ASK EACH PARTICIPANT IN AN EMERGENCY, VOLUNTARY, OR INVOLUNTARY CHILD CUSTODY PROCEEDING WHETHER THE PARTICIPANT KNOWS OR HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD OR WHETHER THE PARTICIPANT HAS INFORMATION THAT IS

RELEVANT TO DETERMINING WHETHER THE CHILD IS AN INDIAN CHILD. ANY RESPONSE TO THE INQUIRY MUST BE MADE ON THE RECORD. THE COURT SHALL INSTRUCT THE PARTICIPANTS TO INFORM THE COURT IF A PARTICIPANT SUBSEQUENTLY RECEIVES INFORMATION THAT PROVIDES REASON TO KNOW THE CHILD IS AN INDIAN CHILD.

(b) NO LATER THAN THE FIRST APPEARANCE AFTER AN EXPEDITED HEARING HELD PURSUANT TO SECTION 19-3-217 OR 19-3-403, EACH PARTY TO THE CHILD CUSTODY PROCEEDING SHALL DISCLOSE TO THE COURT AND THE PETITIONING AND FILING PARTIES INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD, INCLUDING, BUT NOT LIMITED TO, PROVIDING AN IDENTIFICATION CARD INDICATING THE CHILD'S MEMBERSHIP IN A TRIBE. THE COURT SHALL ORDER THE PARTIES TO PROVIDE INFORMATION LEARNED THEREAFTER TO THE COURT AND ALL PARTIES NO LATER THAN SEVEN DAYS AFTER RECEIVING THE RELEVANT INFORMATION OR PRIOR TO THE NEXT HEARING ON THE MATTER, WHICHEVER OCCURS FIRST.

(3) **Form of inquiry.** (a) AT THE COMMENCEMENT OF THE CHILD CUSTODY PROCEEDING, THE PETITIONING OR FILING PARTY SHALL MAKE A RECORD, EITHER IN WRITING OR ORALLY IN OPEN COURT ON THE RECORD, OF THE PARTY'S GOOD FAITH EFFORTS TO DETERMINE WHETHER THE CHILD IS AN INDIAN CHILD, INCLUDING, AT A MINIMUM, INQUIRIES MADE BY CONSULTING WITH:

(I) THE CHILD, DIRECTLY OR THROUGH THE CHILD'S REPRESENTATIVE;

(II) THE CHILD'S PARENT OR PARENTS;

(III) AN INDIVIDUAL HAVING CUSTODY OF THE CHILD OR WITH WHOM THE CHILD RESIDES;

(IV) THE CHILD'S EXTENDED FAMILY MEMBERS;

(V) ANY OTHER INDIVIDUAL WHO MAY REASONABLY BE EXPECTED TO HAVE INFORMATION REGARDING THE CHILD'S MEMBERSHIP OR ELIGIBILITY FOR MEMBERSHIP IN AN INDIAN TRIBE; AND

(VI) AN INDIAN TRIBE WHEN INFORMATION FROM INQUIRIES MADE PURSUANT TO SUBSECTIONS (3)(a)(I) TO (3)(a)(V) OF THIS SECTION INDICATE

THAT THERE IS A REASONABLE LIKELIHOOD THAT THE INDIAN TRIBE MAY PROVIDE ADDITIONAL INFORMATION REGARDING WHETHER THE CHILD IS A MEMBER OF THAT TRIBE OR WHETHER THE CHILD MAY BE ELIGIBLE FOR MEMBERSHIP IN THAT TRIBE.

(b) THE COURT, UPON REVIEWING THE RECORD OF INQUIRIES MADE PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, HAS REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD IF:

(I) A PARTICIPANT IN THE CHILD CUSTODY PROCEEDING, AN OFFICER OF THE COURT INVOLVED IN THE CHILD CUSTODY PROCEEDING, AN INDIAN TRIBE, AN INDIAN ORGANIZATION, OR AN AGENCY INFORMS THE COURT THAT THE CHILD IS AN INDIAN CHILD;

(II) A PARTICIPANT IN THE CHILD CUSTODY PROCEEDING, AN OFFICER OF THE COURT INVOLVED IN THE CHILD CUSTODY PROCEEDING, AN INDIAN TRIBE, AN INDIAN ORGANIZATION, OR AN AGENCY INFORMS THE COURT THAT IT HAS DISCOVERED INFORMATION INDICATING THAT THE CHILD IS AN INDIAN CHILD;

(III) THE CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING GIVES THE COURT REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD;

(IV) THE COURT IS INFORMED THAT THE DOMICILE OR RESIDENCE OF THE CHILD, THE CHILD'S PARENT, OR THE CHILD'S INDIAN CUSTODIAN IS OR WAS ON A RESERVATION OF A FEDERALLY RECOGNIZED INDIAN TRIBE OR IN AN ALASKA NATIVE VILLAGE;

(V) THE COURT IS INFORMED THAT THE CHILD IS OR HAS BEEN A WARD OF A TRIBAL COURT.

(VI) THE COURT IS INFORMED THAT THE CHILD OR THE CHILD'S PARENT POSSESSES AN IDENTIFICATION CARD OR OTHER SUFFICIENT DOCUMENTATION INDICATING MEMBERSHIP IN AN INDIAN TRIBE;

(VII) THE COURT IS INFORMED THAT THE PARENT OR CHILD RECEIVED HEALTH SERVICES FROM AN INDIAN HEALTH SERVICE OR TRIBAL HEALTH FACILITY;

(VIII) THE COURT OR THE PETITIONING OR FILING PARTY RECEIVES ANY OTHER REASONABLY CREDIBLE INFORMATION, REGARDLESS OF ADMISSIBILITY, THAT A PARENT OR THE CHILD HAS AN IDENTIFIABLE CONNECTION WITH A SPECIFIC FEDERALLY RECOGNIZED TRIBE OR TRIBES BEYOND A GENERALIZED ASSERTION OF HERITAGE;

(IX) THE COURT IS INFORMED THAT THERE ARE SCHOOL RECORDS INDICATING THAT THE CHILD IS AN ENROLLED MEMBER OF AN INDIAN TRIBE; OR

(X) AFTER PERFORMING DUE DILIGENCE PURSUANT TO SUBSECTION (4) OF THIS SECTION, INFORMATION IS PRESENTED TO THE COURT THAT SUBSECTIONS (3)(b)(I) TO (3)(b)(IX) OF THIS SECTION APPLY OR THAT THE CHILD IS AN INDIAN CHILD.

(c) THE COURT SHALL MAKE SPECIFIC FINDINGS, EITHER IN WRITING OR ORALLY ON THE RECORD, REGARDING ITS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD.

(d) IF THE COURT KNOWS, OR HAS REASON TO KNOW AS DESCRIBED IN SUBSECTION (3)(b) OF THIS SECTION, THAT THE CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL SEND NOTICE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PARENT OF THE CHILD, THE CHILD'S INDIAN CUSTODIAN, AND THE TRIBAL AGENT OF THE INDIAN CHILD'S TRIBE OR TRIBES, OR, IF THERE IS NOT A DESIGNATED TRIBAL AGENT, THE PETITIONING OR FILING PARTY SHALL CONTACT THE INDIAN TRIBE FOR DIRECTION TO THE APPROPRIATE OFFICE OR INDIVIDUAL. IN PROVIDING THE NOTICE, THE COURT AND EACH PARTY SHALL COMPLY WITH THE FEDERAL ICWA AND THIS ARTICLE 1.2.

(4) (a) **Due diligence.** IF THE COURT RECEIVES INFORMATION THAT THE CHILD MAY HAVE INDIAN HERITAGE BUT THE COURT LACKS SUFFICIENT INFORMATION TO DETERMINE THAT THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO SUBSECTION (3) OF THIS SECTION, THE COURT SHALL DIRECT THE PETITIONING OR FILING PARTY TO EXERCISE DUE DILIGENCE IN GATHERING ADDITIONAL INFORMATION PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION, ENSURE THAT THE DUE DILIGENCE REQUIREMENTS ARE FOLLOWED, AND ENSURE THAT ALL INFORMATION KNOWN TO THE PARTIES IS DISCLOSED IN WRITING OR ORALLY ON THE

RECORD. THE COURT SHALL DIRECT THE PETITIONING OR FILING PARTY TO MAKE A RECORD, EITHER IN WRITING OR ORALLY ON THE RECORD, OF THE DUE DILIGENCE EFFORTS TAKEN TO DETERMINE WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD.

(b) IN PERFORMING DUE DILIGENCE, THE PETITIONING OR FILING PARTY SHALL, AT A MINIMUM:

(I) ASK EACH PARTY, INCLUDING THE CHILD DIRECTLY OR THROUGH THE CHILD'S REPRESENTATIVE, WHAT INFORMATION THE PARTY HAS REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY;

(II) ASK OR EARNESTLY ATTEMPT TO ASK EACH PARENT WHAT INFORMATION THE PARENT HAS REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY; WHERE AND HOW THE PARENT RECEIVED THE INFORMATION; AND WHAT, IF ANY, OTHER INFORMATION SOURCES THE PARENT BELIEVES MAY HAVE ADDITIONAL INFORMATION REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY, INCLUDING OTHER RELATIVES AND THEIR CONTACT INFORMATION, IF KNOWN OR REASONABLY OBTAINED;

(III) CONDUCT SEARCHES FOR FAMILY AND DOCUMENT-IDENTIFIED FAMILY RELATIVES OR KIN WHO MAY HAVE INFORMATION REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY;

(IV) ASK OR ATTEMPT TO ASK IDENTIFIED FAMILY RELATIVES OR KIN FOR INFORMATION THE RELATIVES OR KIN HAVE REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY, AND WHERE AND HOW THE RELATIVES OR KIN RECEIVED THAT INFORMATION;

(V) REVIEW COURT AND AGENCY RECORDS IDENTIFIED BY THE PARENTS AND PROVIDED TO THE PETITIONER OR FILING PARTY, OR TO WHICH THE PETITIONER OR FILING PARTY HAS PREVIOUSLY BEEN GRANTED ACCESS THROUGH THE STATE AUTOMATED CHILD WELFARE SYSTEM OR THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT, FOR ALL CHILD CUSTODY PROCEEDINGS RELATED TO THE CHILD AND PARENTS FOR INFORMATION REGARDING THE CHILD'S INDIAN HERITAGE, IF ANY; AND

(VI) CONTACT THE TRIBAL REPRESENTATIVE OR REPRESENTATIVES BY EMAIL, PHONE CALL, LETTER, OR ANY OTHER MEANS AGREED TO BY THE PARTIES REGARDING WHETHER THE CHILD MAY BE ELIGIBLE FOR TRIBAL

MEMBERSHIP WHEN INFORMED THAT A PARENT, CHILD, OR SPECIFIC EXTENDED FAMILY MEMBER HAS A POTENTIAL CONNECTION WITH A FEDERALLY RECOGNIZED TRIBE OR TRIBES.

(c) IN PERFORMING DUE DILIGENCE, THE PETITIONING OR FILING PARTY MAY, IF A KNOWN CONNECTION HAS NOT BEEN IDENTIFIED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION BUT THE COURT OR PETITIONING OR FILING PARTY RECEIVES A REASONABLY CREDIBLE ASSERTION OF THE CHILD'S INDIAN HERITAGE WITHOUT IDENTIFICATION OF A SPECIFIC TRIBE OR TRIBES BUT NARROWED TO A REGION OF THE UNITED STATES, ASK EITHER RELEVANT TRIBES IN THAT IDENTIFIED REGION OR THE RELEVANT BUREAU OF INDIAN AFFAIRS OFFICE IF THE RELEVANT TRIBES OR BUREAU HAVE INFORMATION RELEVANT TO THE DETERMINATION THAT THE CHILD IS AN INDIAN CHILD.

(d) SUBSECTION (4)(b) OF THIS SECTION DOES NOT PREVENT A PETITIONING PARTY FROM SENDING A WRITTEN INQUIRY TO AN ASSERTED TRIBE FOR THE PURPOSE OF SATISFYING THE DUE DILIGENCE REQUIREMENTS PURSUANT TO SUBSECTION (4)(b)(VI) OF THIS SECTION. A WRITTEN INQUIRY MUST NOT BE CONSTRUED AS FORMAL NOTICE AND IS NOT CONSIDERED A DETERMINATION THAT THERE IS REASON TO KNOW THE CHILD IS AN INDIAN CHILD.

