AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE

Friday, June 5, 2026, 9 a.m.
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report

A. Minutes for the April 3, 2026 meeting. **[pages 3–6]**

B. Rule Changes:

- Rule Change 2026(08) (ICWA Rule Change)
- Rule Change 2026(09) (ICWA reference in juvenile rules)
- Rule Change 2026(10) (ICWA reference in probate rules)
- Rule Change 2026(11) (ICWA reference in civil rules)

III. Present/New Business

A. Email from Anna Ulrich Re C.R.C.P. 59 & 60 **[page 7]**

IV. Old Business

A. Annual Review Subcommittee

- Proposed changes to Rule 4.15 ("First" Option & "Initial" Option) & Rule 4.27(b)(4) **[pages 8–14]**

B. ICWA Review Subcommittee (Judge Moultrie)

- Future of the Subcommittee?

C. Truancy Rules Subcommittee. (update by Abby Young & Jerin Damo)

- Update on some of the changes made by the subcommittee and areas in which ongoing discussion is needed
  - ►Updated Draft **[pages 15–45]**
  - ►Draft with the feedback **[pages 46–78]**

V. Future Meetings (first Friday of even months): August 7th; October 2nd; and December 4th.

VI. Adjourn

Colorado Supreme Court
Rules of Juvenile Procedure Committee
Meeting Minutes: April 3, 2026

I. Call to Order

A quorum being present, the Colorado Supreme Court Rules of Juvenile Procedure Committee was called to order by Chair Judge Craig R. Welling at just after 9 a.m. via videoconference.

The following members were present at the meeting: Judge Craig R. Welling, chair; David P. Ayraud; Jerin T. Damo; Traci Engdol-Fruhwirth; Nathan Fall; Magistrate Randall Lococo; Angela Rose; Zaven Saroyan; Lisa Shellenberger; Anna Ulrich; Pamela Gorden Wakefield; and Abby Young.

Non-voting members: Justice Richard L. Gabriel, liaison justice; Andy Rottman; and J.J. Wallace were also present.

The following members were absent from the meeting: Judge Karen Ashby; Judge Priscilla J. Loew; Judge Ann Meinster; Judge Pax Moultrie; Professor Colene Robinson; and Judge Theresa Slade.

The following materials were distributed for the meeting:

1. 2/2/2026 draft meeting minutes
2. Memo from Magistrate Lococo

II. Announcements from the Chair's Report

A. Welcome Nathan Fall

The chair officially welcomed Nathan Fall, a new member, to the Committee. The other Committee members also each introduced themselves.

B. Minutes

The 2/2/2026 meeting minutes were approved without amendment.

C. Subcommittee Issues

III. Present/New Business

A. Issues Raised

A member raised an issue, passed along from a judicial officer. In the judge's courtroom, the RPCs and GALs are complaining that they do not receive updated discovery materials. The judge raising the issue did not feel the rule required updating discovery. Several members weighed in and a consensus was reached that the judge is reading the rule correctly. The intent of the committee was to make it a continuing duty to *correct* discovery but not provide ongoing discovery. An attorney in private practice noted that, when she made a recent discovery request, the department asked if it was a one-time request or a continuing request, which she thought was a nice way to clarify matters at the front end.

Judge Welling also asked about the law enforcement reports issue raised at the last meeting. Members indicated that it was still an issue and that there is no uniformity. For example, in the same county, a municipal PD may provide reports, but the sheriff's office will not. Another member believed that costs are also influencing the issue because agencies incur charges for documents.

IV. Old Business

B. Annual Review Subcommittee

This is the former drafting subcommittee reconstituted to review the feedback received about the rules. The issues identified were:

1) Law enforcement reports (David Ayraud will do some follow-up to see if this is a statewide issue).

2) Clarification about handwritten DHS notes (Z Saroyan will do some follow-up on this one).

3) C.R.J.P. 4.27(b)(4): Motion to withdraw for respondent parent counsel. Many judges were taking the part requiring a hearing and advising the client literally and seemed stuck on what to do if the client doesn't appear for the hearing. Clarification that written advisement and/or addressing it at the next hearing for no-show clients may be a useful clarification.

4) C.R.J.P. 4.15: Create a new UCCJEA form for D&N cases. JDF 404 is confusing and some people believe the ICWA section on there is sufficient and it's not.

5) Clarifying "first appearance" language of 4.15: it's not clear whether the advisement is required at the shelter hearing and/or at the actual first advisement hearing.

6) Adopting Crim. P. *Batson* rule for the C.R.J.P.

Chair asked if there were other issues. No member indicated a need to examine other issues.

The committee agreed that two principles should guide the approach to reviewing the rules: 1) if it's not broke, don't fix it and 2) distinguish between anecdotal issues (one offs in one courtroom or district) that do not need addressing and systemic problems, which may need addressing.

C. ICWA Review

Judge Moultrie thanked the members of the ICWA subcommittee, Zaven Saroyan, Lisa Shellenberger, Jack Thorpe, and Judge Emily Lieberman for their work on coming up with the new ICWA rule. The committee voted via email after the meeting and approved the rule unanimously. Justice Gabriel will assist in facilitating references to ICWA in the other applicable rule sets.

Members indicated that there may be a need for future ICWA rules, including an amendment to expert disclosure rules for QEWs in ICWA cases. But, for now, the subcommittee is taking a wait and see approach.

D. Truancy Rules

The group decided to take a break to refresh themselves and their perspective. The group is now back to meeting. They are digesting the feedback and took a step back to look at their overall goal to make sure the draft is achieving that goal. They have had one meeting now and four more are on the books. They hope to have an updated draft for the June C.R.J.P. meeting. Subcommittee members continue to applaud Abby Young's leadership. Magistrate Lococo offered feedback acknowledging that there are conflicts in this area, but he doesn't want those conflicts to derail the idea of rules. The subcommittee members indicated that the feedback was helpful.

E. Batson

The committee continues to deliberate on the issue. A county attorney questioned whether this is an issue in D&N cases. A member related that it came up once in 25 years. Another member, who tracks COA cases (both the non-published and published) said that it's come up twice in the last four years, so characterized it as an occasional issue. A judicial officer recalls that the starting point was whether to refer to the criminal rule, do our own thing, or do nothing. Justice Gabriel recounted the history of the rule

change for the criminal rules committee. The issue was referred to the drafting subcommittee (n/k/a annual review subcommittee). The chair noted that if anyone was interested in this particular issue, they are more than welcome to join the annual review subcommittee.

V. Future Meetings

The next meeting is June 5th at 9 a.m. via videoconference.

Additional meetings are scheduled for the first Friday of even months: August 7th; October 2nd; & December 4th.

VI. Adjourn

The committee meeting adjourned just before 10 a.m.

wallace, jennifer

From: Anna Ulrich <[redacted]>
Sent: Monday, June 1, 2026 9:09 AM
To: wallace, jennifer; welling, craig
Subject: [EXTERNAL] Proposal for Juvenile Rules Committee to consider

Hello J.J. & Judge Welling:

OCR would like to propose to the Juvenile Rules Committee (and relevant subcommittee(s)) that, as part of its ongoing work on revisions to the existing Juvenile Rules, it consider the application of C.R.C.P. 59 and 60 in dependency and neglect cases. As you know, these Rules are currently applicable to D&Ns as written through C.R.J.P. 1(b). However, I don't believe the Committee has ever taken a close look at how these rules apply in these cases and whether any modifications are needed for the unique purposes of D&N cases.

While OCR feels that a fresh look at all of the provisions of these two rules is appropriate, OCR is particularly concerned about the impact that Rule 60(b) can have in these case types. In particular, the lack of a specific timeframe for consideration of a reconsideration motion under subsection (b)(5) ("any other reason justifying relief from the operation of the judgment"), which are to be considered "within a reasonable time," is quite indefinite and, in practice, can lead to the upending of the resolution of a D&N case long after the final orders hearing – thereby also impacting a child's stability.

Thank you for consideration of this in advance.

Sincerely

Anna Ulrich

P.S. It's my understanding that an email to you two was the proper procedure for bringing an issue of concern to the attention of the Juvenile Rules Committee – but please let me know if there's a different process I should be utilizing.

Anna N. Ulrich
Appellate and Affirmative Litigation Strategies Attorney
Office of the Child's Representative
Ralph L. Carr Colorado Judicial Center
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Rule 4.15. First Appearance Advisement; Advisment Upon Service of Petition

(a) The first appearance is the first occasion that a respondent appears before the juvenile court in the case. The first appearance may occur before the petition is filed.
(a.5) 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 4.15. ~~First~~Initial Appearance Advisement; Advisment Upon Service of Petition

(a) The initial appearance is the first occasion that a respondent appears before the juvenile court in the case. The initial appearance may occur before the petition is filed.
(a.5) At the ~~first~~ initial 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) Initial Advisement ~~at First~~ Appearance. At the ~~first~~ initial appearance before the court, tThe 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 4.27. 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. Unless the appointment is a provisional appointment pursuant to Chief Justice Directive 16-02, ~~A~~a motion to withdraw as respondent counsel must comply with Rule 121 section 1-1(2)(b) of the Colorado Rules of Civil Procedure and must additionally advise the client of the client's right to counsel~~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.

Contents

Part One – Applicability

Rule 1. Applicability and Citation

(a) These rules govern proceedings brought in the juvenile court under Title 19, also hereinafter referred to as the Children's Code, **and Article 33 of Title 22, also hereinafter referred to as the School Attendance Law of 1963**. All statutory references herein are to the Children's Code **or School Attendance Law of 1963** as amended.

(b) Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19 **or Article 33 of Title 22** shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.

Part Eight – Truancy (Rule 8.1 to Rule 8.22)

Subpart A: Scope, Purpose & Definitions

Rule 8.1. Procedure Governed, Scope, and Purpose of Rules

(a) **Scope.** These rules in part 8 apply to truancy proceedings, which are judicial proceedings for the enforcement of the School Attendance Law of 1963, Article 33 of Title 22, C.R.S., brought pursuant to section 22-33-108, C.R.S.

