COLORADO RULES OF JUVENILE PROCEDURE

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Part One – Applicability

Rule 1. Applicability and Citation

(a) Applicability. These rules govern proceedings brought in the juvenile court under Title 19, also hereinafter referred to as the Children's Code, 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. Any action involving a "child custody proceeding," as defined in 25 U.S.C. §§ 1903, 1912 and section 19-1.2-103(2), C.R.S., must proceed in accordance with the Rules of ICWA Procedure, as contained in Chapter 28.3 of the Colorado Court Rules.

(c) [NO CHANGE]

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, 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 require 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.

COMMENTS

[1] 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.

[2] To the extent that districts become more familiar with the realities of a student's family situation, they are encouraged to request that the court amend the petition to add or remove respondents as appropriate.

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 parent(s), guardian(s), or legal custodian(s). In addition, the petitioner shall include either in the petition or in an exhibit all known phone numbers and email addresses, if available, of the parent(s), guardian(s), or legal custodian(s).

(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:

(A) 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.;

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

(C) 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.;

(D) 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

(E) 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).

COMMENTS

[1] 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.

COMMENTS

[1] 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

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:

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

(b) Curricula vitae, resume, or statement of the qualifications of each witness who will or may be offered as an expert.

(c) 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' opinion that will be introduced at the contested hearing; and

(d) 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) 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:

(A) The right to admit or deny the allegations of the petition;
(B) The right to require the school district to prove the allegations of the petition by a preponderance of the evidence;
(C) The right to present evidence and witnesses to challenge the allegations contained in the petition;
(D) The right to cross examine all adverse witnesses;
(E) The right to have subpoenas issued to compel attendance of witnesses at a hearing on the petition;
(F) The right to testify at a hearing on the petition; and
(G) 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:

(A) An order against the student or the student's parent/guardian/legal custodian, or both compelling the student to attend school or compelling the parent/guardian/legal custodian to take reasonable steps to assure the student's attendance; and/or
(B) An order requiring the student and parent/guardian/legal custodian to cooperate with the school district in complying with the plan created to assist the student to increase attendance and remain in school.

(6) If the student or respondent(s) fail 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.

(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 provisions of the Rule to the contrary, the court may advise a non-appearing respondent pursuant to this Rule in writing.

COMMENTS

[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.

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.

COMMENTS

[1] At the time of adjudication, parties may request, or the court on its own motion, may amend the attendance 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).

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/guardian/legal custodian, or any counsel and guardian ad litem, if appointed, in advance of the hearing as provided in C.R.J.P. 8.22.

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] While section 22-33-108(7), C.R.S., allows a court to 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., if a student fails to comply with a valid court order issued against the student or against both the parent and the student, nothing in this section precludes a truancy court from ordering an investigation on other bases pursuant to C.R.J.P. 8.17 at any other stage of the proceedings, including reviews or prior to adjudication.

[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.

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

(a) **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:

(A) 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;

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

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

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

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

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

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

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

(I) the right to remain silent;

(J) 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;

(K) 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;

(L) 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 sanction including, but not limited to detention of up to 48 hours in a juvenile detention facility.

(2) **Sanctions.**

(A) 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.

(B) 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.

(B) 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:

(i) 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

(ii) 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:

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

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

(i) was subject to a court order;

(ii) had knowledge of the order;

(iii) did not comply with the order;

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

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

(C) 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.

COMMENTS

[1] If the court is considering entering any orders temporarily 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), C.R.S.

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

COMMENTS

[1] Pursuant to section 22-33-108(7)(a.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, guardian, or legal custodian 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 the student 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.

(5) A guardian ad litem may substitute for an appointed 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 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. Alternatively, with the authorization of the Office of the Child's Representative pursuant to chief justice directive, a guardian ad litem can be substituted for another guardian ad litem by filing a "Notice of Substitution of Counsel by the Office of the Child's Representative."

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

(1) Counsel may be appointed for a student, or a parent/guardian/legal custodian of said student, if adjudication is previously entered and the student and/or parent/guardian/legal custodian 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 JDF 208. 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, C.R.S., 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.

COMMENTS

[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:

(A) Delivering an electronic copy by Colorado Courts E-Filing;

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

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

(D) Delivering a copy to the person by handing it to the person, including in open court;

(E) 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

(F) 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.

COMMENTS

[1] 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.