(5) (a) **Indian child's tribe.** IF THE CHILD IS AN INDIAN CHILD, THE INDIAN CHILD'S TRIBE IS:

(I) THE TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER OR ELIGIBLE FOR MEMBERSHIP IF THE INDIAN CHILD IS A MEMBER OF OR IS ELIGIBLE FOR MEMBERSHIP IN ONLY ONE TRIBE;

(II) THE TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER IF THE INDIAN CHILD IS A MEMBER OF ONE TRIBE BUT IS ELIGIBLE FOR MEMBERSHIP IN ONE OR MORE OTHER TRIBES; OR

(III) IF THE INDIAN CHILD IS A MEMBER OF MORE THAN ONE TRIBE OR IF THE INDIAN CHILD IS NOT A MEMBER OF ANY TRIBE BUT IS ELIGIBLE FOR MEMBERSHIP IN MORE THAN ONE TRIBE:

(A) THE TRIBE DESIGNATED BY AN AGREEMENT BETWEEN THE TRIBES OF WHICH THE INDIAN CHILD IS A MEMBER OR IN WHICH THE INDIAN CHILD

IS ELIGIBLE FOR MEMBERSHIP; OR

(B) IF THE TRIBES ARE UNABLE TO AGREE ON THE DESIGNATION OF THE INDIAN CHILD'S TRIBE, THE TRIBE DESIGNATED BY THE COURT.

(b) WHEN DESIGNATING AN INDIAN CHILD'S TRIBE PURSUANT TO SUBSECTION (5)(a)(III)(A) OF THIS SECTION, THE COURT SHALL, AFTER A HEARING, DESIGNATE THE TRIBE WITH WHICH THE INDIAN CHILD HAS THE MORE SIGNIFICANT CONTACTS, TAKING INTO CONSIDERATION:

(I) THE PREFERENCE OF THE INDIAN CHILD'S PARENT;

(II) THE DURATION OF THE INDIAN CHILD'S RESIDENCY AT THEIR CURRENT OR PRIOR DOMICILE OR RESIDENCE ON OR NEAR THE RESERVATION OF EACH TRIBE;

(III) THE TRIBAL MEMBERSHIP OF THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN;

(IV) THE INTERESTS ASSERTED BY EACH TRIBE;

(V) WHETHER A TRIBE HAS PREVIOUSLY ADJUDICATED A CASE INVOLVING THE INDIAN CHILD; AND

(VI) THE SELF-IDENTIFICATION OF THE INDIAN CHILD IF THE COURT DETERMINES THAT THE INDIAN CHILD IS OF SUFFICIENT AGE AND CAPACITY TO MEANINGFULLY SELF-IDENTIFY.

(6) **Written findings.** THE COURT SHALL MAKE WRITTEN FINDINGS DETERMINING WHETHER THE PETITIONING OR FILING PARTY:

(a) SATISFIED ITS INQUIRY AND DUE DILIGENCE REQUIREMENTS CONCERNING WHETHER THE CHILD IS AN INDIAN CHILD OR WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD;

(b) VERIFIED WHETHER THE CHILD IS IN FACT A MEMBER OF A TRIBE, OR A BIOLOGICAL PARENT OF THE CHILD IS A MEMBER OF A TRIBE, AND THE CHILD IS ELIGIBLE FOR MEMBERSHIP;

(c) DOCUMENTED ALL CONTACT WITH:

(I) THE RESPECTIVE TRIBE OR TRIBES. THIS CONTACT MUST INCLUDE AT LEAST TWO CONTACTS OR GOOD FAITH ATTEMPTS TO CONTACT THE TRIBE OR TRIBES WITHIN SEVENTY DAYS AFTER THE FINDING, UNLESS THE TRIBE OR TRIBES PROVIDED WRITTEN DOCUMENTATION INDICATING MEMBERSHIP, ELIGIBILITY, OR INELIGIBILITY OF THE CHILD.

(II) THE BUREAU OF INDIAN AFFAIRS TO SEEK ASSISTANCE WITH CONTACTING THE TRIBE OR TRIBES, IF GOOD FAITH ATTEMPTS TO CONTACT THE TRIBE OR TRIBES HAVE BEEN UNSUCCESSFUL; AND

(d) TREATED THE CHILD AS AN INDIAN CHILD, UNLESS AND UNTIL IT IS DETERMINED ON THE RECORD THAT THE CHILD DOES NOT MEET THE DEFINITION OF AN INDIAN CHILD.

19-1.2-108. Formal notice - language, accessibility, and content requirements. (1) NOTICES REQUIRED BY THIS ARTICLE 1.2 IN A CHILD CUSTODY PROCEEDING MUST BE PROVIDED IN CLEAR, ACCESSIBLE, AND UNDERSTANDABLE LANGUAGE AND INCLUDE THE FOLLOWING INFORMATION:

(a) THE INDIAN CHILD'S NAME, DATE OF BIRTH, AND PLACE OF BIRTH;

(b) TO THE EXTENT KNOWN, ALL NAMES, INCLUDING MAIDEN, MARRIED, AND FORMER NAMES OR ALIASES OF THE INDIAN CHILD'S PARENTS, THE PARENTS' BIRTHPLACES, AND THE PARENTS' TRIBAL ENROLLMENT INFORMATION;

(c) TO THE EXTENT KNOWN, THE NAMES, DATES OF BIRTH, PLACES OF BIRTH, AND TRIBAL ENROLLMENT INFORMATION OF OTHER DIRECT LINEAL ANCESTORS OF THE INDIAN CHILD;

(d) THE NAME OF EACH INDIAN TRIBE OF WHICH THE INDIAN CHILD IS A MEMBER OR IN WHICH THE INDIAN CHILD MAY BE ELIGIBLE FOR MEMBERSHIP;

(e) TO THE EXTENT KNOWN, INFORMATION REGARDING THE INDIAN CHILD'S DIRECT LINEAL ANCESTORS, AN ANCESTRAL CHART FOR EACH BIOLOGICAL PARENT, AND THE INDIAN CHILD'S TRIBAL AFFILIATION AND BLOOD QUANTUM;

(f) A COPY OF THE PETITION OR MOTION INITIATING THE PROCEEDING

AND, IF A HEARING HAS BEEN SCHEDULED, INFORMATION ON THE DATE, TIME, AND LOCATION OF THE HEARING;

(g) THE NAME OF THE PETITIONING OR FILING PARTY AND THE NAME AND ADDRESS OF THE PARTY'S ATTORNEY;

(h) A STATEMENT THAT THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN HAS THE RIGHT TO PARTICIPATE IN THE PROCEEDING PURSUANT TO SECTION 19-1.2-113;

(i) A STATEMENT THAT THE INDIAN CHILD'S TRIBE HAS THE RIGHT TO INTERVENE OR PARTICIPATE IN THE PROCEEDING AS A PARTY OR IN AN ADVISORY CAPACITY PURSUANT TO SECTION 19-1.2-113;

(j) A STATEMENT THAT IF THE COURT DETERMINES THAT THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS UNABLE TO AFFORD COUNSEL, THE PARENT OR INDIAN CUSTODIAN HAS THE RIGHT TO COURT-APPOINTED COUNSEL;

(k) A STATEMENT THAT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE HAS THE RIGHT, UPON REQUEST, TO UP TO TWENTY ADDITIONAL DAYS TO PREPARE FOR THE PROCEEDING;

(l) A STATEMENT THAT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE HAS THE RIGHT TO PETITION THE COURT TO TRANSFER THE CHILD CUSTODY PROCEEDING TO THE TRIBAL COURT;

(m) A STATEMENT DESCRIBING THE POTENTIAL LEGAL CONSEQUENCES OF THE PROCEEDING ON FUTURE PARENTAL AND CUSTODIAL RIGHTS OF THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN;

(n) THE MAILING ADDRESS AND TELEPHONE NUMBERS OF THE COURT AND CONTACT INFORMATION FOR ALL PARTIES TO THE PROCEEDING AND THE INDIVIDUALS NOTIFIED PURSUANT TO THIS SECTION; AND

(o) A STATEMENT THAT THE INFORMATION CONTAINED IN THE NOTICE IS CONFIDENTIAL AND MUST NOT BE SHARED WITH ANY INDIVIDUAL WHO DOES NOT NEED THE INFORMATION TO EXERCISE RIGHTS PURSUANT TO THIS ARTICLE 1.2.

(2) IF THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN HAS LIMITED ENGLISH PROFICIENCY AND MAY NOT UNDERSTAND THE CONTENTS OF THE NOTICE PROVIDED PURSUANT TO THIS SECTION, THE COURT SHALL PROVIDE LANGUAGE ACCESS SERVICES AS REQUIRED BY TITLE VI OF THE FEDERAL "CIVIL RIGHTS ACT OF 1964", 42 U.S.C. SEC. 2000e ET SEQ., AND OTHER APPLICABLE FEDERAL AND STATE LAWS. IF THE COURT IS UNABLE TO SECURE TRANSLATION OR INTERPRETATION SUPPORT, THE COURT SHALL CONTACT OR DIRECT A PARTY TO CONTACT THE INDIAN CHILD'S TRIBE OR THE LOCAL OFFICE OF THE FEDERAL BUREAU OF INDIAN AFFAIRS FOR ASSISTANCE IDENTIFYING A QUALIFIED TRANSLATOR OR INTERPRETER.

(3) (a) A HEARING THAT REQUIRES NOTICE PURSUANT TO THIS SECTION MUST NOT BE HELD UNTIL AT LEAST TEN DAYS AFTER THE LATEST RECEIPT OF THE NOTICE BY THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, TRIBE, OR, IF APPLICABLE, THE FEDERAL BUREAU OF INDIAN AFFAIRS. UPON REQUEST, THE COURT SHALL GRANT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE UP TO TWENTY-ONE ADDITIONAL DAYS AFTER THE DATE UPON WHICH NOTICE WAS RECEIVED BY THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE TO PREPARE FOR PARTICIPATION IN THE HEARING.

(b) THIS SUBSECTION (3) DOES NOT PREVENT A COURT, DURING AN EMERGENCY PROCEEDING BEFORE THE EXPIRATION OF THE WAITING PERIOD DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION, FROM REVIEWING THE REMOVAL OF AN INDIAN CHILD FROM THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO DETERMINE WHETHER THE REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD.

19-1.2-109. Enrollment of an Indian child with a tribe. (1) UNLESS AN INDIAN CHILD'S PARENT OBJECTS, THE PETITIONING OR FILING PARTY OR THE INDIAN TRIBE SHALL ASSIST IN ENROLLING AN INDIAN CHILD WHO IS IN THE COURT'S JURISDICTION IN A TRIBE WITH WHICH THE CHILD IS ELIGIBLE FOR ENROLLMENT. IF THE INDIAN CHILD IS ELIGIBLE TO BE ENROLLED IN MORE THAN ONE TRIBE, THE COURT SHALL DETERMINE MEMBERSHIP PURSUANT TO SECTION 19-1.2-107.

(2) IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, WHEN THE PETITIONING OR FILING PARTY, INCLUDING A COUNTY DEPARTMENT OR A CHILD PLACEMENT AGENCY, HAS REASON TO KNOW THAT THE CHILD IS AN

INDIAN CHILD, THE PETITIONING OR FILING PARTY SHALL, AT A MINIMUM, STATE IN WRITING OR ORALLY ON THE RECORD THE RELEVANT TRIBE OR TRIBES WITH WHICH THE CHILD MAY BE ELIGIBLE FOR ENROLLMENT TO DETERMINE IF THE CHILD IS IN FACT ELIGIBLE FOR ENROLLMENT. THE NOTIFICATION TO THE RELEVANT TRIBE OR TRIBES MAY BE DONE IN CONJUNCTION WITH THE NOTICE REQUIREMENTS SET FORTH IN SECTION 19-1.2-108 (1).

(3) IN A CHILD CUSTODY PROCEEDING, WHEN THE PETITIONING OR FILING PARTY HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD AND THAT THE INDIAN CHILD IS ELIGIBLE FOR ENROLLMENT IN A TRIBE, THE PETITIONING OR FILING PARTY SHALL NOTIFY THE INDIAN CHILD AND THE INDIAN CHILD'S PARENT OF THE PARENT'S RIGHT TO OBJECT TO THE PETITIONING OR FILING PARTY'S ASSISTANCE PURSUANT TO SUBSECTION (1) OF THIS SECTION.