(b) **Consent to Magistrate Not Required.** Pursuant to Colorado Rules for Magistrates 6(d)(1)(A), consent of the parties is not required for a magistrate to preside over truancy matters governed by these rules.

(c) **Purposes of these Rules.**

(1) Truancy cases are unique civil cases, which require a careful balance of the important and connected rights and interests of parents, legal guardians, and legal custodians; students; and school districts.

(2) To best serve these rights and interests, truancy courts are encouraged to employ a specialized approach to address complex cases that requires knowledge of education law, family dynamics, and community resources to develop individualized solutions that promote student success.

(3) Truancy cases require a particularized approach that emphasizes collaboration, early intervention, and wraparound services, which is reflected in these rules.

(4) Where not governed by the Rules of Juvenile Procedure or the procedures set forth in Article 33 of Title 22, truancy cases must be conducted according to the Colorado Rules of Civil Procedure.

Rule 8.2 Definitions

The words and phrases used in the rules in this part 8 have the same meanings as the definitions contained in the School Attendance Law of 1963, and if not in the School Attendance Law of 1963, then other applicable statutes. For purposes of these rules, the term "student" is the same as a child who is alleged to be "habitually truant" pursuant to section 22-33-102(3.5), C.R.S.

Subpart B: Parties

Rule 8.3. Parties and Participants; Joinder

(a) Petitioner. A truancy case must be brought in the name of the school district by:

(1) An attorney for the school district;
(2) An employee authorized by the local board of education pursuant to section 13-1-127(7), C.R.S., to represent the school district in truancy proceedings;
(3) The attendance officer designated by the local board of education; or
(4) The local board of education.

(b) Respondents.

(1) A parent, guardian, or legal custodian of a student alleged to be in violation of the School Attendance Law of 1963 shall be named as a respondent in the petition.
(2) The student, from ages 12 through 16, alleged to be in violation of the School Attendance Law of 1963 shall be named as a student respondent in the petition.
(3) The student, from ages 6 through 11, alleged to be in violation of the School Attendance Law of 1963 may be named as a student respondent in the petition.

(c) Discretionary Joinder. The court, on its own motion, or on the motion of a party may join as a 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.

(d) Misjoinder, Nonjoinder, Designation, and Alignment of Parties. Misjoinder and nonjoinder of parties are not grounds for dismissal of a truancy case. Parties may be dismissed, added, designated as respondents, or aligned according to their respective positions on the issues by order of the court, on motion of a party, or of its own initiative at any stage of the case on such terms as are just.

PROPOSED OFFICIAL COMMENT(S)

Particularly in cases in which the student respondent is between the ages of 6 and 11, the court should consider whether the appointment of a guardian ad litem is necessary due to exceptional and extraordinary circumstances pursuant to C.R.J.P. 8.16(b), and/or whether appointment of counsel is necessary to protect the interests of the student respondent.

Commented [ay1]: Comment from Anna Ulrich: This reads as a requirement that all parents, guardians, legal custodians be included in a truancy petition - and I'm wondering if this is a realistic expectation. Some students involved in truancy will have complicated "parent" situations: i.e. parent is who is non-custodial/no parenting time or no contact with; live out-of-state and do not visit; there is no contact information for; are incarcerated; are unknown (John Doe); paternity has not been established or resolved, etc. I was just thinking it might warrant a comment if nothing else

Subpart C: Pleadings

Rule 8.4. Petition and Summons: Initiation, Form, Content, and Service

(a) Initiation. A petition and summons to compel attendance must be initiated in accordance with section 22-33-108, C.R.S.

(b) Form and Content of Petition.

(1) The petition shall identify parties, be signed by counsel or attendance officer, and filed with the court. The statements in the petition may be made upon information and belief.

(2) The petition shall set forth plainly the facts which bring the parties within the court's jurisdiction. The petition shall also state the name, age, and residence of the student and the names and residences of the student's parents, guardians, or legal custodians.

(3) The petition shall include a statement describing the creation and implementation of the plan created pursuant to section 22-33-107(3), C.R.S., to improve the student's attendance.

(4) The petition shall include a statement describing the form, content, and date in which the school district gave the student and the student's parents, guardians, or legal custodians written notice that the school district will initiate proceedings if the student does not comply with the attendance requirements set forth in Article 33 of Title 22.

(5) If the petition is combined with the school district's written notice pursuant section 22-33-108(5)(c), C.R.S., the petition must state the date on which the school district will initiate proceedings, which date must not be less than five days after the date of the notice and summons.

(6) The petition shall include evidence of:

(i) The student's attendance record prior to and after the point at which the student was identified by the school district as habitually truant as defined by section 22-33-102, C.R.S.;

(ii) Whether the student was identified as chronically absent and, if so, the strategies the school district used to improve the students' attendance;

(iii) The interventions and strategies used to improve the student's attendance before school or school district personnel created the student's plan described in section 22-33-107(3), C.R.S.;

(iv) The student's plan and the efforts of the student, the student's parents, guardians, or legal custodians and school or school district personnel to implement the plan; and

(v) The best practices and research-based strategies employed by the district prior to filing to minimize the need for court action, making the filing of a petition a last resort approach to address truancy.

(c) Service. Service of the petition and summons must comply with C.R.J.P. 2.2(d).

PROPOSED OFFICIAL COMMENT

Should the district not provide the physical copies of the documentation as outlined in paragraph 6, a signed, verified affidavit by an individual with knowledge will constitute evidence. Evidence could include documentation of the items required in paragraph 6 or in the alternative a signed affidavit by an individual with knowledge.

Rule 8.5. Responsive Pleadings

(a) Pleadings. A written responsive pleading to the petition 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 in 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 may be noticed by the court or raised by a party 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 a student's failure to comply with the School Attendance Law of 1963, 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 a student's failure to comply with the School Attendance Law of 1963.

PROPOSED OFFICIAL COMMENT

Given the nature of truancy proceedings and the relatively limited circumstances under which parties have access to court-appointed counsel under CJD 04-05, truancy courts are encouraged to consider what, if any, access the party had to legal counsel at the time the admission or denial was made when determining whether good cause has been shown to grant relief from a waiver under subsection (b).

Subpart D: Disclosures

Rule 8.6. Disclosures for a Contested Hearing

(a) The parties shall disclose the following no later than 7 days, or such other time as the parties agree or the court determines reasonable, before a contested hearing:

(1) Names, addresses, and telephone numbers of all witnesses who may be offered at the contested hearing and a short summary of their anticipated testimony.

(2) Curricula vitae, resume, 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 hearing; and

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

Subpart E: First Appearance to Adjudication

Rule 8.7. First Appearance Advisement Upon Service of Petition

(a) At the first appearance before the court, unless waived by counsel, the respondent(s) shall be fully advised by the court as to all their rights. 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 be represented by counsel and, if the party is indigent, the court may appoint counsel if the court deems representation by counsel necessary to protect the interests of the student or necessary parties;

(3) The right to a hearing, including:

(i) The right to admit or deny the allegations of the petition;

(ii) The right to require the school district to prove the allegations of the petition by a preponderance of the evidence;

(iii) The right to present evidence and witnesses to challenge the allegations contained in the petition;

(iv) The right to cross examine all adverse witnesses;

(v) The right to have subpoenas issued to compel attendance of witnesses at a hearing on the petition;

(vi) The right to testify at a hearing on the petition; and

(vii) The right to appeal any final decision made by the court.

(4) That any admission to allegations in the petition must be voluntary;

(5) If the petition is admitted or sustained, the court may issue:

~~(i)~~ An order against the student or the student's guardian or both compelling the student to attend school or compelling the guardian to take reasonable steps to assure the student's attendance;

(i) An order requiring the student and guardian to cooperate with the school district in complying with the plan created to assist the student to remain in school

(ii) If the student or respondent(s) fails to comply with any court order, contempt proceedings may be initiated and if the student or respondent is found to be in contempt, the court may impose sanctions.

(6) That if the petition is admitted, the court is not bound by any promises or representations made by anyone about what orders may be entered by the court.

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

PROPOSED OFFICIAL COMMENT

[1] Judicial officers are encouraged to consider how detailed of an advisement to provide to students and respondents with respect to possible contempt sanctions.

Rule 8.8. Admission or Denial

(a) **Response to the Petition's Allegations.** After being advised in accordance with C.R.J.P. 8.7, the student, and the named respondent(s), may admit or deny the allegations of the petition. In the alternative, the court, in its discretion, may allow the parties to continue the formal entry of an admission or denial for such time that the court sees fit.

(b) **Written Admission.** The court may accept a written admission to the petition if the respondent has affirmed under oath that the respondent 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.

(c) **Adjudication by Admission.** If no party requests a contested hearing and the student, or the named respondent(s) in the petition admit the allegations contained in the petition, then the juvenile court may accept the admission after making the following findings: (1) the admitting party understands the advisement of rights and possible consequences required by C.R.J.P. 8.7, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary. After accepting an admission, the court shall adjudicate the student as habitually truant as defined by section 22-33-102(3.5), C.R.S.

(d) **Denial**. If any respondent(s) enter a denial, the court shall set for an adjudicatory hearing consistent with C.R.J.P. 8.11.

PROPOSED OFFICIAL COMMENTS

[1] When determining whether to enter an adjudication in a case, the Court shall consider the statutory exceptions to the compulsory school attendance law set forth in section 22-33-104(2), C.R.S.

[2] While Colorado law does not explicitly address competency issues arising in the context of truancy proceedings, the court should consider the parties' ability to comprehend the proceedings, understand an advisement of rights, knowingly waive any rights, and knowingly enter an admission. In cases where the court has concerns about any of the above items, the court should consider the appointment of a guardian ad litem for the student respondent or other named respondent(s).