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Part One – Applicability

Rule 1. Applicability and Citation

(a) Applicability. These rules govern proceedings brought in the juvenile court under Title 19, also hereinafter referred to as the Children's Code, 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 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. Any action involving a "child custody proceeding," as defined in 25 U.S.C. §§ 1903, 1912 and section 19-1.2-103(2), C.R.S., must proceed in accordance with the Rules of ICWA Procedure, as contained in Chapter 28.3 of the Colorado Court Rules.

(c) [NO CHANGE]

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, 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 require 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.

COMMENTS

[1] 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.

[2] To the extent that districts become more familiar with the realities of a student's family situation, they are encouraged to request that the court amend the petition to add or remove respondents as appropriate.

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 parent(s), guardian(s), or legal custodian(s). In addition, the petitioner shall include either in the petition or in an exhibit all known phone numbers and email addresses, if available, of the parent(s), guardian(s), or legal custodian(s).

(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:

(A) 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.;

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

(C) 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.;
(D) 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
(E) 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).

COMMENTS

[1] 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.

COMMENTS

[1] 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

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:

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

(b) Curricula vitae, resume, or statement of the qualifications of each witness who will or may be offered as an expert.

(c) 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' opinion that will be introduced at the contested hearing; and

(d) 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) 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:

(A) The right to admit or deny the allegations of the petition;
(B) The right to require the school district to prove the allegations of the petition by a preponderance of the evidence;
(C) The right to present evidence and witnesses to challenge the allegations contained in the petition;
(D) The right to cross examine all adverse witnesses;
(E) The right to have subpoenas issued to compel attendance of witnesses at a hearing on the petition;
(F) The right to testify at a hearing on the petition; and
(G) 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:

(A) An order against the student or the student's parent/guardian/legal custodian, or both compelling the student to attend school or compelling the parent/guardian/legal custodian to take reasonable steps to assure the student's attendance; and/or
(B) An order requiring the student and parent/guardian/legal custodian to cooperate with the school district in complying with the plan created to assist the student to increase attendance and remain in school.

(6) If the student or respondent(s) fail 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.

(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 provisions of the Rule to the contrary, the court may advise a non-appearing respondent pursuant to this Rule in writing.

COMMENTS

[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.

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.

COMMENTS

[1] At the time of adjudication, parties may request, or the court on its own motion, may amend the attendance 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).

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/guardian/legal custodian, or any counsel and guardian ad litem, if appointed, in advance of the hearing as provided in C.R.J.P. 8.22.

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] While section 22-33-108(7), C.R.S., allows a court to 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., if a student fails to comply with a valid court order issued against the student or against both the parent and the student, nothing in this section precludes a truancy court from ordering an investigation on other bases pursuant to C.R.J.P. 8.17 at any other stage of the proceedings, including reviews or prior to adjudication.

[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.

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

(a) **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:

(A) 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;

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

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

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

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

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

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

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

(I) the right to remain silent;

(J) 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;

(K) 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;

(L) 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 sanction including, but not limited to detention of up to 48 hours in a juvenile detention facility.

(2) **Sanctions.**

(A) 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.

(B) 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.

(B) 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:

(i) 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

(ii) 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:

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

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

(i) was subject to a court order;

(ii) had knowledge of the order;

(iii) did not comply with the order;

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

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

(C) 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.

COMMENTS

[1] If the court is considering entering any orders temporarily 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), C.R.S.

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

COMMENTS

[1] Pursuant to section 22-33-108(7)(a.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, guardian, or legal custodian 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 the student 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.

(5) A guardian ad litem may substitute for an appointed 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 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. Alternatively, with the authorization of the Office of the Child's Representative pursuant to chief justice directive, a guardian ad litem can be substituted for another guardian ad litem by filing a "Notice of Substitution of Counsel by the Office of the Child's Representative."

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

(1) Counsel may be appointed for a student, or a parent/guardian/legal custodian of said student, if adjudication is previously entered and the student and/or parent/guardian/legal custodian 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 JDF 208. 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, C.R.S., 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.

COMMENTS

[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:
   (A) Delivering an electronic copy by Colorado Courts E-Filing;
   (B) Delivering a copy by mailing to the last known address of the person served;
   (C) If the person served has no known address, leaving a copy with the clerk of court;
   (D) Delivering a copy to the person by handing it to the person, including in open court;
   (E) 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
   (F) 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.

COMMENTS

[1] 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.