19-1.2-110. Emergency proceeding - emergency removal - termination of emergency - duration. (1) IF AN INDIVIDUAL OR AGENCY TAKES A CHILD INTO PROTECTIVE CUSTODY, THE INDIVIDUAL OR AGENCY SHALL, AT THE COMMENCEMENT OF THE EMERGENCY PROCEEDING, MAKE A GOOD FAITH EFFORT TO:

(a) DETERMINE WHETHER THE INDIVIDUAL OR AGENCY HAS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD PURSUANT TO SECTION 19-1.2-107 (3)(b); AND

(b) CONTACT BY TELEPHONE, EMAIL, FACSIMILE, OR OTHER MEANS OF IMMEDIATE COMMUNICATION ANY TRIBE OF WHICH THE CHILD IS OR MAY BE A MEMBER OR ELIGIBLE FOR MEMBERSHIP TO DETERMINE THE CHILD'S TRIBAL AFFILIATION. NOTIFICATION MUST INCLUDE THE BASIS FOR THE CHILD'S REMOVAL; THE TIME, DATE, AND PLACE OF THE INITIAL HEARING; AND A STATEMENT THAT THE TRIBE HAS THE RIGHT TO PARTICIPATE IN THE PROCEEDING AS A PARTY OR IN AN ADVISORY CAPACITY PURSUANT TO SECTION 19-1.2-113.

(2) AN EMERGENCY REMOVAL OR PLACEMENT OF AN INDIAN CHILD PURSUANT TO THIS SECTION TERMINATES IMMEDIATELY WHEN THE REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD. IN SUCH A REMOVAL OR PLACEMENT, THE COURT SHALL:

(a) MAKE A FINDING ON THE RECORD THAT THE EMERGENCY REMOVAL OR PLACEMENT IS NECESSARY TO PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD;

(b) PROMPTLY HOLD A HEARING ON WHETHER THE EMERGENCY REMOVAL OR PLACEMENT CONTINUES TO BE NECESSARY WHEN NEW INFORMATION INDICATES THAT THE EMERGENCY SITUATION HAS ENDED;

(c) AT ANY COURT HEARING DURING THE EMERGENCY PROCEEDING, DETERMINE WHETHER THE EMERGENCY REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD; AND

(d) IMMEDIATELY TERMINATE, OR ENSURE THAT THE INDIVIDUAL OR AGENCY THAT TOOK THE CHILD INTO PROTECTIVE CUSTODY IMMEDIATELY TERMINATES, THE EMERGENCY PROCEEDING ONCE THE COURT OR AGENCY POSSESSES SUFFICIENT EVIDENCE TO DETERMINE THAT THE EMERGENCY REMOVAL OR PLACEMENT IS NO LONGER NECESSARY TO PREVENT IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD.

(3) A PETITION FOR A COURT ORDER AUTHORIZING THE EMERGENCY REMOVAL OR CONTINUED EMERGENCY PLACEMENT OF AN INDIAN CHILD, AND ITS ACCOMPANYING DOCUMENTS, MUST CONTAIN A STATEMENT OF THE RISK OF IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD AND ANY EVIDENCE THAT THE EMERGENCY REMOVAL OR PLACEMENT CONTINUES TO BE NECESSARY TO PREVENT THE IMMINENT PHYSICAL HARM OR DANGER TO THE INDIAN CHILD. THE PETITION, AND ITS ACCOMPANYING DOCUMENTS, MUST ALSO CONTAIN THE FOLLOWING INFORMATION:

(a) THE NAME, AGE, AND LAST-KNOWN ADDRESS OF THE INDIAN CHILD;

(b) THE NAME AND LAST-KNOWN ADDRESS OF THE INDIAN CHILD'S PARENTS OR INDIAN CUSTODIAN, IF ANY;

(c) THE STEPS TAKEN TO PROVIDE NOTICE TO THE INDIAN CHILD'S PARENTS, CUSTODIAN, AND TRIBE ABOUT THE EMERGENCY PROCEEDING;

(d) IF THE INDIAN CHILD'S PARENTS OR INDIAN CUSTODIAN IS UNKNOWN, A DETAILED EXPLANATION OF WHAT EFFORTS HAVE BEEN MADE

TO LOCATE AND CONTACT THEM, INCLUDING CONTACT WITH THE APPROPRIATE FEDERAL BUREAU OF INDIAN AFFAIRS REGIONAL DIRECTOR;

(e) THE RESIDENCE AND DOMICILE OF THE INDIAN CHILD;

(f) IF EITHER THE RESIDENCE OR DOMICILE OF THE INDIAN CHILD IS BELIEVED TO BE ON A RESERVATION OR IN AN ALASKA NATIVE VILLAGE, THE NAME OF THE TRIBE AFFILIATED WITH THAT RESERVATION OR VILLAGE;

(g) THE TRIBAL AFFILIATION OF THE INDIAN CHILD AND THE CHILD'S PARENTS OR INDIAN CUSTODIAN;

(h) A SPECIFIC AND DETAILED ACCOUNT OF THE CIRCUMSTANCES THAT LED THE INDIVIDUAL OR AGENCY RESPONSIBLE FOR THE EMERGENCY REMOVAL OF THE INDIAN CHILD TO TAKE THAT ACTION;

(i) IF THE INDIAN CHILD IS BELIEVED TO RESIDE OR BE DOMICILED ON A RESERVATION WHERE THE TRIBE EXERCISES EXCLUSIVE JURISDICTION OVER CHILD CUSTODY MATTERS, A STATEMENT OF EFFORTS MADE TO CONTACT THE TRIBE AND TRANSFER THE INDIAN CHILD TO THE TRIBE'S JURISDICTION; AND

(j) A STATEMENT OF THE EFFORTS THAT HAVE BEEN TAKEN TO ASSIST THE INDIAN CHILD'S PARENTS OR INDIAN CUSTODIAN SO THAT THE INDIAN CHILD MAY BE SAFELY RETURNED TO THE CUSTODY OF THE PARENTS OR INDIAN CUSTODIAN.

(4) AN EMERGENCY REMOVAL REGARDING AN INDIAN CHILD MUST NOT BE CONTINUED FOR MORE THAN THIRTY DAYS, UNLESS THE COURT DETERMINES THAT RESTORING THE INDIAN CHILD TO THE PARENT OR INDIAN CUSTODIAN WOULD SUBJECT THE INDIAN CHILD TO IMMINENT PHYSICAL HARM OR DANGER, AND:

(a) THE COURT HAS APPROVED A MOTION TO TRANSFER THE CASE TO A TRIBAL COURT BUT HAS NOT BEEN ABLE TO TRANSFER THE PROCEEDING TO THE JURISDICTION OF THE APPROPRIATE INDIAN TRIBE; OR

(b) DESPITE DILIGENT EFFORTS, THE COURT HAS BEEN UNABLE TO HOLD A HEARING BASED ON THE CRITERIA SET FORTH IN SECTION 19-1.2-123. IN SUCH A CASE, THE COURT SHALL SCHEDULE THE HEARING WITHIN SEVEN

DAYS AFTER THE DETERMINATION MADE PURSUANT TO THIS SUBSECTION (4).

19-1.2-111. Active efforts - when required - characteristics. (1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, ACTIVE EFFORTS ARE REQUIRED AND THE COURT SHALL MAKE AN INITIAL DETERMINATION WHETHER ACTIVE EFFORTS HAVE BEEN MADE TO PREVENT REMOVAL OF THE INDIAN CHILD FROM THE FAMILY. IF THE INDIAN CHILD HAS BEEN REMOVED FROM THE FAMILY, THE COURT SHALL DETERMINE WHETHER ACTIVE EFFORTS HAVE BEEN MADE TO REUNITE THE FAMILY.

(2) ACTIVE EFFORTS REQUIRE A HIGHER STANDARD OF CONDUCT THAN REASONABLE EFFORTS.

(3) ACTIVE EFFORTS MUST:

(a) BE DOCUMENTED IN DETAIL IN WRITING OR ORALLY ON THE RECORD;

(b) IF THE INDIAN CHILD IS ALLEGED TO BE WITHIN THE JURISDICTION OF THE COURT PURSUANT TO SECTION 19-1.2-116, INCLUDE ACTIVELY ASSISTING THE INDIAN CHILD'S PARENT OR PARENTS OR INDIAN CUSTODIAN THROUGH THE STEPS OF A CASE PLAN AND ACCESSING OR DEVELOPING THE RESOURCES NECESSARY TO SATISFY THE CASE PLAN;

(c) INCLUDE PROVIDING ASSISTANCE IN A MANNER CONSISTENT WITH THE PREVAILING SOCIAL AND CULTURAL STANDARDS AND WAY OF LIFE OF THE INDIAN CHILD'S TRIBE;

(d) BE CONDUCTED IN PARTNERSHIP WITH THE INDIAN CHILD AND THE INDIAN CHILD'S PARENTS, EXTENDED FAMILY MEMBERS, INDIAN CUSTODIAN, AND TRIBE; AND

(e) BE TAILORED TO THE FACTS AND CIRCUMSTANCES OF THE CASE.

(4) ACTIVE EFFORTS MAY INCLUDE, AS APPLICABLE, THE FOLLOWING:

(a) CONDUCTING A COMPREHENSIVE ASSESSMENT OF THE CIRCUMSTANCES OF THE INDIAN CHILD'S FAMILY, WITH A FOCUS ON REUNIFICATION AS THE PRIMARY AND MOST DESIRABLE GOAL;

(b) IDENTIFYING APPROPRIATE SERVICES AND HELPING THE INDIAN CHILD'S PARENTS OVERCOME BARRIERS TO REUNIFICATION, INCLUDING ACTIVELY ASSISTING THE INDIAN CHILD'S PARENTS WITH OBTAINING THE IDENTIFIED SERVICES;

(c) IDENTIFYING, NOTIFYING, AND INVITING REPRESENTATIVES OF THE INDIAN CHILD'S TRIBE TO PARTICIPATE IN PROVIDING SUPPORT AND SERVICES TO THE INDIAN CHILD'S FAMILY AND IN FAMILY TEAM MEETINGS, PERMANENCY PLANNING, RESOLUTION OF PLACEMENT ISSUES, REVIEWS, OR OTHER CASE-MANAGEMENT-RELATED MEETINGS;

(d) CONDUCTING OR CAUSING TO BE CONDUCTED A DILIGENT SEARCH FOR THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS AND CONTACTING AND CONSULTING WITH THE INDIAN CHILD'S EXTENDED FAMILY MEMBERS AND ADULT RELATIVES TO PROVIDE FAMILY STRUCTURE AND SUPPORT FOR THE INDIAN CHILD AND THE INDIAN CHILD'S PARENTS;

(e) OFFERING AND EMPLOYING CULTURALLY APPROPRIATE FAMILY PRESERVATION STRATEGIES AND FACILITATING THE USE OF REMEDIAL AND REHABILITATIVE SERVICES PROVIDED BY THE INDIAN CHILD'S TRIBE;

(f) TAKING STEPS TO KEEP THE INDIAN CHILD AND THE INDIAN CHILD'S SIBLINGS TOGETHER, WHENEVER POSSIBLE;

(g) SUPPORTING REGULAR FAMILY TIME WITH THE INDIAN CHILD'S PARENTS OR INDIAN CUSTODIAN IN THE MOST NATURAL SETTING POSSIBLE, AS WELL AS TRIAL HOME VISITS DURING A PERIOD OF REMOVAL, CONSISTENT WITH THE NEED TO ENSURE THE HEALTH, SAFETY, AND WELFARE OF THE INDIAN CHILD;

(h) IDENTIFYING AND MAKING APPROPRIATE REFERRALS TO COMMUNITY RESOURCES, INCLUDING HOUSING, FINANCIAL ASSISTANCE, EMPLOYMENT TRAINING, TRANSPORTATION, MENTAL HEALTH CARE, HEALTH CARE, SUBSTANCE ABUSE PREVENTION AND TREATMENT, PARENTING TRAINING, TRANSPORTATION, PEER SUPPORT SERVICES NECESSARY TO MAINTAIN THE CHILD IN THE HOME OR TO REHABILITATE THE FAMILY SO THAT THE CHILD CAN SAFELY RETURN HOME, AND ACTIVELY ASSISTING THE INDIAN CHILD'S PARENTS OR, WHEN APPROPRIATE, THE INDIAN CHILD'S FAMILY, IN UTILIZING AND ACCESSING SUCH RESOURCES;

(i) MONITORING PROGRESS AND PARTICIPATION OF THE INDIAN CHILD'S PARENTS, INDIAN CUSTODIAN, OR EXTENDED FAMILY MEMBERS IN THE SERVICES DESCRIBED IN SUBSECTIONS (4)(b), (4)(c), (4)(e), AND (4)(h) OF THIS SECTION;

(j) CONSIDERING ALTERNATIVE WAYS TO ADDRESS THE NEEDS OF THE INDIAN CHILD'S PARENTS, INDIAN CUSTODIAN, AND, WHEN APPROPRIATE, THE INDIAN CHILD'S FAMILY IF THE SERVICES DESCRIBED IN THIS SECTION ARE UNAVAILABLE OR THE OPTIMUM SERVICES DO NOT EXIST OR ARE NOT AVAILABLE;

(k) PROVIDING POST-REUNIFICATION SERVICES AND MONITORING WHILE THE INDIAN CHILD REMAINS IN THE COURT'S JURISDICTION;

(l) CONTACTING THE INDIAN CHILD'S TRIBE TO DETERMINE WHAT, IF ANY, TRIBAL RESOURCES ARE AVAILABLE; AND

(m) ANY OTHER EFFORTS THAT ARE APPROPRIATE TO THE INDIAN CHILD'S CIRCUMSTANCES.