Rule 8.9. Adjudicating a Non-Appearing or Non-Defending Respondent

(a) Failing to Appear or Defend.

(1) If after notice, the required party does not appear before the juvenile court for the adjudicatory hearing, the party seeking to compel attendance 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 at the date and time set by the court, the party seeking to compel attendance may proceed as set forth in section (b) of this rule.

(b) Motion. A party seeking to compel attendance may request adjudication be entered either upon written or verbal motion supported by witness testimony or other appropriate evidence stating facts sufficient to support a petition to compel attendance.

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

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

(2) Must find that the allegations of the petition are supported by a preponderance of the evidence that the student is habitually truant as defined by section 22-33-102(3.5), C.R.S.

Rule 8.10. Case Management for Adjudicatory Hearing

(a) Pretrial Conference. The court may hold one or more pretrial conferences with counsel present to consider such matters as will promote a fair and expeditious hearing.

(b) Exhibits and Witnesses. Exhibit lists and witness lists beyond what was included in the initial petition filing must be provided by any parties seeking admission of evidence, in accordance with C.R.J.P. 8.6. Upon its own motion, or at the request of any party, the court may set a deadline for the parties to exchange all proposed exhibits which may be offered at the hearing.

Rule 8.11. Adjudicatory Hearing

(a) Burden of Proof. For the purposes of a hearing to adjudicate a petition to compel attendance, the petitioner has the burden of proving by a preponderance of the evidence that the student is habitually truant as defined by section 22-33-102(3.5), C.R.S.

(b) Adjudication. When the allegations of the petition are supported by a preponderance of the evidence, the court shall sustain the petition and shall make an order of adjudication that the student is habitually truant and may enter other orders as contemplated by section 22-33-108, C.R.S.

(c) Dismissal. When the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed.

Subpart F: Periodic Reviews and Dismissal of Actions

Rule 8.12. Periodic Reviews

(a) The court, in its discretion or upon the request of any party, may hold periodic review hearings with the goal of increasing the student's school attendance.

(b) In advance of any periodic review hearings, the school district may submit, or the court may require the school district to submit, attendance records and other information relevant to the proceedings for consideration at the periodic review hearing. Any information submitted to the court shall also be provided to the student, parent or legal guardian, or any counsel and guardian ad litem, if appointed, in advance of the hearing as provided in C.R.J.P. 8.22.

PROPOSED OFFICIAL COMMENTS

[1] During Periodic Reviews, parties may present and the court may review any changing circumstances impacting attendance, and any updates to the plan created to assist the student to remain in school pursuant to section 22-33-107(3). If the petition has been admitted or sustained, the court may issue any of the orders permitted by Rule 8.7(a)(5) at a review hearing. Such orders may include but are not limited to verbal admonishment by the court, increased court appearances, an order requiring in-person appearances, and attendance and engagement in therapeutic services.

[2] Courts should consider setting increased attendance goals and whether any incentives may be available, upon the student's compliance with court orders and school attendance.

[3] Pursuant to section 22-33-108(7), C.R.S., if a student fails to comply with a valid court order issued against the student or against both the parent and the student, the court may order that an assessment for neglect as described in section 19-3-102(1), C.R.S. be conducted as provided in section 19-3-501, C.R.S. Nothing in this section precludes a truancy court from ordering an investigation on other bases pursuant to C.R.J.P. 8.17.

[4] Courts have the discretion to excuse students and parents from hearings when appropriate. Courts are encouraged to utilize creative solutions that allow students to attend school instead of appearing in court, for example, excusing elementary aged children from review hearings, or allowing students to appear virtually from school.

Rule 8.13. Dismissal of Actions

(a) **Successful dismissal.** The court, in its discretion, or upon the request of any party, may dismiss the truancy proceedings upon a finding that the student has either: (1) achieved their attendance goals or (2) made sufficient progress toward achieving their attendance goals such that the proceedings are no longer necessary.

(b) **Unsuccessful dismissal.** The court, in its discretion, or upon the request of any party, may dismiss the truancy proceedings if the court finds that, although the student has not achieved their attendance goals or made sufficient progress toward achieving their attendance goals, the court's resources have been exhausted and it is in the best interests of the student to dismiss the proceedings.

> (1) Prior to exercising its discretion to dismiss a truancy proceeding *sua sponte* under this provision, the court shall issue to the Petitioner an order to show cause why the proceeding should not be dismissed.

(c) Nothing in this rule prevents the court from dismissing truancy proceedings upon a finding that a student is exempted from compulsory school attendance as set forth in section 22-33-104, C.R.S.

PROPOSED OFFICIAL COMMENTS

[1] Prior to dismissal under section (b) of this rule, the court may consider ordering a staffing or meeting among the parties and/or professional team to discuss whether there are any remaining resources that may be offered to the family prior to dismissal.

[2] When considering dismissal under section (b) of this rule, courts are encouraged to consider factors such as the age of the student; the student's unique circumstances; the engagement and resources of the student and his or her parent(s) or legal guardian(s); any assistance being provided by the school district or other state or private agencies; and the length of time the truancy proceedings have been pending.

Subpart G: Contempt and Warrants

Rule 8.14. Contempt

(b) **Indirect contempt proceedings against students.** Pursuant to section 22-33-108(7), C.R.S., if a student does not comply with a valid court order issued against the student, the Court may issue an order to show cause as to why the student shall not be held in contempt of court. When instituting contempt of court proceedings, the court shall provide all procedural protections mandated in rule 107 of the Colorado rules of civil procedure, or any successor rule, concerning punitive sanctions for contempt.

(1) **Advisement.** The student shall be advised of:

(i) the right to be represented by counsel, including court-appointed counsel pursuant to any chief justice directive concerning the appointment of court-appointed counsel in truancy proceedings;

(ii) if the judicial officer initiated the proceedings, the right to have the contempt matter heard by a different judicial officer;

(iii) the right to plead guilty or not guilty to the charge of contempt;

(iv) the right to be presumed innocent unless and until the allegation(s) in the motion for contempt is/are proven beyond a reasonable doubt;

(v) the right to have a trial before the court;

(vi) the right to confront and cross-examine all witnesses against the student;

(vii) the right to present relevant witnesses and evidence at the hearing;

(viii) the right to request the court to issue subpoenas to compel witnesses to appear and give testimony;

(ix) the right to remain silent;

(x) the right to testify on the student's own behalf. If the student testifies, they waive their right to remain silent and the other party may cross-examine them;

(xi) the right to make a statement on the student's own behalf prior to the imposition of sanctions, if the student is found in contempt of court;

(xii) if the court finds the student in contempt, including finding that the student's conduct was offensive to the authority and dignity of the court, the court may impose a sentence including, but not limited to:

(A) community service to be performed by the student;

(B) supervised activities;

(C) participation in services for at-risk students as described by section 22-33-204, C.R.S. and other activities having the goal of ensuring that the student has the opportunity to obtain a quality education; and

(D) detention of up to 48 hours in a juvenile detention facility.

(2) **Sanctions.**

(i) If the court finds that the student is in contempt of court, the court may impose sanctions that may include, but not be limited to, community service, supervised activities, participation in services for at-risk students, as described by section 22-33-204, C.R.S., and other activities having the goal of ensuring that the student has an opportunity to obtain a quality education.

(ii) The court may only impose a sanction of detention up to 48 hours if the Court finds the student in contempt of court for refusing to comply with the terms of a plan created for the student pursuant to section 22-33-107(3), C.R.S.

(iii) Detention sentences are strongly discouraged and a student who is habitually truant must not be placed in secure confinement for truancy alone. Prior to any sentence of detention, the court must identify the specific provision(s) of the student's plan to which the student has refused to comply and shall make the following findings on the record:

(A) That detention of the student is in the best interests of the student as well as the public, including specific reasons why detention is in the best interests of the student as well as the public; and

(B) That in making the findings required by subsection A, the court has considered each factor set forth in section 22-33-108 (7)(c)(I), C.R.S.

(b) **Indirect contempt proceedings against parents, guardians, or legal custodians.** Pursuant to section 22-33-108(8), C.R.S., following an adjudication of the parent, guardian, or legal custodian, if a parent, guardian, or legal custodian refuses or neglects to obey an order issued against the parent, guardian, or legal custodian, or against both the student, parent, guardian, or legal custodian, the court may issue an order to show cause as to why the parent, guardian, or legal custodian should not be held in contempt of court. Indirect contempt proceedings against a parent, guardian, or legal custodian are remedial in nature.

(1) **Advisement.** The parent, guardian, or legal custodian shall be advised of:

(i) the right to counsel, including court-appointed counsel pursuant to any chief justice directive concerning the appointment of court-appointed counsel in truancy proceedings;

(ii) the right to a hearing before a judicial officer where the court must find that the parent, guardian, or legal custodian:

(A) was subject to a court order;

(B) had knowledge of the order;

(C) did not comply with the order;

(D) had the ability to comply with the order;

(E) has the present ability to comply with the order; and

(iii) if the parent, guardian, or legal custodian is found to be in remedial contempt of court, the court may require them to pay a fine of up to but not more than 25 dollars per day or confine the parent in the county jail until the order is complied with.

(2) **Purging contempt.** If a parent, guardian, or legal custodian is found in contempt of court, the court shall enter an order in writing or on the record describing the means by which the parent, guardian, or legal custodian may purge the contempt and the sanctions that will be in effect until the contempt is purged.

(3) **Sanctions.** If a parent, guardian, or legal custodian is found to be in contempt of court and fails to purge the contempt as set forth in the court's order as described above, the court may impose a fine of up to but not more than 25 dollars per day or confine the parent in the county jail until the order is complied with.

(c) **Direct contempt proceedings.** Nothing in this rule limits the court's ability to institute and punish any party summarily for direct contempt pursuant to C.R.C.P. 107(b).

