

COLORADO RULES OF JUVENILE PROCEDURE

Rule 4.6

Rule 4.6. Disclosure and Discovery in Dependency and Neglect Cases

- (a) Purposes of this Rule.
- (1) Dependency and neglect cases are unique civil cases requiring an intricate balance of the important and interrelated rights and interests of parents, legal guardians and/or legal custodians; children and youth; and the government.
 - (2) In light of the purposes of the Children's Code and to avoid unnecessary delay, dependency and neglect cases require a particularized approach to discovery, which is reflected in this rule.
 - (3) This rule provides a uniform procedure for resolution of all disclosure and discovery issues in dependency and neglect cases in a manner that furthers the purposes of the Children's Code.
- (b) Active Case Management. It is incumbent upon the court to actively manage dependency and neglect cases to eliminate delay, including actively monitoring disclosures and discovery.
- (c) Persons Exempted from Disclosures and Discovery. (1) Non-parties, and (2) alleged or presumptive parents, guardians, or custodians whose legal rights have not been established are exempted from obtaining and providing disclosures and discovery, unless the court orders otherwise.
- (d) Other Case Participants. Upon request and consistent with the purposes outlined in subsection (a), the court may authorize other case participants to engage in or be subject to disclosures and discovery.
- (e) Automatic Disclosures.
- (1) Before an Initial Hearing Pursuant to Section 19-3-403, C.R.S. All parties must disclose to all other parties as soon as practicable, but no later than prior to the commencement of an initial hearing pursuant to 19-3-403, C.R.S., all exhibits it intends to introduce in its case in chief at the initial hearing.
 - (2) No later than the first appearance after the initial hearing pursuant to section 19-3-403, C.R.S. all parties must disclose to all other parties:
 - (A) any information and documentation related to a parent's, child's, youth's, or other family member's potential Native American heritage, including but not limited to tribal identity cards;
 - (B) information relevant to jurisdictional determinations under the Uniform Child-custody Jurisdiction and Enforcement Act, C.R.S. 14-13-101, et seq.; and
 - (C) information about any parentage, custody, guardianship, child support, or protection order cases, and any other court case relevant to the court's jurisdiction.
 - (3) Parents must disclose relative information pursuant to section 19-3-403(3.6)(a), C.R.S..
- (f) Disclosures on Written Request.
- (1) By Petitioner. At any time and upon written request, the petitioner must disclose to the requesting respondent, child through their guardian ad litem, or youth through their counsel, the following items related to the case in its possession, custody, or control. Disclosures must be made no later than 21 days after the request is made, or such other time as the parties agree or the court determines reasonable. Written

notice of any of the following items that are not disclosed and a brief explanation of the reason for withholding them must be given by the petitioner to the requesting respondent, child through their guardian ad litem, or youth through their counsel. Nothing in this rule prevents the court from prohibiting or limiting disclosure of the items listed below for good cause.

(A) Safety and risk assessments;

(B) All TRAILS entries, including Record of Contact (“ROC”) notes, and handwritten notes;

(C) Confirmation of county referrals to service providers;

(D) All reports and notes from family or team decision meetings convened by or on behalf of the department;

(E) Family time assessments, reports, and notes;

(F) Law enforcement reports;

(G) Photographs and videos;

(H) Forensic interviews; and

(I) When permitted under state and federal law or when an appropriate waiver of privilege or confidentiality has been provided:

(I) All court ordered evaluations, treatment records, and service provider notes of any child, youth, or respondent;

(II) Educational, medical, dental, mental health, substance abuse, and domestic violence documents and information; and

(III) Any item in the file of the department if requested with specificity.

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

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

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

(2) Curricula vitae, résumé, or statement of the qualifications of each witness who will or may be offered as an expert;

(3) Written reports of witnesses who will or may be offered as an expert. If no written report has been prepared, a summary of any expert witness’s opinion that will be introduced at the contested trial or hearing; and

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

- (h) Other Disclosures. Other disclosures may be obtained and provided as ordered by the court.
- (i) Discovery.
- (1) Scope.
- (A) Discovery may be obtained and provided regarding any matter not privileged, relevant to any matter presented to the court for resolution in the case, and proportional to the needs of the case.
- (B) Guardians ad litem and children under 12 are not required to produce discovery unless ordered by the court for good cause shown.
- (2) Resolution of Discovery Disputes. Discovery disputes must be resolved as quickly and informally as possible. Before bringing a discovery dispute to the court, including a request for protection orders, the parties must confer or attempt to confer in good faith to resolve the dispute. If a discovery dispute is brought to the attention of the court, the court must exercise due diligence to resolve the discovery dispute within 48 hours, or as soon as practicable.
- (3) Deadlines. Unless otherwise agreed to by the parties or ordered by the court:
- (A) all oral depositions and depositions by written examination shall be completed at least 21 days before a contested hearing; and
- (B) all requests for admissions, interrogatories, and requests for production shall be propounded at least 35 days before a contested hearing.
- (4) Oral Depositions. Throughout a case, a party may take depositions of up to 4 persons. Depositions of incarcerated individuals or repeat depositions of the same person must not occur without court order. It is presumed that depositions of children or youth are not in their best interests and require a court order supported by good cause shown. Each deposition must be limited to two hours.
- (5) Depositions by Written Examination. Throughout a case, a party may take up to 4 depositions by written examination for the purposes of obtaining or authenticating documents.
- (6) Requests for Admission. Throughout a case, a party may serve on each party no more than 20 discrete requests for admissions. Complete responses must be served on the requesting party no later than 21 days after service of the requests, or within the timeframe agreed to by the parties or ordered by the court.
- (7) Interrogatories. Throughout a case, a party may serve on each party no more than 20 discrete interrogatories. Complete responses must be served on the requesting party no later than 21 days after service of the requests, or within the timeframe agreed to by the parties or ordered by the court.
- (8) Requests for Production. Throughout a case, a party may serve on each party no more than 20 discrete requests for production of documents. Complete responses must be served on the requesting party no later than 21 days after service of the requests, or within the timeframe agreed to by the parties or ordered by the court.
- (9) Protective Orders. For good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
- (A) that the disclosure or discovery not be had;

- (B) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;
- (C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (D) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
- (E) that discovery be conducted with no one present except persons designated by the court; and
- (F) that a deposition, after being sealed, be opened only by order of the court.
- (10) Expansion or Limitation for Good Cause. The trial court may limit or expand discovery for good cause considering factors such as the purposes of the Children’s Code, the complexity of the case, the importance of the issues at stake, the parties’ alternative access to the relevant information, the importance of discovery in resolving the issues before the juvenile court, and whether the burden or delay associated with the proposed discovery outweighs its likely benefits.
- (j) Duty to Supplement Disclosures and Discovery. Unless expressly waived by the receiving party, parties who have provided disclosures or discovery must supplement disclosures or discovery when such parties learn that previously-provided disclosures or discovery are incomplete or incorrect in some material respect and the additional or corrective information has not otherwise been made known to the other parties from other disclosures or discovery. The duty to supplement or correct extends to the production of expert reports disclosed pursuant to these rules. Unless expressly waived by the receiving party, updated disclosures and discovery must be provided as soon as reasonably practicable.
- (k) Sanctions and Other Remedial Measures. The court may exercise its discretion to impose sanctions and other remedial measures for disclosure and discovery violations in a manner consistent with the purposes outlined in subsection (a).

COMMENT

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

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

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

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

P.2d 925, 928 (1977) (discovery rules “should be construed liberally to effectuate the full extent of their truth-seeking purpose.”).

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

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

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

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

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