(5) IN A CHILD CUSTODY PROCEEDING BROUGHT PURSUANT TO ARTICLE 3 OF THIS TITLE 19, IF THE COURT FINDS THAT A COUNTY DEPARTMENT DID NOT PROVIDE ACTIVE EFFORTS TO MAKE IT POSSIBLE FOR THE INDIAN CHILD TO SAFELY RETURN HOME, AT A PERMANENCY HEARING THE COURT SHALL NOT CHANGE THE PERMANENCY PLAN TO SOMETHING OTHER THAN TO REUNITE THE FAMILY.

(6) UNLESS STIPULATED BY THE PARTIES AND NOT OBJECTED TO BY THE INDIAN CHILD'S TRIBE, IN ANY PROCEEDING BROUGHT PURSUANT TO ARTICLE 3 OF THIS TITLE 19, IF THE COURT FINDS THAT A COUNTY DEPARTMENT DID NOT PROVIDE ACTIVE EFFORTS TO MAKE IT POSSIBLE FOR THE INDIAN CHILD TO SAFELY RETURN HOME, THE COURT SHALL NOT SET A DATE FOR A PERMANENT ORDERS HEARING, INCLUDING, BUT NOT LIMITED TO, GUARDIANSHIP, ALLOCATION OF PARENTAL RESPONSIBILITIES, OR TERMINATION OF PARENTAL RIGHTS, UNTIL THE COUNTY DEPARTMENT PROVIDES ACTIVE EFFORTS FOR THE NUMBER OF DAYS THAT ACTIVE EFFORTS WERE NOT PREVIOUSLY PROVIDED.

19-1.2-112. Right to counsel - appointment of counsel - access to records. (1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE

SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD:

(a) THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE INDIAN CHILD IN ACCORDANCE WITH APPLICABLE LAW; AND

(b) THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN PURSUANT TO SECTION 19-3-202 IF THE PARENT OR INDIAN CUSTODIAN IS A RESPONDENT IN A DEPENDENCY AND NEGLECT ACTION BROUGHT PURSUANT TO ARTICLE 3 OF THIS TITLE 19. IN ANY REMOVAL, PLACEMENT, OR TERMINATION OF PARENTAL RIGHTS PROCEEDING, OUTSIDE OF A DEPENDENCY AND NEGLECT PROCEEDING, IN WHICH THE COURT DETERMINES THAT AN INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS INDIGENT, THE COURT SHALL APPOINT COUNSEL TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN THROUGH THE OFFICE OF THE STATE COURT ADMINISTRATOR.

19-1.2-113. Right to intervene and appear. (1) NOTWITHSTANDING THIS ARTICLE 1.2 TO THE CONTRARY, A TRIBE, OR INDIAN CUSTODIAN WHO IS NOT OTHERWISE A PARTY TO A CHILD CUSTODY PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE 1.2, HAS THE RIGHT TO INTERVENE AT ANY POINT IN A CHILD CUSTODY PROCEEDING AND A TRIBE MAY BE REPRESENTED BY AN INDIVIDUAL AUTHORIZED BY THE TRIBE TO ACT ON ITS BEHALF, REGARDLESS OF WHETHER THE INDIVIDUAL IS LICENSED TO PRACTICE LAW.

(2) IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE, AN ATTORNEY WHO IS NOT BARRED FROM PRACTICING LAW IN COLORADO MAY APPEAR ON BEHALF OF A TRIBE IN ANY CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD WITHOUT ASSOCIATING WITH LOCAL COUNSEL OR WITHOUT PAYING A FEE TO APPEAR PRO HAC VICE.

(3) NOTWITHSTANDING THIS ARTICLE 1.2 TO THE CONTRARY, PURSUANT TO SUBSECTION (1) OF THIS SECTION, A TRIBE MAY NOTIFY THE COURT, IN WRITING OR ORALLY ON THE RECORD, THAT THE TRIBE WITHDRAWS AS A PARTY TO THE PROCEEDING.

19-1.2-114. Right to examine documents - compliance regarding an Indian child. (1) IF THERE IS REASON TO KNOW THAT A CHILD WHO IS THE SUBJECT OF A CHILD CUSTODY PROCEEDING IS AN INDIAN CHILD, EACH PARTY HAS THE RIGHT TO TIMELY EXAMINE ALL REPORTS OR OTHER

DOCUMENTS AS OUTLINED IN THE APPLICABLE RULES OF DISCOVERY UNLESS PRECLUDED PURSUANT TO STATE OR FEDERAL LAW.

(2) REGARDLESS OF WHETHER A TRIBE IS A PARTY IN ANY CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD, THE INDIAN CHILD'S TRIBE MUST HAVE ACCESS TO ALL REPORTS OR OTHER DOCUMENTS REGARDING THE INDIAN CHILD. ANY REPORTS OR OTHER DOCUMENTS REGARDING THE INDIAN CHILD MUST BE PROVIDED, UPON REQUEST, TO THE TRIBE FREE OF COST.

19-1.2-115. Qualified expert witnesses. (1) IN A CHILD CUSTODY PROCEEDING THAT REQUIRES THE TESTIMONY OF A QUALIFIED EXPERT WITNESS, THE PETITIONING OR FILING PARTY SHALL SEEK A QUALIFIED EXPERT WITNESS FROM THE INDIAN CHILD'S TRIBE AND MAY, WHEN APPROPRIATE, CONTACT THE FEDERAL BUREAU OF INDIAN AFFAIRS AND REQUEST THAT THE TRIBE OR BUREAU IDENTIFY ONE OR MORE INDIVIDUALS WHO MEET THE CRITERIA DESCRIBED IN SUBSECTION (3) OR (4) OF THIS SECTION AND MAKE A RECORD OF THAT CONTACT EITHER IN WRITING OR ORALLY ON THE RECORD.

(2) AT A HEARING PURSUANT TO SECTION 19-1.2-123 OR 19-1.2-125, IF THE COURT HAS FOUND THAT THERE IS REASON TO KNOW THAT A CHILD IS AN INDIAN CHILD, AT LEAST ONE EXPERT WITNESS MUST BE QUALIFIED TO TESTIFY REGARDING:

(a) WHETHER THE CONTINUED CUSTODY OF THE INDIAN CHILD BY THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD; AND

(b) THE PREVAILING SOCIAL AND CULTURAL STANDARDS AND CHILD-REARING PRACTICES OF THE INDIAN CHILD'S TRIBE.

(3) FOR THE PURPOSES OF THIS SECTION, A QUALIFIED EXPERT WITNESS IS NOT REQUIRED TO HAVE KNOWLEDGE OF SOCIAL AND CULTURAL STANDARDS OF THE INDIAN CHILD'S TRIBE ONLY IF SUCH KNOWLEDGE IS PLAINLY IRRELEVANT TO THE PARTICULAR CIRCUMSTANCES AT ISSUE IN THE PROCEEDING. THE INDIAN CHILD'S TRIBE MAY DESIGNATE AN INDIVIDUAL AS BEING QUALIFIED TO TESTIFY TO THE PREVAILING SOCIAL AND CULTURAL STANDARDS OF THE INDIAN CHILD'S TRIBE.

(4) IF THE INDIAN CHILD'S TRIBE HAS NOT IDENTIFIED A QUALIFIED EXPERT WITNESS, THE FOLLOWING INDIVIDUALS, IN ORDER OF PRIORITY, MAY TESTIFY AS A QUALIFIED EXPERT WITNESS:

(a) A MEMBER OF THE INDIAN CHILD'S TRIBE OR ANOTHER INDIVIDUAL WHO IS RECOGNIZED BY THE TRIBE AS KNOWLEDGEABLE ABOUT TRIBAL CUSTOMS REGARDING FAMILY ORGANIZATION AND CHILD-REARING PRACTICES;

(b) AN INDIVIDUAL WHO HAS SUBSTANTIAL EXPERIENCE IN THE DELIVERY OF CHILD AND FAMILY SERVICES TO INDIANS AND EXTENSIVE KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND CHILD-REARING PRACTICES IN THE INDIAN CHILD'S TRIBE; OR

(c) AN INDIVIDUAL WHO HAS SUBSTANTIAL EXPERIENCE IN THE DELIVERY OF CHILD AND FAMILY SERVICES TO INDIANS AND EXTENSIVE KNOWLEDGE OF PREVAILING SOCIAL AND CULTURAL STANDARDS AND CHILD-REARING PRACTICES IN INDIAN TRIBES WITH CULTURAL SIMILARITIES TO THE INDIAN CHILD'S TRIBE.

(5) AN INDIAN CHILD'S TRIBE MUST BE PROVIDED THE OPPORTUNITY TO QUESTION THE QUALIFIED EXPERT WITNESS IN ALL HEARINGS INVOLVING THE INDIAN CHILD, REGARDLESS OF WHETHER THE INDIAN CHILD'S TRIBE HAS INTERVENED PURSUANT TO SECTION 19-1.2-113.

(6) FOR THE PURPOSES OF THIS SECTION, A PETITIONING OR FILING PARTY OR AN EMPLOYEE OF THE PETITIONING OR FILING PARTY MAY NOT SERVE AS A QUALIFIED EXPERT WITNESS.

19-1.2-116. Jurisdiction. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE COURT'S JURISDICTION PURSUANT TO THIS ARTICLE 1.2 IN A CASE INVOLVING AN INDIAN CHILD IS CONCURRENT WITH THE INDIAN CHILD'S TRIBE.

(2) THE INDIAN CHILD'S TRIBE HAS EXCLUSIVE JURISDICTION IN A CASE INVOLVING AN INDIAN CHILD IF:

(a) THE INDIAN CHILD IS A WARD OF A TRIBAL COURT OF THE TRIBE; OR

(b) THE INDIAN CHILD RESIDES OR IS DOMICILED ON THE TRIBE'S RESERVATION.

(3) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, THE COURT HAS TEMPORARY EMERGENCY JURISDICTION OVER AN INDIAN CHILD WHO IS TAKEN INTO PROTECTIVE CUSTODY PURSUANT TO SECTION 19-1.2-110 OR 19-3-201, OR PART 4 OF ARTICLE 3 OF THIS TITLE 19.

19-1.2-117. Determination of domicile and residence - tribal court jurisdiction. (1) IN A CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD, THE COURT SHALL DETERMINE AND ISSUE AN ORDER REGARDING THE INDIAN CHILD'S DOMICILE OR RESIDENCE AND WHETHER THE INDIAN CHILD IS UNDER A TRIBAL COURT'S JURISDICTION.

(2) THE PETITIONING OR FILING PARTY SHALL COORDINATE WITH THE INDIAN CHILD'S TRIBE AS NECESSARY TO ASSIST THE COURT IN MAKING A DETERMINATION PURSUANT TO THIS SECTION. IF IT IS UNCLEAR WHICH TRIBE IS THE INDIAN CHILD'S TRIBE, THE PETITIONING OR FILING PARTY SHALL COORDINATE WITH EACH TRIBE WITH WHICH THERE IS REASON TO KNOW THAT THE INDIAN CHILD MAY BE A MEMBER OR ELIGIBLE FOR MEMBERSHIP TO ASSIST THE COURT IN MAKING THE DETERMINATION.