(d) **Appeal.** For the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final.

PROPOSED OFFICIAL COMMENT

[1] If the court is considering entering any orders changing the status quo with respect to custody of the student , including entering a detention order, the court must consider the applicability of the Indian Child Welfare Act (ICWA), see section 19-1.2-102 et seq, C.R.S. This includes but is not limited to making an inquiry pursuant to section 19-1.2-107 (3).

Commented [ay2]: Comment from Judge Moultrie: Noting that once ICWA Rule changes are finalized will probably want to incorporate the language here

[2] The limited contempt sanctions available for the court to impose on parents, legal guardians, in no way limits the court's ability to impose orders against the student or the student's parent or

guardian or both compelling parent or guardian to take reasonable steps to assure or improve the student's attendance.

Rule 8.15. Warrants Authorizing the Taking into Temporary Custody of a student

(a) A warrant that authorizes taking a student who has failed to appear for a court hearing into temporary custody must comply with section 22-33-108(7)(a.5), C.R.S.

(b) The party requesting a warrant shall provide to the extent possible, the student's date of birth as well as a physical description of the student, including their height, weight, hair, and eye color.

PROPOSED OFFICIAL COMMENTS

[1] Pursuant to section 22-33-108(7)(1.5), C.R.S., a judge or magistrate of any court may issue a warrant that authorizes the taking into temporary custody of a student who has failed to appear for a court hearing for a truancy or contempt action; except that any such warrant must provide for release of the student from temporary custody on an unsecured personal recognizance bond that is cosigned by the student's parent or legal guardian or, if the student is in the custody of the department of human services, cosigning may be accomplished by a representative of the department of human services. In the alternative, the warrant may direct that the student must only be arrested while court is in session and that he or she be taken directly to court for an appearance rather than booked into secure confinement.

[2] When issuing warrants for a student's failure to appear, truancy courts are encouraged to consider the factors set forth in section 22-33-108(7)(c)(I)(B)-(E), C.R.S.

[3] Nothing in this rule limits the Court's authority to issue warrants for other parties named in the petition, as authorized by law.

Subpart H: General Provisions

Rule 8.16. Attorney of Record, Guardians ad litem, and Court-Appointed Counsel

(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 by the court.

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

(b) Guardians ad litem for Students.

(1) The court may appoint a guardian ad litem for a student when the appointment is necessary due to exceptional and extraordinary circumstances. The court shall not appoint a guardian ad litem if the student has counsel, unless the court finds that it is in the best interest and welfare of the student to have both counsel and a guardian ad litem.

(2) Any person appointed to serve as guardian ad litem for a student in a truancy proceeding shall comply with the provisions set forth in a chief justice directive concerning the appointment of guardians ad litem under Article 33 of Title 22, and any subsequent chief justice directive or practice standards established by rule or directive of the chief justice concerning the duties and responsibilities of a guardian ad litem in truancy proceedings.

(3) Upon the appointment of a guardian ad litem for the student, the court shall issue an order appointing the guardian ad litem. The order shall authorize the guardian ad litem's access to the student and relevant information about the student, such as educational and other records. The order may be amended by the court as necessary throughout the course of the appointment of the guardian ad litem.

(4) A finding of indigence is not required for the appointment of a guardian ad litem at state expense.

(c) Court-appointed Counsel for Students or Parents/Legal Guardians.

(1) Counsel may be appointed for a student, or a parent/guardian of said student, if adjudication is previously entered and the student and/or parent/guardian is served with a contempt citation or if the court deems representation by counsel necessary to protect the interests of the student or other parties.

(2) A finding of indigence is required for the appointment of counsel at state expense. All parties requesting counsel must complete form JDF208.If the party does not qualify to have court-appointed representation at state expense, and is still requesting

appointment of counsel, the court shall advise the party of the possible order to reimburse the state for any justifiable fees and expenses as a result of representation provided from the appointment of legal counsel prior to such appointment.

Rule 8.17. Report of Suspected Child Abuse to the Court

(a) Upon the court's own motion, or at the request of a moving party, and, if a student is, or appears to be, within the court's jurisdiction as provided in this Article 3 of Title 19, the court may refer the matter to the county department of human or social services, or any other agency designated by the court to make an investigation or to conduct an assessment of services and/or filing of a dependency and neglect petition pursuant to section 19-3-501, C.R.S.

(b) If the court orders a preliminary investigation pursuant to 19-3-501, the court shall provide notice of such order to the department of human services where the student resides, within 72 hours in addition to serving parties to the case, including any appointed counsel.

Rule 8.18. CASA Rule

(a) **Appointment.** The court may appoint a Court Appointed Special Advocate (CASA) volunteer in any action brought under Article 33 of Title 22, provided that at least one parent or legal guardian of the student is provided with notice of the appointment of a CASA volunteer.

(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.

PROPOSED OFFICIAL COMMENT

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

Rule 8.19. 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. The Colorado Rules of Evidence apply to truancy proceedings except as otherwise provided by law.

(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 truancy 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.

Rule 8.20. 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 in 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 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 a 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 earlier.

(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 caption the motion as forthwith or emergency. 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 truancy proceedings.

Rule 8.21. Time; Continuances

(a) Computation and Legal Holidays. Computation and legal holidays are 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 in these rules an act is required or allowed to be done at or within a specific 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 a continuance will not be effective unless and until approved by the court. Continuances may be granted for good cause shown.

Rule 8.22. Service of Documents & Filing with the Court

(a) Form of Documents. Except for reports filed pursuant to section 19-1-107, C.R.S., every document filed with the juvenile court must contain a caption setting forth the name of the court; title of the case; the case number, if known to the person signing it; and the name of the document.

(b) Service. Except as otherwise provided in these rules or pursuant to the School Attendance Law of 1963 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 if appointed.

(c) 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. If a student is unrepresented by an attorney, service on the student is made by serving the parent, guardian or custodian named as respondent(s) in the petition.

(2) Service under this rule is made by:
- (i) Delivering an electronic copy by Colorado Courts E-Filing;
- (ii) Delivering a copy by mailing 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 court;
- (iv) Delivering a copy to the person by handing it to the person, including in open court;
- (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.

(d) Filing of Documents with the Court; Exceptions.

(1) All documents required to be served on a party must be filed with the court within a reasonable time after service, except that disclosures under C.R.J.P. 8.6 may not be filed until they are used in the proceeding or the court orders otherwise.

(2) Filing documents with the court is accomplished as set forth as in Rule 5(e) of the Colorado Rules of Civil Procedure, which includes permitting a party to file in open court by providing the court with a copy of the document, in which event the court shall note the filing date and transmit the document to the office of the clerk for docketing in the court file.

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

PROPOSED OFFICIAL COMMENT

For additional guidance regarding the format of documents, including a sample of a case caption, see Rule 10(d)-(i) of the Colorado Rules of Civil Procedure.

Contents

Part One – Applicability

Rule 1. Applicability and Citation

(a) These rules govern proceedings brought in the juvenile court under Title 19, also hereinafter referred to as the Children's Code, **and Article 33 of Title 22, also hereinafter referred to as the School Attendance Law of 1963**. All statutory references herein are to the Children's Code **or School Attendance Law of 1963** as amended.

(b) Proceedings are civil in nature and where not governed by these rules or the procedures set forth in Title 19 **or Article 33 of Title 22** shall be conducted according to the Colorado Rules of Civil Procedure. Proceedings in delinquency shall be conducted in accordance with the Colorado Rules of Criminal Procedure, except as otherwise provided by statute or by these rules.

TRUANCY SUBCOMMITTEE COMMENTS

Reference to Article 33 of Title 22 as truancy matters are largely governed by Article 33 of Title 22 rather than Title 19.

Part Eight – Truancy (Rule 8.1 to Rule 8.22)

Subpart A: Scope, Purpose & Definitions

Rule 8.1. Procedure Governed, Scope, and Purpose of Rules

(a) **Scope.** These rules in part 8 apply to truancy proceedings, which are judicial proceedings for the enforcement of the School Attendance Law of 1963, Article 33 of Title 22, C.R.S., brought pursuant to section 22-33-108, C.R.S.

(b) **Consent to Magistrate Not Required.** Pursuant to Colorado Rules for Magistrates 6(d)(1)(A), consent of the parties is not required for a magistrate to preside over truancy matters governed by these rules.

(c) **Purposes of these Rules.**

(1) Truancy cases are unique civil cases, which require a careful balance of the important and connected rights and interests of parents, legal guardians, and legal custodians; students; and school districts.

(2) To best serve these rights and interests, truancy courts are encouraged to employ a specialized approach to address complex cases that requires knowledge of education law, family dynamics, and community resources to develop individualized solutions that promote student success.

(3) Truancy cases require a particularized approach that emphasizes collaboration, early intervention, and wraparound services, which is reflected in these rules.

(4) Where not governed by the Rules of Juvenile Procedure or the procedures set forth in Article 33 of Title 22, truancy cases must be conducted according to the Colorado Rules of Civil Procedure.

Commented [ay1]: Comment from Anna Ulrich: "Particularized approach" is similar to "specialized approach" in sub (2) above. Just wondering if these two provisions can somehow be combined or streamlined.

TRUANCY SUBCOMMITTEE COMMENT(S)

Modeled after Rule 4.1.

Rule 8.2 Definitions

The words and phrases used in the rules in this part 8 have the same meanings as the definitions contained in the School Attendance Law of 1963, and if not in the School Attendance Law of 1963, then other applicable statutes. For purposes of these rules, the term "student" is the same as a child who is alleged to be "habitually truant" pursuant to section 22-33-102(3.5), C.R.S.

TRUANCY SUBCOMMITTEE COMMENT(S)

Modeled after Rule 4.2 with reference to the School Attendance Law of 1963.

Subpart B: Parties

Rule 8.3. Parties and Participants; Joinder

(a) Petitioner. A truancy case must be brought in the name of the school district by:

(1) An attorney for the school district;

(2) An employee authorized by the local board of education pursuant to section 13-1-127(7), C.R.S., to represent the school district in truancy proceedings;

(3) The attendance officer designated by the local board of education; or

(4) The local board of education.

(b) Respondents.

(1) A parent, guardian, or legal custodian of a student alleged to be in violation of the School Attendance Law of 1963 shall be named as a respondent in the petition.

(2) The student, from ages 12 through 16, alleged to be in violation of the School Attendance Law of 1963 shall be named as a student respondent in the petition.

(3) The student, from ages 6 through 11, alleged to be in violation of the School Attendance Law of 1963 may be named as a student respondent in the petition.

(c) Discretionary Joinder. The court, on its own motion, or on the motion of a party may join as a 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.

(d) Misjoinder, Nonjoinder, Designation, and Alignment of Parties. Misjoinder and nonjoinder of parties are not grounds for dismissal of a truancy case. Parties may be dismissed, added, designated as respondents, or aligned according to their respective positions on the issues by order of the court, on motion of a party, or of its own initiative at any stage of the case on such terms as are just.

PROPOSED OFFICIAL COMMENT(S)

If a student from ages 6 through 11 is named as a student respondent in the petition as set forth in C.R.J.P. 8.3(b)(2), the court should consider whether the appointment of a guardian ad litem is necessary due to exceptional and extraordinary circumstances. Similarly, the court should consider whether appointment of counsel is necessary to protect the interests of the student respondent. (katie will work on this to incorporate all youth, Andrew provided suggested edit)

Elise will draft proposed comment accounting for parents/guardians in context of shall/may

TRUANCY SUBCOMMITTEE COMMENT(S)

Commented [ay2]: Comment from Anna Ulrich: This reads as a requirement that all parents, guardians, legal custodians be included in a truancy petition - and I'm wondering if this is a realistic expectation. Some students involved in truancy will have complicated "parent" situations: i.e. parent is who is non-custodial/no parenting time or no contact with; live out-of-state and do not visit; there is no contact information for; are incarcerated; are unknown (John Doe); paternity has not been established or resolved, etc. I was just thinking it might warrant a comment if nothing else

Commented [ay3]: Comment from Katie Hecker and Anna Ulrich: SD comment: this seems to suggest that the court doesn't have the option to appoint a GAL due to exceptional and extraordinary circumstances if a child is 12 or older, which contradicts broader GAL appointment rule.

JD background info: this was added to encourage courts to consider *always* finding exceptional and extraordinary circumstances and/or appointing counsel for very young children. The truancy rules subcommittee was very concerned with truancy cases being filed for such young children - really felt like it wasn't the best venue for addressing whatever is going on in the family, or with the child, and that the rules should encourage courts to deploy as many supports as possible in those situations.

If this stays or isn't reworded so that its purpose is clearer, perhaps reference GAL appointment rule (below) to make it clear that this doesn't preclude appointment of GAL or counsel for older youth.

I agree with SD's concern in the current wording

Commented [ay4]: Comments from Andrew: "The Court should consider whether the appointment mof a guardian ad litem is necessary due to exceptional and extraordinary circumstances, and/or if appointment of counsel is necessary to protect the interests of the student respondent, *particularly in cases in which the student is between the ages of 6 and 11?"*

Comment from Cara: How about... Court always maintains discretion to dismiss or excuse a party due to particular circumstances and is encouraged to be flexible in how a student may attend in order to maintain attendance at school

Modeled after Rule 4.3.

Subpart C: Pleadings

Rule 8.4. Petition and Summons: Initiation, Form, Content, and Service

(a) Initiation. A petition and summons to compel attendance must be initiated in accordance with section 22-33-108, C.R.S.

(b) Form and Content of Petition.

(1) The petition shall identify parties, be signed by counsel or attendance officer, and filed with the court. The statements in the petition may be made upon information and belief.

(2) The petition shall set forth plainly the facts which bring the parties within the court's jurisdiction. The petition shall also state the name, age, and residence of the student and the names and residences of the student's parents, guardians, or legal custodians.

(3) The petition shall include a statement describing the creation and implementation of the plan created pursuant to section 22-33-107(3), C.R.S., to improve the student's attendance.

(4) The petition shall include a statement describing the form, content, and date in which the school district gave the student and the student's parents, guardians, or legal custodians written notice that the school district will initiate proceedings if the student does not comply with the attendance requirements set forth in Article 33 of Title 22.

(5) If the petition is combined with the school district's written notice pursuant section 22-33-108(5)(c), C.R.S., the petition must state the date on which the school district will initiate proceedings, which date must not be less than five days after the date of the notice and summons.

(6) The petition shall include evidence of:

(i) The student's attendance record prior to and after the point at which the student was identified by the school district as habitually truant as defined by section 22-33-102, C.R.S.;

(ii) Whether the student was identified as chronically absent and, if so, the strategies the school district used to improve the student's attendance;

(iii) The interventions and strategies used to improve the student's attendance before school or school district personnel created the student's plan described in section 22-33-107(3), C.R.S.,~~; and~~

(iv) The student's plan and the efforts of the student, the student's parents, guardians, or legal custodians and school or school district personnel to implement the plan, and

~~(iv)~~(v) The best practices and research based strategies employed by the district prior to filing to minimize the need for court action, making the filing of a petition a last resort approach to address truancy.

(c) **Service.** Service of the petition and summons must comply with C.R.J.P. 2.2(d).

proposed comment:

~~(c)~~ **Should the district not provide the physical copies of the documentation as outlined in paragraph 6, a signed, verified affidavit by an individual with knowledge will constitute evidence. Evidence could include docuemntatio fo the items required in paragraph 6 or in the alternative a signed affidavit by and individual with knowledge.**

TRUANCY SUBCOMMITTEE COMMENT(S)

[1] Subsections (b)(1) and (b)(2) taken from section 19-3-502, C.R.S.

[2] Subsections (b)(3), (b)(4), (b)(5), and (f) taken from section 22-33-108, C.R.S.

Rule 8.5. Responsive Pleadings

(a) Pleadings. A written responsive pleading to the petition 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 in 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 may be noticed by the court or raised by a party 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 a student's failure to comply with the School Attendance Law of 1963, 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 a student's failure to comply with the School Attendance Law of 1963.

TRUANCY SUBCOMMITTEE COMMENT(S)

Nearly identical to Rule 4.6 with the exception of replacing references to D&N with references to school attendance law in subsection (c).

PROPOSED OFFICIAL COMMENT

Given the nature of truancy proceedings and the relatively limited circumstances under which parties have access to court-appointed counsel under CJD 04-05, truancy courts are encouraged to consider what, if any, access the party had to legal counsel at the time the admission or denial was made when determining whether good cause has been shown to grant relief from a waiver under subsection (b).

Subpart D: Disclosures

Rule 8.6. Disclosures for a Contested Hearing

(a) The parties shall disclose the following no later than 7 days, or such other time as the parties agree or the court determines reasonable, before a contested hearing:

(1) Names, addresses, and telephone numbers of all witnesses who may be offered at the contested hearing and a short summary of their anticipated testimony.

(2) Curricula vitae, resume, 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 hearing; and

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

TRUANCY SUBCOMMITTEE COMMENT(S)

This is an extremely paired down version of Rule 4.9 that simply requires disclosures 7 days prior to any adjudication or contempt proceeding.

Subpart E: First Appearance to Adjudication

Rule 8.7. First Appearance Advisement Upon Service of Petition

(a) At the first appearance before the court, the respondent(s) shall be fully advised by the court as to all their rights. 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 be represented by counsel;

(3) That if the respondent(s) is indigent, counsel may be appointed if adjudication is previously entered and the student and/or parent/guardian is served with a contempt citation or if the court deems representation by counsel necessary to protect the interests of the student or other parties;

(4) The right to a hearing, including:

(i) The right to admit or deny the allegations of the petition;

(ii) The right to require the school district to prove the allegations of the petition by a preponderance of the evidence;

(iii) The right to present evidence and witnesses to challenge the allegations contained in the petition;

(iv) The right to cross examine all adverse witnesses;

(v) The right to have subpoenas issued to compel attendance of witnesses at a hearing on the petition;

(vi) The right to testify at a hearing on the petition; and

(vii) The right to appeal any final decision made by the court.

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

(6) If the petition is admitted or sustained, the court may issue:

(i) An order against the student or the student's guardian or both compelling the student to attend school or compelling the guardian to take reasonable steps to assure the student's attendance. § 22-33-108(6), C.R.S.

~~(7)~~ An order requiring the student and guardian to cooperate with the school district in complying with the plan created to assist the student to remain in school pursuant to section 22-33-107(3), C.R.S. If the student or respondent(s) fails to comply with these orders, ~~,~~ the court may find the non-complying student or respondent(s) to be in contempt of court and impose sanctions as provided for in C.R.J.P. 8.12.

Commented [ay5]: Comment by Elise: Do we want to require this at the first appearance, or just prior to any admission? Not requiring at the first appearance allows courts to take a more treatment court type approach where they focus on alleviating barriers to attendance at the first hearing, and get families engaged in that process, instead of emphasizing punishment options from the get go. For that reason I would be in favor of requiring this prior to any admission but not necessarily at the first appearance.

Commented [jw6]: I'm not sure this sentence is clear and it seems to hold two different ideas, which may need to be broken up:
1)that if the respondent is served with a contempt citation (SIDE NOTE, I'm assuming that you can only be served with a contempt citation if you have been adjudicated first), the respondent may request counsel, and if found to be indigent, counsel may be appointed for them; and
2)If the respondent (or party) is indigent and the court deems counsel necessary to protect the interest of the respondent (or party), counsel may be appointed for the respondent (or party).