19-1.2-118. Motion to transfer to tribal court - objection. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5) OF THIS SECTION, THE COURT SHALL TRANSFER A CHILD CUSTODY PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE 1.2 THAT INVOLVES AN INDIAN CHILD IF, AT ANY TIME DURING THE PROCEEDING, THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE PETITIONS THE COURT TO TRANSFER THE PROCEEDING TO THE TRIBAL COURT, UNLESS GOOD CAUSE IS SHOWN TO DENY THE TRANSFER.

(2) UPON RECEIPT OF A TRANSFER MOTION, THE COURT SHALL CONTACT THE INDIAN CHILD'S TRIBE AND REQUEST A TIMELY RESPONSE REGARDING WHETHER THE TRIBE INTENDS TO DECLINE THE TRANSFER.

(3) (a) IF A PARTY OBJECTS IN WRITING TO THE TRANSFER MOTION, THE COURT SHALL SET A HEARING ON THE OBJECTIONS TO THE MOTION. IN DETERMINING WHETHER THERE IS GOOD CAUSE TO DENY TRANSFER OF JURISDICTION TO A TRIBAL COURT, THE COURT SHALL ENGAGE IN A FACT-SPECIFIC INQUIRY, DETERMINED ON A CASE-BY-CASE BASIS AS SET

FORTH IN SUBSECTION (4) OF THIS SECTION.

(b) AT THE HEARING, THE OBJECTING PARTY HAS THE BURDEN OF PROOF OF ESTABLISHING BY CLEAR AND CONVINCING EVIDENCE THAT GOOD CAUSE EXISTS TO DENY THE TRANSFER.

(c) IF THE INDIAN CHILD'S TRIBE CONTESTS THE ASSERTION THAT GOOD CAUSE EXISTS TO DENY THE TRANSFER, THE COURT SHALL GIVE THE TRIBE'S ARGUMENT SUBSTANTIAL WEIGHT.

(d) WHEN MAKING A DETERMINATION WHETHER GOOD CAUSE EXISTS TO DENY THE TRANSFER MOTION, THE COURT MUST NOT CONSIDER:

(I) WHETHER THE PROCEEDING IS AT AN ADVANCED STAGE;

(II) WHETHER THERE HAS BEEN A PRIOR PROCEEDING INVOLVING THE INDIAN CHILD IN WHICH A TRANSFER MOTION WAS NOT FILED;

(III) WHETHER THE TRANSFER COULD AFFECT THE PLACEMENT OF THE INDIAN CHILD;

(IV) THE INDIAN CHILD'S CULTURAL CONNECTIONS WITH THE TRIBE OR THE TRIBE'S RESERVATION;

(V) THE SOCIOECONOMIC CONDITIONS OF THE INDIAN CHILD'S TRIBE OR ANY NEGATIVE PERCEPTION OF THE TRIBE'S OR THE FEDERAL BUREAU OF INDIAN AFFAIRS'S SOCIAL SERVICES OR JUDICIAL SYSTEMS; OR

(VI) WHETHER THE TRANSFER SERVES THE BEST INTERESTS OF THE INDIAN CHILD.

(4) ABSENT EXTRAORDINARY CIRCUMSTANCES, GOOD CAUSE TO DENY TRANSFER TO A TRIBAL COURT MUST BE BASED ON ONE OR BOTH OF THE FOLLOWING FACTORS:

(a) THE INDIAN CHILD'S TRIBE DOES NOT HAVE A TRIBAL COURT OR ANY OTHER ADMINISTRATIVE BODY THAT IS VESTED WITH AUTHORITY OVER CHILD CUSTODY PROCEEDINGS TO WHICH THE CASE CAN BE TRANSFERRED, AND NO OTHER TRIBAL COURT HAS BEEN DESIGNATED BY THE INDIAN CHILD'S TRIBE TO HEAR CHILD CUSTODY PROCEEDINGS; OR

(b) THE EVIDENCE NECESSARY TO DECIDE THE CASE COULD NOT BE ADEQUATELY PRESENTED IN THE TRIBAL COURT WITHOUT UNDUE HARDSHIP TO THE PARTIES OR THE WITNESSES, AND THE TRIBAL COURT IS UNABLE TO MITIGATE THE HARDSHIP BY ANY MEANS PERMITTED IN THE TRIBAL COURT'S RULES. WITHOUT EVIDENCE OF UNDUE HARDSHIP, TRAVEL DISTANCE ALONE IS NOT A BASIS FOR DENYING A TRANSFER MOTION.

(5) (a) THE COURT SHALL DENY THE TRANSFER MOTION IF:

(I) THE TRIBE DECLINES THE TRANSFER IN WRITING OR ORALLY ON THE RECORD;

(II) ONE OF THE INDIAN CHILD'S PARENTS OBJECTS TO THE TRANSFER; OR

(III) AFTER A HEARING, THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT GOOD CAUSE EXISTS TO DENY THE TRANSFER.

(b) NOTWITHSTANDING SUBSECTION (5)(a)(II) OF THIS SECTION, THE OBJECTION OF THE INDIAN CHILD'S PARENT DOES NOT PRECLUDE THE TRANSFER IF:

(I) THE OBJECTING PARENT DIES OR THE OBJECTING PARENT'S PARENTAL RIGHTS ARE TERMINATED AND HAVE NOT BEEN RESTORED; AND

(II) THE INDIAN CHILD'S REMAINING PARENT, INDIAN CUSTODIAN, OR TRIBE FILES A NEW TRANSFER MOTION SUBSEQUENT TO THE DEATH OR TERMINATION OF PARENTAL RIGHTS OF THE OBJECTING PARENT.

(6) IF THE COURT DENIES A TRANSFER MOTION PURSUANT TO THIS SECTION, THE COURT SHALL DOCUMENT THE BASIS FOR THE DENIAL IN A WRITTEN ORDER.

19-1.2-119. Requirements if transfer to tribal court granted. (1) UPON GRANTING A MOTION TO TRANSFER PURSUANT TO SECTION 19-1.2-118, THE COURT SHALL EXPEDITIOUSLY:

(a) NOTIFY THE TRIBAL COURT OF THE PENDING DISMISSAL OF THE CHILD CUSTODY PROCEEDING;

(b) TRANSFER ALL INFORMATION REGARDING THE PROCEEDING, INCLUDING PLEADINGS AND COURT RECORDS, TO THE TRIBAL COURT; AND

(c) IF THE INDIAN CHILD IS ALLEGED TO BE WITHIN THE JURISDICTION OF THE COURT PURSUANT TO SECTION 19-1.2-116, DIRECT THE PETITIONING OR FILING PARTY TO:

(I) COORDINATE WITH THE TRIBAL COURT AND THE INDIAN CHILD'S TRIBE TO ENSURE THAT THE TRANSFER OF THE PROCEEDING AND THE TRANSFER OF CUSTODY OF THE INDIAN CHILD IS ACCOMPLISHED WITH MINIMAL DISRUPTION OF SERVICES TO THE INDIAN CHILD AND THE INDIAN CHILD'S FAMILY; AND

(II) EXPEDITIOUSLY PROVIDE AT NO COST TO THE APPROPRIATE TRIBAL AGENCY:

(A) ALL RECORDS AND ORIGINAL DOCUMENTS IN THE PETITIONING OR FILING PARTY'S POSSESSION THAT ARE RELATED TO THE INDIAN CHILD, INCLUDING A BIRTH CERTIFICATE, SOCIAL SECURITY CARD, CERTIFICATE OF INDIAN BIRTH, AND OTHER SIMILAR DOCUMENTS;

(B) DOCUMENTATION RELATED TO THE INDIAN CHILD'S ELIGIBILITY FOR STATE AND FEDERAL ASSISTANCE; AND

(C) THE ENTIRE CASE RECORD FOR THE INDIAN CHILD THAT THE PETITIONING OR FILING PARTY POSSESSES.

(2) THE COURT SHALL DISMISS THE PROCEEDING WITH PREJUDICE UPON CONFIRMATION FROM THE TRIBAL COURT THAT THE TRIBAL COURT RECEIVED THE REQUIRED TRANSFERRED INFORMATION.

19-1.2-120. Placement preferences - cultural compact - confidentiality. (1) IF THE PARENTAL RIGHTS OF AN INDIAN CHILD'S PARENTS HAVE NOT BEEN TERMINATED AND THE INDIAN CHILD IS IN NEED OF PLACEMENT OR CONTINUATION IN SUBSTITUTE CARE, THE INDIAN CHILD MUST BE PLACED IN THE LEAST RESTRICTIVE SETTING THAT:

(a) MOST CLOSELY APPROXIMATES A FAMILY, TAKING INTO CONSIDERATION SIBLING ATTACHMENT;

(b) ALLOWS THE INDIAN CHILD'S SPECIAL NEEDS, IF ANY, TO BE MET;

(c) SUBJECT TO SUBSECTION (1)(d)(II)(C) OF THIS SECTION, IS IN REASONABLE PROXIMITY TO THE INDIAN CHILD'S HOME, EXTENDED FAMILY, OR SIBLINGS; AND

(d) (I) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, IS IN ACCORDANCE WITH THE ORDER OF PREFERENCE ESTABLISHED BY THE INDIAN CHILD'S TRIBE; OR

(II) IF THE INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED PLACEMENT PREFERENCES, IS IN ACCORDANCE WITH THE FOLLOWING ORDER OF PREFERENCE:

(A) THE CHILD'S NONCUSTODIAL PARENT;

(B) A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY;

(C) A FOSTER HOME LICENSED, APPROVED, OR SPECIFIED BY THE INDIAN CHILD'S TRIBE;

(D) ANOTHER MEMBER OF THE INDIAN CHILD'S TRIBE;

(E) ANOTHER INDIAN FAMILY WITH WHOM THE INDIAN CHILD HAS A RELATIONSHIP;

(F) AN INDIAN FAMILY FROM A TRIBE THAT IS CULTURALLY SIMILAR OR LINGUISTICALLY CONNECTED TO THE INDIAN CHILD'S TRIBE;

(G) A FOSTER HOME LICENSED OR APPROVED BY A LICENSING AUTHORITY IN THIS STATE AND IN WHICH ONE OR MORE OF THE LICENSED OR APPROVED FOSTER PARENTS IS AN INDIAN; OR

(H) AN INSTITUTION FOR CHILDREN THAT HAS A PROGRAM SUITABLE TO MEET THE INDIAN CHILD'S NEEDS AND IS APPROVED BY AN INDIAN TRIBE OR OPERATED BY AN INDIAN ORGANIZATION.

(2) IF THE PARENTAL RIGHTS OF THE INDIAN CHILD'S PARENTS HAVE BEEN TERMINATED OR IF AN INDIAN CHILD IS IN NEED OF GUARDIANSHIP PURSUANT TO PART 2 OF ARTICLE 14 OF TITLE 15 OR ADOPTIVE PLACEMENT,

EXCEPT AS PROVIDED FOR IN SUBSECTION (3) OF THIS SECTION, THE INDIAN CHILD MUST BE PLACED:

(a) IN ACCORDANCE WITH THE ORDER OF PREFERENCE ESTABLISHED BY THE INDIAN CHILD'S TRIBE; OR

(b) IF THE INDIAN CHILD'S TRIBE HAS NOT ESTABLISHED PLACEMENT PREFERENCES, ACCORDING TO THE FOLLOWING ORDER OF PREFERENCE:

(I) WITH A MEMBER OF THE INDIAN CHILD'S EXTENDED FAMILY;

(II) WITH OTHER MEMBERS OF THE INDIAN CHILD'S TRIBE;

(III) WITH A MEMBER OR CITIZEN OF AN INDIAN TRIBE IN WHICH THE INDIAN CHILD IS ELIGIBLE FOR MEMBERSHIP OR CITIZENSHIP BUT THAT IS NOT THE INDIAN CHILD'S TRIBE;

(IV) WITH ANOTHER INDIAN FAMILY WITH WHOM THE INDIAN CHILD HAS A RELATIONSHIP;

(V) WITH AN INDIAN FAMILY FROM A TRIBE THAT IS CULTURALLY SIMILAR OR LINGUISTICALLY CONNECTED TO THE INDIAN CHILD'S TRIBE; OR

(VI) WITH ANOTHER INDIAN FAMILY.