Commented [jw7]: Usually this one goes first (to remind people that this is their personal choice, not their attorney's choice), but you could also put it under 5) That any admission to allegations in the petition must be voluntary.

Commented [ay8]: Comment by Elise: Should families be advised of their right to raise a defense for the reasons under 22-33-104(2)? (temporary illness or injury with absences approved by the school administrator, enrollment in an independent school, parochial school, or home school program, absent due to physical disability or mental or behavioral health disorder, absences due to suspension, expulsion, or denial of admission, possession of a current age and school certificate or work permit, absence to do being in the custody of a court or law enforcement, absence due to participation in an approved work-study program, gradation from 12th grade, excused from school for a ...

Commented [ay9]: Comment from Anna Ulrich: Just FYI, these go beyond what is required in CRJP 4.15. I assume there was a reason for this.

Commented [jw10]: Referring to C.R.J.P. 8.12 (instead of C.R.C.P. 107) strikes me as the sort of legislative change that judicial could ask for. In order to take this approach, we need to talk to our new Juvenile Rules Committee member, Andy Rottman (Judicial Branch Counsel). He can point us in the right direction about asking the legislature to change the referenced rule.

Commented [ay11]: Comment by Elise: Should everyone be advised that contempt sanctions can include detention, fines, and incarceration (for parents)? It feels like they should.

~~(8)~~(7) That if the petition is admitted, the court is not bound by any promises or representations made by anyone about what orders may be entered by the court.

(b) Notwithstanding any provision of this Rule to the contrary, the court may advise a non-appearing respondent 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.

Commented [jw12]: There does not appear to be a (c) to this rule. Do you mean the next rule?

Alternatively, should this rule just say that "the court may advise a non-appearing respondent pursuant to this Rule in writing.

And then put the written admission part in the next rule?

Commented [ay13]: Comment by Elise: Given that the law allows children to be put in detention for up to 48 hours for non compliance after an admission, I am uncomfortable with the idea that a written admission would be taken without even a virtual appearance.

Commented [ay14R13]: Comment by Anna Ulrich: Long compound sentence. Any way to break it up into shorter sentences and/or more than one section?

TRUANCY SUBCOMMITTEE COMMENT(S)

[1] Language largely taken from Rule 4.15.

[2] Rule 2.2(d)(1): In any jurisdiction in which juvenile detention may be used as a sanction after a finding of a violation of a valid court order, the summons shall inform the juvenile served of his or her right to a hearing and to due process as guaranteed by the United States Constitution prior to the entry of a valid court order.

Rule 8.8. Admission or Denial

(a) **Response to the Petition's Allegations.** After being advised in accordance with C.R.J.P. 8.7, the student, and the named respondent(s), may admit or deny the allegations of the petition. In the alternative, the court, in its discretion, may allow the parties to continue the formal entry of an admission or denial for such time that the court sees fit.

(b) **Written Admission.** The court may accept a written admission to the petition if the respondent has affirmed under oath that the respondent 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.

(c) **Adjudication by Admission.** If no party requests a contested hearing and the student, or the named respondent(s) in the petition admit the allegations contained in the petition, then the juvenile court may accept the admission after making the following findings: (1) the admitting party understands the advisement of rights and possible consequences required by C.R.J.P. 8.7, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary. After accepting an admission, the court shall adjudicate the student as habitually truant as defined by section 22-33-102(3.5), C.R.S.

(d) **Denial**. If any respondent(s) enter a denial, the court shall set for an adjudicatory hearing consistent with C.R.J.P. 8.11.

TRUANCY SUBCOMMITTEE COMMENT(S)

[1] Modeled after Rule 4.16.

[2] Subsection (a) is an attempt to acknowledge the approach previously employed by the court/school district in Boulder County (and likely some others) where the school district doesn't move to adjudicate right away, but rather gives the student/parent(s) the opportunity to come into compliance without an adjudication or any court orders.

PROPOSED OFFICIAL COMMENTS

[1] When determining whether to enter an adjudication in a case, the Court shall consider the statutory exceptions to the compulsory school attendance law set forth in section 22-33-104(2), C.R.S.

[2] While Colorado law does not explicitly address competency issues arising in the context of truancy proceedings, the court should consider the parties' ability to comprehend the proceedings, understand an advisement of rights, knowingly waive any rights, and knowingly enter an admission. In cases where the court has concerns about any of the above items, the court

should consider the appointment of a guardian ad litem for the student respondent or other named respondent(s).

Rule 8.9. Adjudicating a Non-Appearing or Non-Defending Respondent

(a) Failing to Appear or Defend.

(1) If after notice, the required party does not appear before the juvenile court for the adjudicatory hearing, the party seeking to compel attendance 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 at the date and time set by the court, the party seeking to compel attendance may proceed as set forth in section (b) of this rule.

(b) Motion. A party seeking to compel attendance may request adjudication be entered either upon written or verbal motion supported by witness testimony or other appropriate evidence stating facts sufficient to support a petition to compel attendance.

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

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

(2) Must find, by a preponderance of the evidence, that the student is habitually truant as defined by section 22-33-102(3.5), C.R.S., based on the evidence presented.

Commented [jw15]: You could also say "Must find that the allegations of the petition are supported by a preponderance of the evidence."

TRUANCY SUBCOMMITTEE COMMENT(S)

Modeled after Rule 4.17 with minor changes adding habitually truant language.

Rule 8.10. Case Management for Adjudicatory Hearing

(a) Pretrial Conference. The court may hold one or more pretrial conferences with counsel present to consider such matters as will promote a fair and expeditious hearing.

(b) Exhibits and Witnesses. Exhibit lists and witness lists beyond what was included in the initial petition filing must be provided by any parties seeking admission of evidence, in accordance with C.R.J.P. 8.6. Upon its own motion, or at the request of any party, the court may set a deadline for the parties to exchange all proposed exhibits which may be offered at the hearing.

TRUANCY SUBCOMMITTEE COMMENT(S)

Modeled after Rule 4.19. Chose not to include the matters the court may consider at pretrial conferences contained in Rule 4.19 for simplicity.

Rule 8.11. Adjudicatory Hearing

(a) Burden of Proof. For the purposes of a hearing to adjudicate a petition to compel attendance, the petitioner has the burden of proving by a preponderance of the evidence that the student is habitually truant as defined by section 22-33-102(3.5), C.R.S.

(b) Adjudication. When the allegations of the petition are supported by a preponderance of the evidence, the court shall sustain the petition and shall make an order of adjudication that the student is habitually truant and may enter other orders as contemplated by section 22-33-108, C.R.S.

(c) Dismissal. When the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed.

TRUANCY SUBCOMMITTEE COMMENT(S)

Modeled after Rule 4.20. Did not include section (a) from Rule 4.20 since there are no statutory timeframes for adjudication in truancy proceedings.

Subpart F: Periodic Reviews and Dismissal of Actions

Rule 8.12. Periodic Reviews

(a) The court, in its discretion or upon the request of any party, may hold periodic review hearings with the goal of increasing the student's school attendance.

(b) In advance of any periodic review hearings, the school district may submit, or the court may require the school district to submit, attendance records and other information relevant to the proceedings for consideration at the periodic review hearing. Any information submitted to the court shall also be provided to the student, parent or legal guardian, and any counsel or guardian ad litem in advance of the hearing as provided in C.R.J.P. 8.22.

PROPOSED OFFICIAL COMMENTS

[1] Courts should consider setting increased attendance goals and whether any incentives or sanctions should be imposed based upon the student's compliance with court orders and school attendance.

[2] When imposing sanctions, the court shall comply with the requirements of section 22-33-108, C.R.S., and C.R.J.P. 8.14, unless said sanctions are in the nature of verbal admonishment by the court, increased court appearances, or an order requiring in-person appearances.

[3] Pursuant to section 22-33-108(7), C.R.S., if a student fails to comply with a valid court order issued against the student or against both the parent and the student, the court may order that an assessment for neglect as described in section 19-3-102(1), C.R.S. be conducted as provided in section 19-3-501, C.R.S.

Commented [ay16]: Comment by Elise: DPS provides information to counsel and GAL prior to review hearings and relies on them to provide the information to the student and legal guardian—would that be permitted here, with the wording of this rule? It would be very time consuming to try and provide this information directly to students and guardians, in addition to their counsel.

Commented [ay17R16]: Comment from Elise: The court has discretion to excuse students and parents from hearings when appropriate. Courts are encouraged to utilize creative solutions that allow students to attend school instead of appearing in court, for example, excusing elementary aged children from review hearings, or allowing students to appear virtually from school.

Commented [ay18]: Comment from Katie Hecker: SD comment: this may be an issue with formatting (because this comment comes before larger rule 8.17 about ordering D&N investigation), but this comment makes it seem like these are the *only* circumstances where an investigation can be ordered by a truancy court. Perhaps add reference to 8.17 here?

JD and KH agree. This comment was added as a reminder to courts that failure to comply with truancy court orders is specifically highlighted in the school attendance statute as a basis for ordering an investigation. Perhaps add a sentence like "Nothing in this section precludes a truancy court from ordering an investigation on other bases pursuant to rule 8.17, below"?

Rule 8.13. Dismissal of Actions

(a) **Successful dismissal.** The court, in its discretion, or upon the request of any party, may dismiss the truancy proceedings upon a finding that the student has either: (1) achieved their attendance goals or (2) made sufficient progress toward achieving their attendance goals such that the proceedings are no longer necessary.

(b) **Unsuccessful dismissal.** The court, in its discretion, or upon the request of any party, may dismiss the truancy proceedings if the court finds that, although the student has not achieved their attendance goals or made sufficient progress toward achieving their attendance goals, the court's resources have been exhausted and it is in the best interests of the student to dismiss the proceedings.

(1) Prior to exercising its discretion to dismiss a truancy proceeding *sua sponte* under this provision, the court shall issue to the Petitioner an order to show cause why the proceeding should not be dismissed.

(c) Nothing in this rule prevents the court from dismissing truancy proceedings upon a finding that a student is exempted from compulsory school attendance as set forth in section 22-33-104(2), C.R.S.

PROPOSED OFFICIAL COMMENTS

[1] Prior to dismissal under section (b) of this rule, the court may consider ordering a staffing or meeting among the parties and/or professional team to discuss whether there are any remaining resources that may be offered to the family prior to dismissal.

[2] When considering dismissal under section (b) of this rule, courts are encouraged to consider factors such as the age of the student; the student's unique circumstances; the engagement and resources of the student and his or her parent(s) or legal guardian(s); any assistance being provided by the school district or other state or private agencies; and the length of time the truancy proceedings have been pending.

Commented [ay19]: Comment by Anna Ulrich: Curious if a committee anticipates that, upon objection, this language would require a contested hearing on the request for dismissal? Would the GAL be able to request one? Does that issue need to be clarified?

Commented [ay20]: Comment by Elise: We may just want to cite 22-33-104 here, as sometimes cases are dismissed when the student turns 17 and we lose jurisdiction under 22-33-104(1).

Commented [ay21R20]: Comment by Katie Hecker: From SD: historically, there has been an issue with cases staying open after students 17 and are therefore no longer subject to compulsory attendance. Is dismissal required at that point? Should we use rules to highlight that cases should close if student is no longer required to attend school?

JD and KH totally on board with this; however, JD points out that some judicial officers believe that once an adjudication has entered, they retain jurisdiction and can continue to enter orders. Nothing in the statute clearly says otherwise, so not sure how far to go in the rules.

Is a middle ground adding to the end of subsection © "or no longer subject to compulsory school attendance."

Subpart G: Contempt and Warrants

Rule 8.14. Contempt

(a) **Contempt in truancy proceedings generally.** When instituting contempt of court proceedings in a truancy proceeding, the court shall provide all procedural protections mandated in Rule 107 of the Colorado Rules of Civil Procedure, or any successor rule, concerning punitive or remedial sanctions for contempt.

(b) **Indirect contempt proceedings against students.** Pursuant to section 22-33-108(7), C.R.S., if a student does not comply with a valid court order issued against the student, the Court may issue an order to show cause as to why the student shall not be held in contempt of court. Indirect contempt proceedings against a student are punitive in nature.

(1) **Advisement.** The student shall be advised of:

(i) the right to be represented by counsel, including court-appointed counsel pursuant to any chief justice directive concerning the appointment of court-appointed counsel in truancy proceedings;

(ii) if the judicial officer initiated the proceedings, the right to have the contempt matter heard by a different judicial officer;

(iii) the right to plead guilty or not guilty to the charge of contempt;

(iv) the right to be presumed innocent unless and until the allegation(s) in the motion for contempt is/are proven beyond a reasonable doubt;

(v) the right to have a trial before the court;

(vi) the right to confront and cross-examine all witnesses against the student;

(vii) the right to present relevant witnesses and evidence at the hearing;

(viii) the right to request the court to issue subpoenas to compel witnesses to appear and give testimony;

(ix) the right to remain silent;

(~~i~~x) the right to testify on the student's own behalf. If the student testifies, they waive their right to remain silent and the other party may cross-examine them;

(xi) the right to make a statement on the student's own behalf prior to the imposition of sanctions, if the student is found in contempt of court;

(xii) if the court finds that the student was subject to a court order, that the student had knowledge of the order, that the student had the ability to obey the order, that the student willfully failed or refused to obey the order, and that such conduct was

Commented [ay22]: Comment by Judge Moultrie: Noting that this could be included in Rule 8.14(b) and 8.14(c) rather than being a separate section

Commented [ay23]: Comment by Elise: Returning to our prior conversation, I would suggest we delete this sentence.

Commented [jw24]: The rights that follow are trial rights, so I feel like we need to say you have right to have the contempt tried.

offensive to the authority and dignity of the court, the court may impose a sentence including, but not limited to:

(A) community service to be performed by the student;

(B) supervised activities;

(C) participation in services for at-risk students as described by section 22-33-204, C.R.S. and other activities having the goal of ensuring that the student has the opportunity to obtain a quality education; and

(D) detention of up to 48 hours in a juvenile detention facility.

(2) **Sanctions.**

(i) If the court finds that the student is in contempt of court, the court may impose sanctions that may include, but not be limited to, community service, supervised activities, participation in services for at-risk students, as described by section 22-33-204, C.R.S., and other activities having the goal of ensuring that the student has an opportunity to obtain a quality education.

(ii) The court may only impose a sanction of detention up to 48 hours if the Court finds the student in contempt of court for refusing to comply with the terms of a plan created for the student pursuant to section 22-33-107(3), C.R.S.

(iii) Detention sentences are strongly discouraged and a student who is habitually truant must not be placed in secure confinement for truancy alone. Prior to any sentence of detention, the court must identify the specific provision(s) of the student's plan to which the student has refused to comply and shall make the following findings on the record:

(A) That the court has considered the factors set forth in section 22-33-108 (7)(c)(I), C.R.S.; and

(B) That detention of the student is in the best interests of the student as well as the public, including specific reasons why detention is in the best interests of the student as well as the public.

(b) **Indirect contempt proceedings against parents, guardians, or legal custodians.** Pursuant to section 22-33-108(8), C.R.S., following an adjudication of the parent, guardian, or legal custodian, if a parent, guardian, or legal custodian refuses or neglects to obey an order issued against the parent, guardian, or legal custodian, or against both the student, parent, guardian, or legal custodian, the court may issue an order to show cause as to why the parent, guardian, or legal custodian should not be held in contempt of court. Indirect contempt proceedings against a parent, guardian, or legal custodian are remedial in nature.

Commented [ay25]: Comment from Anna Ulrich: This is not typical "rule/statute" language - though I can see the motivation for it here. More typical rule or statute language would be create a presumption against a detention sentence - or an increased burden. Another option would be to move this to a comment.

Commented [ay26]: Comment by Elise: Did we want to highlight this part of the statute in the rule? "There is a rebuttable presumption that a child or youth must receive credit for time served if he or she is sentenced to detention pursuant to subsection (7)(c)(I) of this section for violating a valid court order to attend school. If the court rebuts this presumption, it shall explain its reasoning on the record."

Commented [ay27]: Comment by Elise: I guess we are saying this because the statutory sanctions are an ongoing fine or incarceration "until the order is complied with," but I honestly think it could confuse practitioners more than it helps. I would remove this sentence also and just stick to describing the procedures that have to be followed, and the possible sentences/sanctions under statute. I do honestly think it will confuse practitioners who are not intimately familiar with contempt proceedings less.

(1) **Advisement.** The parent, guardian, or legal custodian shall be advised of:

(i) the right to counsel, including court-appointed counsel pursuant to any chief justice directive concerning the appointment of court-appointed counsel in truancy proceedings;

(ii) the right to a hearing before a judicial officer where the court must find that the parent, guardian, or legal custodian:

(A) was subject to a court order;

(B) had knowledge of the order;

(C) did not comply with the order;

(D) had the ability to comply with the order;

(E) has the present ability to comply with the order; and

(iii) if the parent, guardian, or legal custodian is found to be in remedial contempt of court, the court may require them to pay a fine of up to but not more than 25 dollars per day or confine the parent in the county jail until the order is complied with.

(2) **Purging contempt.** If a parent, guardian, or legal custodian is found in contempt of court, the court shall enter an order in writing or on the record describing the means by which the parent, guardian, or legal custodian may purge the contempt and the sanctions that will be in effect until the contempt is purged.

(3) **Sanctions.** If a parent, guardian, or legal custodian is found to be in contempt of court and fails to purge the contempt as set forth in the court's order as described above, the court may impose a fine of up to but not more than 25 dollars per day or confine the parent in the county jail until the order is complied with.

(c) **Direct contempt proceedings.** Nothing in this rule limits the court's ability to institute and punish any party summarily for direct contempt pursuant to C.R.C.P. 107(b).

(d) **Appeal.** For the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final.

PROPOSED OFFICIAL COMMENT

If the court is considering entering any orders changing the status quo with respect to caretakers, including entering a detention order, the court shall consider the applicability of the Indian Child Welfare Act (ICWA), see section 19-1.2-102 et seq, C.R.S. This includes but is not limited to making an inquiry pursuant to section 19-1.2-107 (3).

Commented [ay28]: Comment by Elise: Again, not sure if we need this word.

Commented [ay29]: Comment by Elise: Maybe we want to state really clearly here that once the contempt is purged, the fine or incarceration must end. I realize everyone should know that but it can't hurt to state it. And then maybe we don't need to keep saying "remedial" above.

Commented [jw30]: This is from C.R.C.P. 107(f). It's a procedural protection and I feel like a contempt is a truancy case would be appealable.

Commented [ay31]: Comment from Anna Ulrich: For what it's worth, I don't think ICWA would be implicated if the court is entering orders modifying parenting time between parents but it could be implicated if placing the child out of home, including in detention.

The way this note is phrased it raised the question in my mind whether the court in a truancy case can enter custody or guardianship orders – or really any orders regarding custody/placement of youth beyond detention? (I would think not if there's not specific authority). . . . If not, then might want to consider language here limiting it to the applicable situation (ie detention).

Commented [ay32]: Comment from Judge Moultrie: Noting that once ICWA Rule changes are finalized will probably want to incorporate the language here

TRUANCY SUBCOMMITTEE COMMENT(S)

Committee is considering removal of: "Indirect contempt proceedings against a student are punitive in nature." And having it instead read:

Pursuant to section 22-33-108(7), C.R.S., if a student does not comply with a valid court order issued against the student, the Court may issue an order to show cause as to why the student shall not be held in contempt of court. When instituting contempt of court proceedings, the court shall provide all procedural protections mandated in rule 107 of the Colorado rules of civil procedure, or any successor rule, concerning punitive sanctions for contempt.