(3) (a) A PARTY MAY FILE A MOTION WITH THE COURT REQUESTING AUTHORITY TO PLACE THE INDIAN CHILD CONTRARY TO THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION. THE MOTION MUST DETAIL THE REASONS THE PARTY ASSERTS THAT GOOD CAUSE EXISTS FOR PLACEMENT CONTRARY TO THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION.

(b) UPON THE FILING OF AN OBJECTION TO A MOTION FILED PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION, THE COURT SHALL SET THE TIME FOR A HEARING ON THE OBJECTIONS.

(c) IF THE COURT DETERMINES THAT THE MOVING PARTY HAS ESTABLISHED ITS BURDEN BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS GOOD CAUSE TO DEPART FROM THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION, THE COURT MAY

AUTHORIZE AN ALTERNATIVE PLACEMENT.

(d) THE COURT'S DETERMINATION PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION:

(I) MUST BE IN WRITING AND BASED ON ONE OR MORE OF THE FOLLOWING FACTORS:

(A) THE PREFERENCES OF THE INDIAN CHILD, IF THE INDIAN CHILD IS OF SUFFICIENT AGE AND CAPACITY TO UNDERSTAND THE DECISION THAT IS BEING MADE;

(B) THE PRESENCE OF A SIBLING ATTACHMENT THAT CANNOT BE MAINTAINED THROUGH A PLACEMENT CONSISTENT WITH THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION;

(C) ANY EXTRAORDINARY PHYSICAL, MENTAL, OR EMOTIONAL NEEDS OF THE INDIAN CHILD THAT REQUIRE SPECIALIZED TREATMENT SERVICES IF, DESPITE ACTIVE EFFORTS, THOSE SERVICES ARE UNAVAILABLE IN THE COMMUNITY WHERE FAMILIES WHO MEET THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION RESIDE;

(D) A FINDING BASED ON THE TESTIMONY OF THE CHILD PLACEMENT AGENCY OR THE PETITIONING OR FILING PARTY THAT A DILIGENT SEARCH HAS BEEN CONDUCTED AND THAT A PLACEMENT MEETING THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION IS UNAVAILABLE, AS DETERMINED BY THE PREVAILING SOCIAL AND CULTURAL STANDARDS OF THE INDIAN COMMUNITY IN WHICH THE INDIAN CHILD'S PARENT OR EXTENDED FAMILY RESIDES OR MAINTAINS SOCIAL AND CULTURAL TIES; OR

(E) THE PLACEMENT REQUEST OF THE INDIAN CHILD'S PARENT, AFTER THE INDIAN CHILD'S PARENT HAS REVIEWED THE PLACEMENT OPTIONS, IF ANY COMPLY WITH THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION;

(II) MUST ALLOW THE COURT TO RETAIN DISCRETION TO FIND THAT GOOD CAUSE DOES NOT EXIST EVEN IF ONE OR MORE OF THE FACTORS IN SUBSECTION (3)(d)(I) OF THIS SECTION ARE PRESENT;

(III) MUST, IN APPLYING THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION, GIVE WEIGHT TO THE INDIAN CHILD'S PARENT'S REQUEST FOR ANONYMITY IF THE PLACEMENT IS AN ADOPTIVE PLACEMENT TO WHICH THE INDIAN CHILD'S PARENT HAS CONSENTED; AND

(IV) MAY NOT BE BASED:

(A) ON THE SOCIOECONOMIC CONDITIONS OF THE INDIAN CHILD'S TRIBE;

(B) ON ANY PERCEPTION OF THE TRIBE'S OR FEDERAL BUREAU OF INDIAN AFFAIRS' SOCIAL SERVICES OR JUDICIAL SYSTEMS;

(C) ON THE DISTANCE BETWEEN A PLACEMENT THAT MEETS THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION THAT IS LOCATED ON OR NEAR A RESERVATION AND THE INDIAN CHILD'S PARENT, EXCEPT IF THE PLACEMENT WOULD UNDERMINE REUNIFICATION EFFORTS; OR

(D) SOLELY ON THE ORDINARY BONDING OR ATTACHMENT BETWEEN THE INDIAN CHILD AND A NON-PREFERRED PLACEMENT ARISING FROM TIME SPENT IN THE NON-PREFERRED PLACEMENT.

(4) THE COURT, ON THE COURT'S OWN MOTION OR THE MOTION OF ANY PARTY, SHALL MAKE A DETERMINATION PURSUANT TO THIS SECTION REGARDING THE INDIAN CHILD'S PLACEMENT IF THE COURT OR THE MOVING PARTY HAS REASON TO KNOW THAT THE INDIAN CHILD WAS PLACED CONTRARY TO THE PLACEMENT PREFERENCES SET FORTH IN SUBSECTION (1) OR (2) OF THIS SECTION WITHOUT GOOD CAUSE. A MOTION MADE PURSUANT TO THIS SUBSECTION (4) MAY BE MADE IN WRITING OR ORALLY ON THE RECORD.

(5) TO ENSURE THAT THIS ARTICLE 1.2 IS FULLY IMPLEMENTED AND THAT ALL INDIAN CHILDREN HAVE THE OPPORTUNITY TO MAINTAIN STRONG CONNECTIONS TO THEIR CULTURE, IF THE HOUSEHOLD INTO WHICH AN INDIAN CHILD IS PLACED FOR ADOPTION OR GUARDIANSHIP DOES NOT INCLUDE A PARENT WHO IS A MEMBER OF THE INDIAN CHILD'S TRIBE, THE COURT SHALL REQUIRE THE PARTIES TO THE ADOPTION TO ENTER A CULTURAL COMPACT AT THE DISCRETION OF THE INDIAN CHILD'S TRIBE, OR

OTHERWISE DEVELOP A PLAN THAT DOCUMENTS THE PARTIES' AGREEMENT REGARDING HOW THE INDIAN CHILD WILL CONTINUE TO ACTIVELY PARTICIPATE IN THE INDIAN CHILD'S CULTURAL LEARNING AND ACTIVITIES, AND ENGAGEMENT WITH FAMILY MEMBERS. EACH CULTURAL COMPACT OR PLAN MUST BE SPECIFIC TO THE INDIAN CHILD; MUST CONSIDER THE INDIAN CHILD'S MENTAL, PHYSICAL, AND EMOTIONAL NEEDS, INCLUDING THE INDIAN CHILD'S PREFERENCES; AND MUST TAKE INTO ACCOUNT THE INDIAN CHILD'S UNDERSTANDING AS THE INDIAN CHILD GROWS AND MATURES. THE CULTURAL COMPACT OR PLAN IS CONSIDERED A POST-ADOPTION CONTACT AGREEMENT IN ACCORDANCE WITH SECTION 19-5-208 (4.5) AND ENFORCEABLE IN ACCORDANCE WITH SECTION 19-5-217.

(6) A CONFIDENTIALITY REQUIREMENT, IF ANY, DOES NOT RELIEVE THE COURT OR ANY PETITIONERS IN AN ADOPTION PROCEEDING FROM THE DUTY TO COMPLY WITH THE PLACEMENT PREFERENCES SET FORTH IN THIS SECTION IF THE CHILD IS AN INDIAN CHILD.

(7) A CONFIDENTIALITY REQUIREMENT, IF ANY, DOES NOT PREVENT AN ADULT ADOPTEE, ADULT DESCENDANT OF AN ADOPTEE, OR ANOTHER ELIGIBLE PARTY FROM OBTAINING UNREDACTED COPIES OF ADOPTION RECORDS PURSUANT TO SECTION 19-5-305.

19-1.2-121. Order to vacate judgment. (1) A PETITION TO VACATE AN ORDER OR A JUDGMENT INVOLVING AN INDIAN CHILD REGARDING JURISDICTION IN ACCORDANCE WITH SECTIONS 19-1.2-116 AND 19-1.2-118, PLACEMENT, GUARDIANSHIP, OR THE TERMINATION OF PARENTAL RIGHTS MAY BE FILED IN A PENDING CHILD CUSTODY PROCEEDING INVOLVING THE INDIAN CHILD OR, IF A CHILD CUSTODY PROCEEDING IS NOT PENDING, IN ANY STATE OR LOCAL COURT OF COMPETENT JURISDICTION BY:

(a) THE INDIAN CHILD WHO WAS ALLEGED TO BE WITHIN THE COURT'S JURISDICTION PURSUANT TO SECTION 19-1.2-116;

(b) THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN FROM WHOSE CUSTODY THE INDIAN CHILD WAS REMOVED OR WHOSE PARENTAL RIGHTS WERE TERMINATED; OR

(c) THE INDIAN CHILD'S TRIBE.

(2) (a) THE COURT SHALL VACATE AN ORDER OR JUDGMENT

INVOLVING AN INDIAN CHILD REGARDING JURISDICTION IN ACCORDANCE WITH SECTIONS 19-1.2-116 AND 19-1.2-118, PLACEMENT, GUARDIANSHIP, OR THE TERMINATION OF PARENTAL RIGHTS IF THE COURT DETERMINES THAT ANY PROVISION OF THIS ARTICLE 1.2 HAS BEEN VIOLATED.

(b) IF THE VACATED ORDER OR JUDGMENT RESULTED IN THE REMOVAL OR PLACEMENT OF THE INDIAN CHILD, THE COURT SHALL ORDER THE CHILD RETURNED TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN AS SOON AS POSSIBLE, AND THE COURT'S ORDER MUST INCLUDE A TRANSITION PLAN FOR THE PHYSICAL CUSTODY OF THE CHILD, UNLESS THE COURT DETERMINES THAT A HEARING IS TO BE HELD WITHIN TWENTY-EIGHT DAYS IN ACCORDANCE WITH 25 U.S.C. SEC. 1912 (e) AND SECTION 19-1.2-123 TO DETERMINE IF THE RETURN OF THE INDIAN CHILD IS APPROPRIATE. THE TRANSITION PLAN MAY INCLUDE PROTECTIVE CUSTODY PURSUANT TO SECTION 19-3-405.

(c) IF THE VACATED ORDER OR JUDGMENT TERMINATED PARENTAL RIGHTS, THE COURT SHALL ORDER THE PREVIOUSLY TERMINATED PARENTAL RIGHTS TO BE RESTORED.

(d) IF THE STATE OR ANY OTHER PARTY AFFIRMATIVELY ASKS THE COURT TO RECONSIDER THE ISSUES UNDER THE VACATED ORDER OR JUDGMENT, THE COURT'S FINDINGS OR DETERMINATIONS MUST BE READJUDICATED BY THE COURT THAT IS RECONSIDERING WHETHER THERE HAS BEEN ABUSE OR NEGLECT SUFFICIENT TO ALLOW THE INDIAN CHILD TO BE REMOVED PURSUANT TO THIS ARTICLE 1.2.

19-1.2-122. Determination of whether an Indian child has been improperly removed or retained - remedy. (1) THE COURT, ON THE COURT'S OWN MOTION OR ON THE MOTION OF ANY PARTY, SHALL EXPEDITIOUSLY DETERMINE WHETHER AN INDIAN CHILD WHO IS ASSERTED TO BE WITHIN THE COURT'S JURISDICTION PURSUANT TO SECTION 19-1.2-116 HAS BEEN IMPROPERLY REMOVED OR IMPROPERLY RETAINED FOLLOWING A VISIT OR TEMPORARY RELINQUISHMENT OF CUSTODY. A MOTION PURSUANT TO THIS SECTION MAY BE MADE ORALLY OR IN WRITING.

(2) IF THE COURT FINDS THAT THE INDIAN CHILD HAS BEEN IMPROPERLY REMOVED OR IMPROPERLY RETAINED, THE COURT SHALL ORDER THE PETITIONING OR FILING PARTY TO IMMEDIATELY RETURN THE INDIAN CHILD TO THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN AND DISMISS

THE PROCEEDING, UNLESS THE COURT DETERMINES THAT DOING SO WOULD SUBJECT THE INDIAN CHILD TO SUBSTANTIAL AND IMMEDIATE DANGER OR A THREAT OF SUBSTANTIAL AND IMMEDIATE DANGER. IN SUCH A CASE, THE COURT SHALL HOLD A HEARING WITHIN TWENTY-EIGHT DAYS IN ACCORDANCE WITH 25 U.S.C. SEC. 1912 (e) AND SECTION 19-1.2-123 TO DETERMINE IF THE RETURN OF THE INDIAN CHILD IS APPROPRIATE.

19-1.2-123. Foster care placement. (1) FOR A COURT TO ORDER FOSTER CARE PLACEMENT IN A CHILD CUSTODY PROCEEDING INVOLVING AN INDIAN CHILD:

(a) THE COURT MUST FIND BY CLEAR AND CONVINCING EVIDENCE, INCLUDING THE TESTIMONY OF ONE OR MORE QUALIFIED EXPERT WITNESSES, THAT THE INDIAN CHILD'S CONTINUED CUSTODY BY THE INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD; AND

(b) THE COURT MUST DETERMINE THAT THE EVIDENCE REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION SHOWS A CAUSAL RELATIONSHIP BETWEEN THE PARTICULAR CONDITIONS IN THE INDIAN CHILD'S DOMICILE OR RESIDENCE AND THE LIKELIHOOD THAT THE CONTINUED CUSTODY OF THE INDIAN CHILD IN THAT DOMICILE OR RESIDENCE WILL RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING.

(2) WITHOUT A CAUSAL RELATIONSHIP SHOWN PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, IF THE EVIDENCE SHOWS ONLY THE EXISTENCE OF COMMUNITY OR FAMILY POVERTY, ISOLATION, SINGLE PARENTHOOD, CUSTODIAN AGE, CROWDED OR INADEQUATE HOUSING, SUBSTANCE ABUSE, OR NONCONFORMING SOCIAL BEHAVIOR, SUCH EVIDENCE DOES NOT BY ITSELF CONSTITUTE THE CLEAR AND CONVINCING EVIDENCE REQUIRED FOR A FINDING THAT CONTINUED CUSTODY IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD.

19-1.2-124. Tribal customary adoption. (1) IF THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE PROVIDES NOTICE TO THE COURT AND THE PARTIES IN WRITING OR ORALLY ON THE RECORD THAT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE IS PURSUING A TRIBAL CUSTOMARY ADOPTION AS A RESOLUTION TO THE CHILD CUSTODY PROCEEDING, THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE

MUST SECURE A MOTION TO TRANSFER THE CASE TO TRIBAL COURT PURSUANT TO SECTION 19-1.2-118 WITHIN SIXTY-THREE DAYS AFTER RECEIVING THE NOTICE. IF THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE DOES NOT SECURE A MOTION TO TRANSFER THE CASE WITHIN SIXTY-THREE DAYS, THE COURT MAY CONSIDER OTHER PERMANENCY OR PLACEMENT OPTIONS PURSUANT TO THIS ARTICLE 1.2 AS A RESOLUTION TO THE CHILD CUSTODY PROCEEDING. FAILURE TO SECURE THE MOTION TO TRANSFER THE CASE WITHIN SIXTY-THREE DAYS DOES NOT PREVENT THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE FROM FILING A MOTION TO TRANSFER THE CASE TO A TRIBAL COURT AT A LATER DATE.

(2) UPON THE REQUEST OF THE INDIAN CHILD'S TRIBE OR ANOTHER PARTY TO THE CASE IN WHICH THE TRIBAL CUSTOMARY ADOPTION WAS ISSUED, THE COURT SHALL CERTIFY A TRIBAL CUSTOMARY ADOPTION ORDER AND TREAT THE ORDER IN ACCORDANCE WITH THE FULL FAITH AND CREDIT PROVISIONS SET FORTH IN SECTION 19-1.2-131.

19-1.2-125. Termination of parental rights - tribal customary adoption exemption. (1) UPON THE FILING OF A MOTION TO TERMINATE THE PARENT-CHILD LEGAL RELATIONSHIP, THE COURT SHALL MAKE A FINDING, SUBJECT TO THE PROCEDURES DESCRIBED IN SECTION 19-1.2-107 (2) AND (3), REGARDING WHETHER THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD.

(2) (a) IF THERE IS A FINDING THAT THERE IS REASON TO KNOW THAT THE CHILD IS AN INDIAN CHILD, IN ADDITION TO THE STATUTORY CRITERIA OUTLINED IN SECTION 19-3-604 AND PART 1 OF ARTICLE 5 OF THIS TITLE 19, THE COURT SHALL MAKE FINDINGS, SUPPORTED BY EVIDENCE BEYOND A REASONABLE DOUBT, INCLUDING THE TESTIMONY OF ONE OR MORE QUALIFIED EXPERT WITNESSES, THAT THE PARENTS' CONTINUED CUSTODY OF THE INDIAN CHILD IS LIKELY TO RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE CHILD.

(b) THE COURT MAY NOT ENTER AN ORDER TERMINATING PARENTAL RIGHTS OF AN INDIAN CHILD UNLESS:

(I) THE COURT HAS OFFERED THE PARTIES THE OPPORTUNITY TO PARTICIPATE IN MEDIATION;

(II) ACTIVE EFFORTS TO REUNITE THE INDIAN FAMILY DID NOT

ELIMINATE THE NECESSITY FOR TERMINATION BASED ON SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE INDIAN CHILD; AND

(III) THE COURT HAS CONSIDERED AND ELIMINATED ANY LESS DRASTIC ALTERNATIVES TO TERMINATION, INCLUDING, BUT NOT LIMITED TO, ALLOCATION OF PARENTAL RESPONSIBILITIES, GUARDIANSHIP, AND TRIBAL CUSTOMARY ADOPTION.

(3) THE EVIDENCE REQUIRED PURSUANT TO THIS SECTION MUST SHOW A CAUSAL RELATIONSHIP BETWEEN THE PARTICULAR CONDITIONS IN THE INDIAN CHILD'S HOME AND THE LIKELIHOOD THAT CONTINUED CUSTODY OF THE INDIAN CHILD BY THE INDIAN CHILD'S PARENT OR PARENTS WILL RESULT IN SERIOUS EMOTIONAL OR PHYSICAL DAMAGE TO THE PARTICULAR INDIAN CHILD WHO IS THE SUBJECT OF THE CHILD CUSTODY PROCEEDING. EVIDENCE THAT SHOWS THE EXISTENCE OF COMMUNITY OR FAMILY POVERTY, ISOLATION, SINGLE PARENTHOOD, CUSTODIAN AGE, CROWDED OR INADEQUATE HOUSING, SUBSTANCE ABUSE, OR NONCONFORMING SOCIAL BEHAVIOR DOES NOT, BY ITSELF, ESTABLISH A CAUSAL RELATIONSHIP AS REQUIRED BY THIS SECTION.

(4) A PETITIONING OR FILING PARTY FILING A MOTION TO TERMINATE PARENTAL RIGHTS OF AN INDIAN CHILD SHALL DOCUMENT IN THE MOTION WHAT EFFORTS HAVE BEEN MADE TO EXPLORE TRIBAL CUSTOMARY ADOPTION PURSUANT TO SECTION 19-1.2-124.

(5) IF REQUESTED BY THE TRIBE, THE TERMINATION ORDER MUST INCLUDE A PROVISION THAT THE PETITIONING OR FILING PARTY MAINTAIN CONNECTIONS BETWEEN THE INDIAN CHILD AND THE INDIAN CHILD'S TRIBE.

(6) THE RIGHTS OF ONE PARENT MAY BE TERMINATED WITHOUT AFFECTING THE RIGHTS OF THE OTHER PARENT.

19-1.2-126. Voluntary consent - foster care placement, relinquishment of parental rights, or adoption - requirements - when not valid. (1) WHEN A PARENT OR INDIAN CUSTODIAN VOLUNTARILY CONSENTS TO A FOSTER CARE, PRE-ADOPTIVE OR ADOPTIVE PLACEMENT, OR TO TERMINATE PARENTAL RIGHTS, THE CONSENT IS NOT VALID UNLESS EXECUTED IN WRITING AND RECORDED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION AND ACCOMPANIED BY THE JUDGE'S CERTIFICATE THAT THE TERMS AND CONSEQUENCES OF THE CONSENT WERE FULLY

EXPLAINED IN DETAIL AND FULLY UNDERSTOOD BY THE PARENT OR INDIAN CUSTODIAN. THE COURT SHALL ALSO CERTIFY THAT EITHER THE PARENT OR INDIAN CUSTODIAN FULLY UNDERSTOOD THE EXPLANATION IN ENGLISH OR THAT IT WAS INTERPRETED INTO A LANGUAGE THAT THE PARENT OR INDIAN CUSTODIAN UNDERSTOOD. ANY CONSENT GIVEN PRIOR TO, OR WITHIN TEN DAYS AFTER, BIRTH OF THE INDIAN CHILD IS NOT VALID.

(2) A PARENT OR INDIAN CUSTODIAN MAY WITHDRAW CONSENT TO A FOSTER CARE PLACEMENT PURSUANT TO STATE LAW AT ANY TIME, AND, UPON SUCH WITHDRAWAL, THE INDIAN CHILD MUST BE RETURNED TO THE PARENT OR INDIAN CUSTODIAN.

(3) IN A VOLUNTARY PROCEEDING FOR TERMINATION OF PARENTAL RIGHTS TO, OR ADOPTIVE PLACEMENT OF, AN INDIAN CHILD, THE CONSENT OF THE INDIAN CHILD'S PARENT MAY BE WITHDRAWN FOR ANY REASON AT ANY TIME PRIOR TO THE ENTRY OF A FINAL DECREE OF TERMINATION OF PARENTAL RIGHTS OR ADOPTION, AS THE CASE MAY BE, AND THE INDIAN CHILD MUST BE RETURNED TO THE INDIAN CHILD'S PARENT.

19-1.2-127. Tribal-state agreements - purpose - requirements. (1) (a) THE STATE DEPARTMENT SHALL CONTINUE TO MAKE GOOD FAITH EFFORTS TO FOLLOW AND REVISE TRIBAL-STATE CHILD WELFARE AGREEMENTS WITH THE SOUTHERN UTE INDIAN TRIBE AND THE UTE MOUNTAIN UTE INDIAN TRIBE. THE STATE DEPARTMENT SHALL REVISE A TRIBAL-STATE CHILD WELFARE AGREEMENT UPON THE REQUEST OF, AND IN CONJUNCTION WITH, THE REQUESTING INDIAN TRIBE.

(b) THE STATE DEPARTMENT MAY ALSO ENTER INTO A TRIBAL-STATE CHILD WELFARE AGREEMENT WITH ANY INDIAN TRIBE OUTSIDE OF COLORADO THAT HAS A SIGNIFICANT NUMBER OF MEMBER CHILDREN OR MEMBERSHIP-ELIGIBLE CHILDREN RESIDING IN THIS STATE.

(2) THE PURPOSES OF A TRIBAL-STATE CHILD WELFARE AGREEMENT ARE TO PROMOTE THE CONTINUED EXISTENCE AND INTEGRITY OF THE INDIAN TRIBE AS A POLITICAL ENTITY AND TO PROTECT THE VITAL INTERESTS OF INDIAN CHILDREN IN SECURING AND MAINTAINING POLITICAL, CULTURAL, AND SOCIAL RELATIONSHIPS WITH THEIR TRIBE AND FAMILY.

(3) A TRIBAL-STATE CHILD WELFARE AGREEMENT MAY INCLUDE AGREEMENTS REGARDING DEFAULT JURISDICTION OVER CASES IN WHICH THE

STATE COURTS AND TRIBAL COURTS HAVE CONCURRENT JURISDICTION; THE TRANSFER OF CASES BETWEEN STATE COURTS AND TRIBAL COURTS; THE ASSESSMENT, REMOVAL, PLACEMENT, CUSTODY, AND ADOPTION OF INDIAN CHILDREN; AND ANY OTHER CHILD WELFARE SERVICES PROVIDED TO INDIAN CHILDREN.

(4) A TRIBAL-STATE CHILD WELFARE AGREEMENT MUST:

(a) PROVIDE FOR THE COOPERATIVE DELIVERY OF CHILD WELFARE SERVICES TO INDIAN CHILDREN IN COLORADO, INCLUDING THE UTILIZATION, TO THE EXTENT AVAILABLE, OF SERVICES PROVIDED BY THE INDIAN TRIBE OR AN ORGANIZATION WHOSE MISSION IS TO SERVE THE AMERICAN INDIAN OR ALASKA NATIVE POPULATION TO IMPLEMENT THE TERMS OF THE TRIBAL-STATE CHILD WELFARE AGREEMENT; AND

(b) IF SERVICES PROVIDED BY THE INDIAN TRIBE OR AN ORGANIZATION WHOSE MISSION IS TO SERVE THE AMERICAN INDIAN OR ALASKA NATIVE POPULATION ARE UNAVAILABLE, PROVIDE FOR THE STATE DEPARTMENT'S USE OF COMMUNITY SERVICES AND RESOURCES DEVELOPED SPECIFICALLY FOR INDIAN FAMILIES AND THAT HAVE THE DEMONSTRATED CAPACITY TO PROVIDE CULTURALLY RELEVANT AND EFFECTIVE SERVICES TO INDIAN CHILDREN.