Seeking guidance from larger Juvenile Rules committee regarding next steps on how to address within these rules

Commented [ay33]: Comment by Elise: I support this change

Commented [ay34R33]: Comment by Judge Moultrie: My understanding is that there is a disagreement regarding whether remedial contempt against a student is available in truancy proceedings because of this statutory language in CRS § 23-33-108(7)(a): " When instituting contempt of court proceedings pursuant to this subsection (7), the court shall provide all procedural protections mandated in rule 107 of the Colorado rules of civil procedure, or any successor rule, **concerning punitive sanctions for contempt."**

I suggest modifying proposed Rule 8.14(b) as recommended as suggested by the subcommittee and ADDING a reference to *Interest of J.E.S.*

My reasoning is that *J.E.S.* already states that the legislature can't "unduly limit the sanctions for contemptuous conduct so as to seriously impair or destroy the courts' contempt power." In Interest of J.E.S., 817 P.2d 508, 512 (Colo. 1991).

Thus, the proposed rule would read as follows:

(b) **Indirect contempt proceedings against students.** Pursuant to section 22-33-108(7), C.R.S., **and In Interest of J.E.S., 817 P.2d 508 (Colo. 1991),** if a student does not comply with a valid court order issued against the student, the Court may issue an order to show cause as to why the student shall not be held in contempt of court. ~~Indirect contempt proceedings against a student are punitive in nature.~~ When instituting contempt of court proceedings, the court shall provide all procedural protections mandated in rule 107 of the Colorado rules of civil procedure, or any successor rule, concerning punitive sanctions for contempt.

Rule 8.15. Warrants Authorizing the Taking into Temporary Custody of a Child or Youth

(a) A warrant that authorizes taking a child or youth who has failed to appear for a court hearing into temporary custody must comply with section 22-33-108(7)(a.5), C.R.S.

(b) The party requesting a warrant shall provide to the extent possible, the student's date of birth as well as a physical description of the student, including their height, weight, hair, and eye color.

PROPOSED OFFICIAL COMMENTS

[1] Pursuant to section 22-33-108(7)(1.5), C.R.S., a judge or magistrate of any court may issue a warrant that authorizes the taking into temporary custody of a child or youth who has failed to appear for a court hearing for a truancy or contempt action; except that any such warrant must provide for release of the child or youth from temporary custody on an unsecured personal recognizance bond that is cosigned by the child's or youth's parent or legal guardian or, if the child or youth is in the custody of the department of human services, cosigning may be accomplished by a representative of the department of human services. In the alternative, the warrant may direct that the child or youth must only be arrested while court is in session and that he or she be taken directly to court for an appearance rather than booked into secure confinement.

[2] When issuing warrants for a student's failure to appear, truancy courts are encouraged to consider the factors set forth in section 22-33-108(7)(c)(I)(B)-(E), C.R.S.

Commented [ay35]: Comment by Elise: I appreciate spelling this out in the comments

Commented [ay36]: Comment by Elise: I also like this

Subpart H: General Provisions

Rule 8.16. Attorney of Record, Guardians ad litem, and Court-Appointed Counsel

(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 by the court.

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

(b) Guardians ad litem for Students.

(1) The court may appoint a guardian ad litem for a student when the appointment is necessary due to exceptional and extraordinary circumstances. The court shall not appoint a guardian ad litem if the student has counsel, unless the court finds that it is in the best interest and welfare of the student to have both counsel and a guardian ad litem.

(2) Any person appointed to serve as guardian ad litem for a student in a truancy proceeding shall comply with the provisions set forth in a chief justice directive concerning the appointment of guardians ad litem under Article 33 of Title 22, and any subsequent chief justice directive or practice standards established by rule or directive of the chief justice concerning the duties and responsibilities of a guardian ad litem in truancy proceedings.

(3) Upon the appointment of a guardian ad litem for the student, the court shall issue an order appointing the guardian ad litem. The order shall authorize the guardian ad litem's access to the student and relevant information about the student, such as educational and other records. The order may be amended by the court as necessary throughout the course of the appointment of the guardian ad litem.

(4) A finding of indigence is not required for the appointment of a guardian ad litem at state expense.

(c) Court-appointed Counsel for Students or Parents/Legal Guardians.

(1) Counsel may be appointed for a student, or a parent/guardian of said student, if adjudication is previously entered and the student and/or parent/guardian is served with a contempt citation or if the court deems representation by counsel necessary to protect the interests of the student or other parties.

(2) A finding of indigence is required for the appointment of counsel at state expense. All parties requesting counsel must complete form JDF208, and, if the party is not qualified to have court-appointed representation at state expense, the court shall

Commented [ay37]: Comment by Elise: I am curious about why this sentence is included here. If the appointment of a GAL is necessary due to exceptional and extraordinary circumstances (the standard for GAL appointment in statute) why does it matter whether they have counsel?

advise the party of the possible order to reimburse the state for any justifiable fees and expenses as a result of representation provided from the appointment of legal counsel.

Commented [jw38]: Seems like something is missing (or a step is skipped) before this clause. Something along the lines of "If the party is not qualified to have court-appointed representation at state expense, AND THE COURT APPOINTS COUNSEL WITHOUT A FINDING OF INDIGENCE, the court shall advise the party. . ."

Commented [ay39]: Comment by Elise: I am not sure if this is a current practice in Denver--I do not think it is—and therefore am wondering about the addition of this to the rule (and whether our court appointed attorneys know this is being considered).

Rule 8.17. Report of Suspected Child Abuse to the Court

(a) Upon the court's own motion, or at the request of a moving party, and, if a student is, or appears to be, within the court's jurisdiction as provided in this Article 3 of Title 19, the court may refer the matter to the county department of human or social services, or any other agency designated by the court to make an investigation or to conduct an assessment of services and/or filing of a petition in dependency and neglect petition pursuant to section 19-3-501, C.R.S..

(b) If the court orders a preliminary investigation pursuant to 19-3-501, the court shall provide notice of such order to the department of human services where the student resides, within 72 hours in addition to serving parties to the case, including any appointed counsel.

TRUANCY SUBCOMMITTEE COMMENT(S)

[1] Modeled after Rule 4.27.

[2] § 19-1-105, C.R.S. regarding appointment of GALs in truancy proceedings. There is next to nothing referencing the role and responsibilities of GALs in truancy proceedings in CJD 04-06, but I included subsection (a)(2) in case that later changes.

[3] CJD 04-05 for appointment of counsel for respondent children/youth and parents

Commented [ay40]: Comment from Adele: it felt like there was a word missing here?

Rule 8.18. CASA Rule

(a) **Appointment.** The court may appoint a Court Appointed Special Advocate (CASA) volunteer in any action brought under Article 33 of Title 22, provided that at least one parent or legal guardian of the student is provided with notice of the appointment of a CASA volunteer.

(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.

TRUANCY SUBCOMMITTEE COMMENT(S)

Modeled after Rule 4.28. The only difference is the notice to parent requirement for truancy proceedings pursuant to §19-1-206(1)(b), C.R.S.

PROPOSED OFFICIAL COMMENT

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

Rule 8.19. 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. The Colorado Rules of Evidence apply to truancy proceedings except as otherwise provided by law.

(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 truancy 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.

TRUANCY SUBCOMMITTEE COMMENT(S)

Largely identical to Rule 4.29, except removal of exceptions in subsection (b) that are contained in Article 3 (D&N) of Title 19 and Determination of Foreign Law provision of Rule 4.29.

Rule 8.20. 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 in 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 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 a 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 earlier.

(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 caption the motion as forthwith or emergency. 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 truancy proceedings.

TRUANCY SUBCOMMITTEE COMMENT(S)

[1] Identical to Rule 4.30.

[2] §13-17-102(8) references the Children's Code "or related juvenile matters"

Rule 8.21. Time; Continuances

(a) Computation and Legal Holidays. Computation and legal holidays are 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 in these rules an act is required or allowed to be done at or within a specific 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 a continuance will not be effective unless and until approved by the court. Continuances may be granted for good cause shown.

TRUANCY SUBCOMMITTEE COMMENT(S)

Identical to Rule 4.31 except subsection (d). Removed reference to continuances for children under the age of 6 and added good cause language.

Rule 8.22. Service of Documents & Filing with the Court

(a) Form of Documents. Except for reports filed pursuant to section 19-1-107, C.R.S., every document filed with the juvenile court must contain a caption setting forth the name of the court; title of the case; the case number, if known to the person signing it; and the name of the document.

Commented [ay41]: Comment by Elise: Our CMP files reports on our truancy staffings that don't have a caption and I'm not sure they are reports under 19-1-107.

(b) Service. Except as otherwise provided in these rules or pursuant to the School Attendance Law of 1963 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 if appointed.

(c) 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. If a student is unrepresented by an attorney, service on the student is made by serving the parent, guardian or custodian named as respondent(s) in the petition.

(2) Service under this rule is made by:
- (i) Delivering an electronic copy by Colorado Courts E-Filing;
- (ii) Delivering a copy by mailing 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 court;
- (iv) Delivering a copy to the person by handing it to the person, including in open court;
- (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.

(d) Filing of Documents with the Court; Exceptions.

(1) All documents required to be served on a party must be filed with the court within a reasonable time after service, except that disclosures under C.R.J.P. 8.6 may not be filed until they are used in the proceeding or the court orders otherwise.

(2) Filing documents with the court is accomplished as set forth as in Rule 5(e) of the Colorado Rules of Civil Procedure, which includes permitting a party to file in open court by providing the court with a copy of the document, in which event the court shall note the filing date and transmit the document to the office of the clerk for docketing in the court file.

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

PROPOSED OFFICIAL COMMENT

For additional guidance regarding the format of documents, including a sample of a case caption, see Rule 10(d)-(i) of the Colorado Rules of Civil Procedure.