19-1.2-128. Collateral attack. (1) AFTER THE ENTRY OF A FINAL DECREE OF ADOPTION OF AN INDIAN CHILD, THE INDIAN CHILD'S PARENT MAY WITHDRAW CONSENT UPON THE GROUNDS THAT CONSENT WAS OBTAINED THROUGH FRAUD OR DURESS AND MAY PETITION THE COURT TO VACATE THE DECREE.

(2) UPON A FINDING THAT CONSENT WAS OBTAINED THROUGH FRAUD OR DURESS, THE COURT SHALL VACATE THE DECREE OF ADOPTION AND ORDER THE RETURN OF THE INDIAN CHILD TO THE INDIAN CHILD'S PARENT.

(3) AN ADOPTION THAT HAS BEEN EFFECTIVE FOR AT LEAST TWO YEARS SHALL NOT BE INVALIDATED PURSUANT TO THIS SECTION UNLESS OTHERWISE PERMITTED BY STATE LAW.

19-1.2-129. Report. (1) THE STATE DEPARTMENT SHALL COMPILE ANY INFORMATION THAT RELATES TO THE IMPLEMENTATION OF THIS ARTICLE 1.2 AND IS REQUIRED PURSUANT TO 45 CFR 1355.44 CONCERNING THE

ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM.

(2) (a) ON OR BEFORE JULY 1, 2027, AND EVERY ODD-NUMBERED YEAR THEREAFTER, THE JUDICIAL DEPARTMENT SHALL PROVIDE THE FOLLOWING INFORMATION FOR THE PRIOR TWO-YEAR PERIOD TO THE STATE DEPARTMENT:

(I) THE NUMBER OF INDIAN CHILDREN INVOLVED IN DEPENDENCY AND NEGLECT PROCEEDINGS;

(II) THE DATES OUT-OF-HOME PLACEMENT WERE ORDERED FOR INDIAN CHILDREN IN PROTECTIVE CUSTODY;

(III) THE RATIO OF INDIAN CHILDREN TO NON-INDIAN CHILDREN IN PROTECTIVE CUSTODY; AND

(IV) THE NUMBER OF CASES THAT WERE TRANSFERRED TO A TRIBAL COURT PURSUANT TO SECTIONS 19-1.2-118 AND 19-1.2-119.

(b) ON OR BEFORE SEPTEMBER 15, 2027, AND EVERY ODD-NUMBERED YEAR THEREAFTER, THE STATE DEPARTMENT SHALL COMPILE THE FOLLOWING INFORMATION FOR THE PRIOR TWO-YEAR PERIOD:

(I) WHICH TRIBES THE INDIAN CHILDREN WHO WERE IN PROTECTIVE CUSTODY WERE MEMBERS OF OR ELIGIBLE FOR MEMBERSHIP IN;

(II) THE NUMBER OF INDIAN CHILDREN IN FOSTER CARE;

(III) THE NUMBER OF INDIAN CHILDREN PLACED IN ADOPTIVE HOMES FROM THE CHILD WELFARE SYSTEM; AND

(IV) THE NUMBER OF AVAILABLE PLACEMENTS AND COMMON BARRIERS TO RECRUITMENT AND RETENTION OF APPROPRIATE PLACEMENTS.

(c) NO LATER THAN DECEMBER 1, 2027, AND EVERY EVEN-NUMBERED YEAR THEREAFTER, THE STATE DEPARTMENT SHALL REPORT THE FINDINGS OF THE INFORMATION COMPILED PURSUANT TO SUBSECTIONS (2)(a) AND (2)(b) OF THIS SECTION TO THE HOUSE OF REPRESENTATIVES HEALTH AND HUMAN SERVICES COMMITTEE, THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE, THE SENATE HEALTH AND

HUMAN SERVICES COMMITTEE, AND THE SENATE JUDICIARY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES.

(2) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11)(a)(I), THE REPORT REQUIRED PURSUANT TO THIS SECTION CONTINUES INDEFINITELY.

19-1.2-130. Conflict of laws. (1) EXCEPT AS PROVIDED IN SECTION 19-5-305, IF ANY PROVISION OF THIS ARTICLE 1.2 IS FOUND TO PROVIDE A LOWER STANDARD OF PROTECTION TO THE RIGHTS OF AN INDIAN CHILD OR THE INDIAN CHILD'S PARENT, INDIAN CUSTODIAN, OR TRIBE THAN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978":

(a) THE HIGHER STANDARD OF PROTECTION IN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978" CONTROLS; AND

(b) THE CONFLICTING PROVISION DOES NOT RENDER ANY REMAINING PROVISIONS OF THIS ARTICLE 1.2 INOPERATIVE THAT PROVIDE A HIGHER STANDARD OF PROTECTION THAN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978".

19-1.2-131. Full faith and credit. THE COURT SHALL GIVE FULL FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF AN INDIAN TRIBE APPLICABLE TO AN INDIAN CHILD CUSTODY PROCEEDING, INCLUDING, BUT NOT LIMITED TO, TRIBAL CUSTOMARY ADOPTIONS, TO THE SAME EXTENT THAT THE STATE GIVES FULL FAITH AND CREDIT TO THE PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF ANY OTHER GOVERNMENTAL ENTITY. BY GRANTING FULL FAITH AND CREDIT PURSUANT TO THIS SECTION, A TRIBAL COURT ORDER IS ENFORCEABLE PURSUANT TO SECTIONS 13-53-102 AND 13-53-103.

19-1.2-132. Rules. THE DEPARTMENT OF HUMAN SERVICES AND THE JUDICIAL DEPARTMENT MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS ARTICLE 1.2.

SECTION 3. In Colorado Revised Statutes, 19-3-702, **amend** (4)(e) introductory portion; and **add** (4)(e)(III.5) as follows:

19-3-702. Permanency hearing. (4) (e) If the court finds that there is not a substantial probability that the child or youth will be returned to a

parent or legal guardian within six months and the child or youth appears to be adoptable and meets the criteria for adoption in section 19-5-203, the court may order ~~the~~ A county department of human or social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article 3. Cause may include, but is not limited to, any of the following conditions:

(III.5) THE COURT, IN A PROCEEDING INVOLVING AN INDIAN CHILD, HAS DETERMINED THAT ACTIVE EFFORTS, AS DEFINED IN SECTION 19-1.2-103 AND DESCRIBED IN SECTION 19-1.2-111, HAVE NOT BEEN MADE;

SECTION 4. In Colorado Revised Statutes, 19-1-103, **amend** (83), (84), and (85) as follows:

19-1-103. Definitions. As used in this title 19 or in the specified portion of this title 19, unless the context otherwise requires:

(83) "Indian child" ~~means an unmarried person who is younger than eighteen years of age and who is either:~~ HAS THE SAME MEANING AS SET FORTH IN SECTION 19-1.2-103.

~~(a) A member of an Indian tribe; or~~

~~(b) Eligible for membership in an Indian tribe and who is the biological child of a member of an Indian tribe.~~

(84) "Indian child's tribe" ~~means:~~ HAS THE MEANING DETERMINED PURSUANT TO SECTION 19-1.2-108.

~~(a) The Indian tribe in which an Indian child is a member or eligible for membership; or~~

~~(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts.~~

(85) "Indian tribe" ~~means an Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the federal governmental services provided to Indians because of their status as Indians~~ HAS THE SAME MEANING AS SET FORTH IN SECTION 19-1.2-103.

SECTION 5. In Colorado Revised Statutes, 19-2.5-502, **amend** (5)(a) introductory portion and (5)(b) as follows:

19-2.5-502. Petition initiation - petition form and content. (5) (a) Pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, in ~~those~~ delinquency proceedings to which the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., ~~as amended,~~ applies, including, but not limited to, status offenses such as the illegal possession or consumption of ethyl alcohol or marijuana by an underage ~~person~~ INDIVIDUAL or illegal possession of marijuana paraphernalia by an underage person, as described in section 18-13-122, and possession of handguns by juveniles, as described in section 18-12-108.5, the petition must:

(b) If notices were sent to the INDIAN CHILD'S parent or Indian custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts must be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in ~~section 19-1-126 (1)(c)~~ ARTICLE 1.2 OF THIS TITLE 19.

SECTION 6. In Colorado Revised Statutes, 19-3-502, **amend** (2.7)(a) introductory portion and (2.7)(b) as follows:

19-3-502. Petition form and content - limitations on claims in dependency or neglect actions. (2.7) (a) Pursuant to ~~the provisions of section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the petition must:

(b) If notices were sent to the INDIAN CHILD'S parent or Indian custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts ~~shall~~ MUST be attached to the petition and filed with the court or filed within ~~ten~~ FOURTEEN days after the filing of the petition, as specified in ~~section 19-1-126 (1)(c)~~ ARTICLE 1.2 OF THIS TITLE 19.

SECTION 7. In Colorado Revised Statutes, 19-3-602, **amend** (1.5)(a) introductory portion and (1.5)(b) as follows:

19-3-602. Motion for termination - separate hearing - right to counsel - no jury trial. (1.5) (a) Pursuant to ~~the provisions of section 19-1-126~~ SECTION 19-1.2-125, the motion for termination must:

(b) If notices were sent to the INDIAN CHILD'S parent or Indian custodian ~~of the child~~ and to the Indian child's tribe, pursuant to ~~section 19-1-126~~ SECTION 19-1.2-108, the postal receipts, or copies thereof, ~~shall~~ MUST be attached to the motion for termination and filed with the court or filed within ~~ten~~ FOURTEEN days after the filing of the motion for termination, as specified in ~~section 19-1-126 (1)(c)~~ SECTION 19-1.2-107 (1)(b).

SECTION 8. In Colorado Revised Statutes, 19-5-103, **amend** (1.5)(a) introductory portion and (1.5)(b) as follows:

19-5-103. Relinquishment procedure - petition - hearings. (1.5) (a) Pursuant to ~~the provisions of section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the petition for relinquishment ~~shall~~ MUST:

(b) If notices were sent to the INDIAN CHILD'S parent or Indian custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts ~~shall~~ MUST be attached to the petition and filed with the court or filed within fourteen days after the filing of the petition, as specified in ~~section 19-1-126 (1)(c)~~ ARTICLE 1.2 OF THIS TITLE 19.

SECTION 9. In Colorado Revised Statutes, 19-5-105.5, **amend** (7.3) as follows:

19-5-105.5. Termination of parent-child legal relationship upon a finding that the child was conceived as a result of sexual assault - legislative declaration - definitions. (7.3) If the child is an Indian child, the court shall ensure compliance with the federal "Indian Child Welfare Act of 1978", 25 U.S.C. sec. 1901 et seq., and the provisions of ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19.

SECTION 10. In Colorado Revised Statutes, 19-5-105.7, **amend** (11)(b) as follows:

19-5-105.7. Termination of parent-child legal relationship in a case of an allegation that a child was conceived as a result of sexual assault but in which no conviction occurred - legislative declaration - definitions. (11) (b) If the child is an Indian child, the court shall ensure compliance with the federal "Indian Child Welfare Act of 1978", 25 U.S.C.

sec. 1901 et seq., and ~~the provisions of section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19.

SECTION 11. In Colorado Revised Statutes, 19-5-208, **amend** (2.5)(a) introductory portion and (2.5)(b) as follows:

19-5-208. Petition for adoption - open adoption - post-adoption contact agreement. (2.5) (a) Pursuant to ~~the provisions of section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the petition for adoption must:

(b) If notices were sent to the INDIAN CHILD'S parent or Indian custodian ~~of the child~~ and to the Indian child's tribe pursuant to ~~section 19-1-126~~ ARTICLE 1.2 OF THIS TITLE 19, the postal receipts, or copies thereof, ~~shall~~ MUST be attached to the petition for adoption and filed with the court or filed within ~~ten~~ FOURTEEN days after the filing of the petition for adoption, as specified in ~~section 19-1-126 (1)(c)~~ ARTICLE 1.2 OF THIS TITLE 19.

SECTION 12. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED Saturday May 31st 2025 at 10:00 AM
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO