AGENDA
COLORADO SUPREME COURT
RULES OF JUVENILE PROCEDURE COMMITTEE
Friday, October 6, 2023, 9:00 AM
Videoconference Meeting via Webex

I. Call to Order

II. Chair's Report
A. Minutes of 8/4/2023 meeting **[pages 3–7]**

III. New Business
A. Recognition of Service (Justice Gabriel & Judge Welling)
B. ORPC Proposals to Address 2023 Legislative Changes (Z Saroyan & Melanie Jordan) **[pages 8–74]**
i. Emails outlining Issue
ii. Draft Rules (Proposals Highlighted in light blue—p. 32, 42, 46, 52 & 54)
iii. Legislation:
1. HB23-1024 Placement with Family
2. SB23-039 Incarcerated Parents
3. HB23-1027 Family Time
C. Requiring ex parte emergency removal hearings to be on the record (Z Saroyan) **[pages 75–77]**
i. Email from Z

IV. Old Business
A. ICWA Rules Proposal (Judge Furman)
1) Rules Proposal Out for Public Comment
- Written Comments Due on 11/30
supremecourtrules@judicial.state.co.us
- Sign up to Speak at Public Hearing by 11/30
supremecourtrules@judicial.state.co.us
- Public Hearing in the Supreme Court set for 12/12 @ 3:30 PM
4th Floor of the Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver, CO 80203

B. Drafting Subcommittee (Judge Welling & Judge Furman)
1) Update
2) Memo Re Removing (d) (Waiver of Factual Basis) from Admission or Denial Rule **[pages 78–79]**
C. HB22-1038 Review of Draft Rules Subcommittee (Anna Ulrich) **[pages 80-87]**
1) Memo on Youth in Court
2) **NEW** Proposed Rule

D. Subcommittee to redraft Order to Interview or Examine Child (Anna Ulrich & David Ayraud) **[pages 88-96]**

1) Voting on Proposals for new rule on Order to Interview or Examine Child; Investigation

- **NEW** Drafts of Order to Interview or Examine the Child; Investigation in response to feedback (2 options) [pages]
- Prior meeting materials: Original Memo; Redlined Rule; Clean Rule; Feedback gathered by David Ayraud [pages]

V. Adjourn

2023 Meeting Schedule: December 1

2024 Meeting Schedule: February 2; April 5; June 7; August 9; October 4; December 6

Colorado Supreme Court Rules of Juvenile Procedure Committee
Minutes of August 4, 2023 Meeting

I. Call to Order

The Rules of Juvenile Procedure Committee came to order around 9:05 AM via videoconference. Members present or excused from the meeting were:

Name	Present	Excused
Judge Craig Welling, Chair	X	
Judge (Ret.) Karen Ashby		X
David P. Ayraud		X
Jennifer Conn	X	
Traci Engdol-Fruhwirth		X
Judge David Furman	X	
Ruchi Kapoor		X
Magistrate Randall Lococo	X	
Judge Priscilla J. Loew		X
Judge Ann Gail Meinster	X	
Trent Palmer		X
Josefina Raphael-Milliner		X
Professor Colene Robinson		X
Zaven "Z" Saroyan	X	
Judge Traci Slade	X	
Cara Nord for Anna Ulrich	X	
Pam Wakefield	X	
Abby Young	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	X
Terri Morrison	X	
J.J. Wallace		
Special Guests: Jack Trope, member of the ICWA Rules and Resources Subcommittee		

Meeting Materials:

(1) Draft Minutes of 4/7/2023 meeting
(2) Proposed ICWA Rules
(3) Letter Re: Discovery
(4) Memo Re: C.R.C.P. 10
(5) Memo Re: Removing (d) from Admissions or Denial Rule

Chair's Report

A. The 4/7/23 meeting minutes were approved without amendment.

II. New Business

A. ICWA Rules Proposal

The Chair acknowledged the hard work of the ICWA subcommittee and introduced Judge Furman, who recapped the subcommittee's work and introduced the proposal. He noted the subcommittee recommends that the rules be sent to the supreme court as a separate, freestanding rule set (and not rules within the Rules of Juvenile Procedure) because ICWA applies to areas of law outside the Children's Code.

Judge Furman reported that the subcommittee strove to synthesize the various ICWA authorities into easily readable rules. To improve readability, the subcommittee did things such as breaking down large blocks of text into their subparts and replacing "shall" with "must" (or another more appropriate word). Like with other committees, the subcommittee wrestled with extensively quoting the authorities. The subcommittee settled on proposing general rules which cover all ICWA areas using the same words as the source authority when possible but pointing to the source authority for more detailed information. A good example of this is Rule 5. The rule, covering emergency removal or placement of a child, says "the parties must follow the procedures set forth in [authorities]" and lays out the basic standard. The rule mostly points to the appropriate authorities. Thus, the rules have extensive citations. The subcommittee felt that the value of the precise citation to practitioners outweighed the effort it will take to ensure the citations remain current.

Judge Furman then went through the rules one by one taking comments from committee members.

On Rule 1, the Chair recommend removing the brackets from "[F]oster care placement" in the definition section. This change was made.

Z Saroyan suggested re-ordering the series at the end of the comment of Rule 1 to read: "These Colorado Rules of ICWA Procedures are intended to ensure compliance with ICWA, the related ICWA regulations, and corresponding state law." The change would place "with ICWA" and "the related ICWA regulations" together and put "corresponding state law" at the end instead of between ICWA and regulations. The committee agreed with this change.

Cara Nord asked whether the ICWA subcommittee accepted the recommendation from the 1038 subcommittee to add language to Rule 11 to clarify that the court's discretionary choice to provide counsel for a child under ICWA does not supplant or abrogate any right to counsel under state law. The final proposal included the following language to address that issue: "if the court is not required to appoint counsel for the child pursuant to applicable law."

No other suggestions for change were made. One member stated that she thought the rules would be a very useful resource for people in this area.

A motion was made to approve the rules as amended today and send to the supreme court with a recommendation that they be adopted as freestanding rules. The motion was seconded, and the question called.

The committee voted unanimously (10-0) by roll call vote in favor of the motion, and it passed.

Judge Welling again thanked the subcommittee for the effort and indicated that he would write a transmittal letter to the court with the recommendation.

III. Old Business

A. Drafting Subcommittee (Judge Welling and Judge Furman)

1) Update

Judge Welling reported that the drafting subcommittee continues its progress. He stated that the subcommittee drew inspiration from the ICWA subcommittee after seeing their finished product.

2) Letter Re Discovery

The Chair pointed out the letter he received from ORPC about pervasive issues around discovery and the urgent need for resolution of those issues. He explained that, in response, the drafting subcommittee recommends expediting finalization of the discovery rule and releasing that separately from other rules. The 1038 committee recently examined the discovery rule and pointed out issues related to current version of the rule and the new role of children as parties with client-directed counsel. The drafting subcommittee will now be taking up the discovery rule with a goal of finalizing it by the October 6 full committee meeting. The Chair asked if there was an objection to this plan. No objection was made.

Cara Nord indicated that there may also be some urgency to the rule (being drafted by the 1038 committee) covering children in court. The substantial change in law has resulted in a need for direction in this new area. Judge Meinster noted that the jury trial rule is fairly simple and straightforward and there is also a pressing need for this rule to be in place ASAP. Committee members generally agreed that these areas were also pressing needs.

3) Memo Re Recommendation to Civil Rules Committee RE C.R.C.P. 10

The drafting committee considered adopting a version of C.R.C.P. 10 into the juvenile rules but recommends that the juvenile rules utilize C.R.C.P. 10 instead of adopting a separate rule. C.R.C.P. 10 is one-stop-shopping for captions, and it applies uniformly, even to case types with their own sets of procedural rules (e.g., probate and water cases). However, the drafting committee recommends asking the civil rules committee to adopt two minor changes to C.R.C.P. 10: including Juvenile Court as a court type and adding "Juvenile Rules of Procedure" to section (h).

A motion was made and seconded to approve the recommendation. By voice vote, the motion passed unanimously.

Judge Welling will email Judge Jones, Chair of the Civil Rules committee, making the request to amend C.R.C.P. 10.

4) Memo Re Removing (d) (Waiver of Factual Basis) from Admission or Denial Rule

Judge Welling summarized the memo and the committee's recommendation to remove the express approval of waiving a factual basis from (d) of the rule. The subcommittee acknowledged that some jurisdictions routinely allow a waiver of the factual basis as a matter of local practice, but there was uncertainty about how this practice comports with the requirement that the court find that the petition's allegations were supported by a preponderance of evidence.

Z Saroyan believes that parties may enter into this kind of stipulation and sees no problem with waiver being in the rule. Another committee member agreed.

Judge Slade pointed out that by removing the waiver of factual basis language from the rule, the rule is silent on the issue. Thus, parties may

still enter into agreements to waive the factual basis without violating the rule.

Because the committee did not reach consensus and seemed to be thinking over the issue, the Chair suggested tabling this issue until the next meeting. The Chair asked members to think about it for the next couple of months and to ask for feedback from colleagues and other stakeholders.

B. HB22-1038 Review of Draft Rules Subcommittee

Cara Nord and the Chair related that the 1038 subcommittee is moving at an aggressive pace, working closely with the drafting subcommittee, and hopes to finish its work soon. The subcommittee is currently working on drafting a youth in court rule.

IV. Adjourn

The meeting adjourned just around 10:01 AM. The next meeting is October 6 at 9 AM via Webex.

Respectfully Submitted,

J.J. Wallace
Staff Attorney, Colorado Supreme Court

wallace, jennifer

From: Zaven Saroyan [redacted]
Sent: Tuesday, September 26, 2023 6:26 PM
To: wallace, jennifer
Subject: [External] Draft Rules - ORPC Legislative Changes
Attachments: 9.13.23 All Draft Rules One Document ORPC leg changes.docx

J.J.,

Please see attached the requested proposed changes/comments to the rules based on the newly passed legislation. In reviewing the rules, Melanie had a question she asked me to forward. Specifically, it appears several larger issues that commonly occur in dependency cases are not addressed by the rules, including:

1. Reasonable efforts (even though findings are required at almost every hearing)
2. Placement with relatives (recent legislative changes)
3. TPR hearings
4. APRs (including the latest changes allowing for jurisdiction pre-adjudication)
5. Family time (recent legislative changes)
6. Incarcerated parents (recent legislative changes)
7. Adoption (recent legislative changes)

Was there an intentional decision to not include these items? If not, our office would be happy to assist in drafting initial rules for review, especially since much of the recent legislative changes affect these areas. Thanks.

Best regards,

Z-

Zaven ("Z") Saroyan
Appellate Director
Office of Respondent Parents' Counsel
1300 Broadway, Suite 340
Denver, CO 80203
719-421-6767
www.calendly.com/orpc-case-consults-with-z

From: Melanie Jordan
Sent: Wednesday, September 13, 2023 4:01 PM
To: wallace, jennifer; Zaven Saroyan
Subject: [External] Re: Juvenile Rules 1038 Subcommittee

Hi J.J.,

It has been a whirlwind for sure, thank you for following up on this. Z and I spoke today and agree that we would like this included on the agenda for 10/6. I am available to attend. I think the topic is a bit broader than SB 23-39. It is really more like "Impacts of 2023 legislation on draft rules." Most of the 2023 juvenile legislative changes were either introduced by our office, or the ORPC was heavily involved in the drafting of the bills. Z and I will try really hard to flag where we think changes are necessary to the current version of the draft rules based on 2023 legislative changes by 9/27 so you could distribute that document in advance, but we acknowledge that it will likely be necessary for some smaller group to take a look at the proposed changes. Our office is happy to facilitate a smaller group just as OCR has been doing with the changes necessitated by HB 22-1038 if it is decided that is necessary.

Best regards,

Melanie Jordan, Esq. | Case Strategy Director
OFFICE OF RESPONDENT PARENTS' COUNSEL
1300 Broadway | **Suite 340** | Denver, Colorado 80203 | Cell: (303) 641-9054

Book time to meet with me

OFFICE OF RESPONDENT PARENTS' COUNSEL

From: wallace, jennifer [redacted]
Sent: Wednesday, September 13, 2023 9:22 AM

To: Melanie Jordan [redacted]
Subject: RE: Juvenile Rules 1038 Subcommittee

Hi Melanie,

Hope your week is going well. I'm sure it's been busy—I caught part of your testimony yesterday before the Interim Study Committee.

The 10/6 Juvenile Rules Committee meeting is still three weeks away, but I was revising the agenda this morning and remembered that you had mentioned impacts of SB23-39 as a potential agenda item. Let me know by 9/27 if you want to be on the agenda (even if it's more informational in nature; e.g., letting members know about the new legislation and what you think the impacts might be).

Take care,

J.J.

From: wallace, jennifer
Sent: Thursday, August 24, 2023 4:00 PM
To: Melanie Jordan [redacted]
Cc: welling, craig [redacted]
Subject: RE: Juvenile Rules 1038 Subcommittee

Hi Melanie,

I'm not sure I understand your proposal, but I wanted to make sure to respond. If you believe SB23-39 will require updated rules and want to secure approval from the Juvenile Rules Committee for undertaking the review, I can add it as an agenda item to the October 6th Juvenile Rules Committee meeting. If you prefer to make specific updates first and then take those updated recommendations to Juvenile Rules Committee for approval, that works too. Your choice. Let me know how I can help.

Thanks,

J.J.

From: Melanie Jordan [redacted]
Sent: Wednesday, August 23, 2023 2:02 PM
To: wallace, jennifer [redacted] Sheri Danz [redacted] Anna Ulrich [redacted] welling, craig [redacted] lococo, randall [redacted]>; meinster, ann [redacted] loew, priscilla [redacted]; Cara Nord [redacted] Zaven Saroyan [redacted]; [redacted]; David Ayraud [redacted]>
Subject: [External] Re: Juvenile Rules 1038 Subcommitte

Thank you J.J. This brings up a process question for me that I would like to pose to this group. There is legislation from this past session that may require revisions to these draft rules. For instance, in this proposed rule that you attached, SB 23-39 would require revisions to the section on respondent parents. I think the group of people in this subcommittee are the right group of people to look at whether legislative changes from 2023 require changes to the draft rules, but I know that is outside the scope of looking only at 1038. Since it seems like we might be nearing the end of the 1038-related work, I would like to propose that our office take a look at the current draft rules, propose a work plan to address the changes needed due to 2023 legislation (similar to what OCR did with 1038), and submit that to the full rules committee. Is that the correct process? I don't think the changes will be as extensive as what has been required with 1038, but we also don't want to do all of this work just to have to go back and revise things because they are not in accordance with legislative changes taking effect on 1/1/24 or that just took effect on 8/7/23. I welcome any thoughts and feedback on how this should be approached.

Best regards,

Melanie Jordan, Esq. | Case Strategy Director
OFFICE OF RESPONDENT PARENTS' COUNSEL
1300 Broadway | **Suite 340** | Denver, Colorado 80203 | Cell: (303) 641-9054

Book time to meet with me

Contents

General Rules

Commented [wj1]: We are presuming that these rules are limited to Article 3 proceedings.

Attorney of Record

(a) Attorney of Record.

(1) Entry of Appearance. An attorney will be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed.

(2) Appointment by Court. When an attorney who has been appointed by the court is not present at the time of appointment, court staff must timely notify the attorney. An order of appointment must be entered into the court's electronic case management system.

(3) Appointment by Other Appointing Authority. When an attorney has been appointed by an agency with appointment authority, the agency must timely notify the court of the appointment. An order of appointment must be entered into the court's electronic case management system.

Commented [wj2]: The subcommittee added this subsection to acknowledge that some agencies, like ORPC, have the authority to appoint attorneys. The larger committee did not include this, but the subcommittee was prompted to include it here because the larger committee included RPC's appointment authority in (b)(2).

(b) Respondent Counsel.

(1) Advisement and appointment. If a respondent appears in court without counsel, the court must advise the respondent of the right to counsel. If the court finds that the respondent meets the requirements set out in chief justice directive or statute, the court must appoint counsel to represent the respondent unless the respondent affirmatively declines the appointment of counsel on the record. In the interests of justice, the court may provisionally appoint counsel for a respondent.

(2) Appointment of counsel for in-custody respondents. The court must appoint counsel for a respondent who is incarcerated, being held in federal custody, or involuntarily committed as such a respondent is presumed indigent absent a specific judicial determination to the contrary.

Commented [wj3]: Comes from CJD 16-02(VI)(c)

(3) Substitution of respondent counsel.

(A) Substitution by respondent counsel. New counsel may substitute for respondent counsel upon the filing of a notice of substitution of counsel that complies with C.R.C.P. 121 sec.1-1(2)(a) or court order.

(B) Substitution by Office of Respondent Parents' Counsel. With the pre-authorization of the Office of Respondent Parents' Counsel pursuant to chief justice directive, an appointed attorney can be substituted for another appointed attorney by filing a "Notice of Substitution of Counsel by the Office of Respondent Parents' Counsel."

(4) Withdrawal of respondent counsel.

(A) Respondent counsel may seek to withdraw from a case by filing a motion to withdraw. A motion to withdraw as respondent counsel must comply with C.R.C.P. 121 sec. 1-1(2)(b) unless the appointment is a provisional appointment pursuant to CJD 16-02 (VI)(d).

(B) The court must address the motion to withdraw as respondent counsel at the next previously scheduled hearing date or set the request for hearing. Before granting the motion to withdraw, the court must advise the respondent of the right to counsel.

(5) Termination of appointment of provisionally appointed counsel. Provisionally appointed counsel may request termination of the appointment upon written or oral motion to the court stating that the respondent is not indigent, the respondent does not wish to have court-appointed counsel, or the respondent cannot be located after diligent search and direction from the respondent is unknown. The court may immediately terminate a provisional appointment of counsel.

(6) Termination of Representation. Absent an agreement between counsel and a respondent, counsel's representation of that respondent continues until :

(A) certification of an order allocating parental responsibilities if no appeal is filed;
(B) entry of an order terminating the respondent's parental rights as to all of their children if no appeal is filed;
(C) dismissal of the respondent from the case if no appeal is filed;
(D) issuance of a mandate by the appellate court if such mandate terminates the juvenile court's jurisdiction over the respondent; or
(E) otherwise mandated by operation of law or by court order.

(c) Counsel for Youth and Guardians ad Litem for Children and Youth

(1) Counsel for Youth

(A) Appointment of Counsel for Youth for Youth 12 and older. The court must appoint an attorney as counsel for youth for a youth age 12 and older.

(B) Transition from Guardian ad litem to Counsel for Youth at age 12. An appointed guardian ad litem in a dependency and neglect proceeding must begin acting as counsel for youth upon the youth's 12th birthday. The attorney must notify the court and the parties of the change of appointment to counsel for youth, and the court must issue a new order of appointment within seven days.

(C) Appointment of Counsel for Children under 12. The court may appoint counsel for children under age 12 in addition to a guardian ad litem if the court finds representation by counsel is necessary to protect the interests of the child.

(D) No waiver. A child's or youth's right to counsel in a dependency and neglect proceeding may not be waived.

(E) Termination of Appointment as Counsel for Youth. The appointment continues until the entry of a final decree of adoption or until the jurisdiction of the juvenile court is terminated.

Commented [wj4]: Is this a new phrase not used elsewhere? Is a different phrase better?

Commented [wj5]: terminate on the counsel's client's dismissal (not just any respondent)

Commented [SD6]: Ask drafting committee for conventions around when to use acronyms and when to spell out.

Commented [wj7R6]: Spell out and don't use abbreviation

Commented [wj8]: 19-1-105(2)

(2) Guardians ad Litem

(A) For Children under age 12. The court must appoint a guardian ad litem for a child under age 12.

(B) For Children and Youth age 12 and older.

(i) The court may appoint a guardian ad litem or continue the guardian ad litem appointment if the court determines that the appointment is necessary due to the youth's diminished capacity. The court must not consider age or developmental maturity as the sole basis for a determination of diminished capacity.

(ii) The court must not deem a guardian ad litem appointed for a youth age 12 or older to be a substitute for the appointment of a counsel for youth.

(C) Termination of GAL Appointment. The guardian ad litem's appointment continues until the entry of a final decree of adoption, the guardian ad litem transitions to counsel for youth, or the jurisdiction of the juvenile court is terminated. For a youth age 12 or older, the guardian ad litem appointment may also be terminated by court order.

(3) Joint Representation of Siblings. The court may appoint the same attorney as GAL and as Counsel for Youth for members of a sibling group as long as the attorney does not assert there is a conflict of interest. If the attorney asserts a conflict of interest, the court must appoint a new attorney as Guardian ad litem or Counsel for Youth for some or all members of the sibling group.

(4) Substitution. An appointed counsel for youth or guardian ad litem may substitute for another appointed counsel for youth or guardian ad litem upon the filing of a notice of substitution that complies with C.R.C.P. 121 sec.1-1(2)(a) or court order, as long as the substitute counsel for youth or guardian ad litem is identified as qualified for Office of the Child's Representative-paid appointments on the Office of the Child's Representative's appointment eligibility list. Although the substitution is effective upon the filing of the notice of substitution, the court shall promptly issue an appointment order for substitute counsel for youth or guardian ad litem upon receipt of such notice.

(d) Other Guardian ad Litem Appointments. The court may appoint a guardian ad litem for a parent, guardian, legal custodian, custodian, person to whom parental responsibilities have been allocated, stepparent, or spousal equivalent who, as provided in section 19-1-111(2)(c), C.R.S., has been determined to have a behavioral or mental health disorder or an intellectual and developmental disability by a court of competent jurisdiction.

(e) Counsel for Special Respondents or Intervenors. Entry of appearance, substitution, and withdrawal of counsel for special respondents or intervenors must be made pursuant to C.R.C.P. 121 section 1-1.

Comments

[1] Nothing in this rule limits the power of the court to appoint, for good cause, a respondent parent counsel, counsel for youth, or guardian ad litem prior to the filing of a petition.

[2] Nothing in subsection (b)(4) precludes respondent counsel from filing an ex parte motion requesting an in camera hearing in front of a different judge for the purpose of detailing the reasons why withdrawal is necessary.

[3] For guidance on guardian ad litem appointments under section (d), *see People in Interest of M.M.*, 726 P.2d 1108, 1120 (Colo. 1986) ("If the parent is mentally impaired so as to be incapable of understanding the nature and significance of the proceeding or incapable of making those critical decisions that are the parent's right to make, then a court would clearly abuse its discretion in not appointing a guardian ad litem to act for and in the interest of the parent. A court would also abuse its discretion in not appointing a guardian ad litem in those situations in which it is clear that the parent lacks the intellectual capacity to communicate with counsel or is mentally or emotionally incapable of weighing the advice of counsel on the particular course to pursue in her own interest."); *accord People in Interest of T.M.S.*, 2019 COA 136, ¶ 9.

~~**(a) Attorney of Record.**~~

~~**(1) Entry of Appearance.** An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court.~~

~~**(2) Appointment.** Court staff shall timely notify an attorney appointed by the court. An order of appointment shall be entered into the court's electronic case management system.~~

~~**(b) Appointment of Respondent Counsel in Article 3 Proceedings.**~~

~~**(1) Advisement.** If a respondent appears in court without counsel, the court shall advise the respondent of the right to counsel. At the first appearance, if, upon the respondent's affidavit or sworn testimony and other investigation, the court finds that the respondent meets the eligibility requirements or exceptions set out in chief justice directive or statute, an attorney shall be appointed to represent the respondent at every stage of the proceedings. must~~

~~**(2) Appointment of RPC.** In addition to the procedures of (a)(1), Respondent Parent Counsel may also be appointed by the Office of Respondent Parents' Counsel as set out in chief justice directive.~~

~~**(3) Request for Withdrawal of Respondent Counsel During Proceedings.**~~

~~**(A) Notice of Withdrawal.** Except as provided in subsection (D), respondent counsel may withdraw from a case only after hearing and upon order of the court. Such approval shall rest in the sound discretion of the court and shall not be granted until the attorney seeking to withdraw has made diligent efforts to give actual notice to the client. A request to withdraw shall be in writing and shall be made as soon as~~

Commented [wj9]: This word is in the statute CRS 19-3-203(1)

Commented [fs10]: Include – "and if the respondent wants counsel"?

Commented [wj11]: Since the heading uses counsel and in the D&N world, "counsel" is a plain language term, we suggest making all references to attorney/lawyer = counsel.

practicable upon the lawyer becoming aware of the grounds for withdrawal. Such notice to withdraw shall include:

(I) That the attorney wishes to withdraw;

(II) That the court retains jurisdiction;

(III) That the respondent has the right to object to withdrawal within such time as permitted by the court, but no more than 7 days from the date of the notice;

(IV) That a hearing will be held and withdrawal will only be allowed if the court approves;

(V) A statement of all future court dates and that the respondent has the obligation to appear at all previously scheduled court dates;

(VI) That if the request to withdraw is granted, then the respondent will have the obligation to hire other counsel, request the appointment of counsel by the court, or elect to represent himself or herself.

(B) Hearing. The court must address the request to withdraw at the next previously scheduled hearing date or set the request for hearing. Before granting the motion to withdraw, the court must advise respondents of their right to counsel.

(C) Denial of Request to Withdraw. If the court denies respondent counsel's request to withdraw, then counsel may file an *ex parte* motion requesting an *in camera* hearing in front of a new judge and detailing the reasons why the withdrawal is necessary.

Substitution Without Hearing. An attorney may withdraw from a case, upon order of the court without hearing, where the withdrawing attorney has complied with all outstanding orders of the court and either files a notice of withdrawal where there is active co-counsel for the respondent represented by the withdrawing attorney or files a substitution of counsel signed by both the withdrawing and replacement attorney. The attorney seeking to substitute shall prepare a notification certificate stating that the above notification requirements have been met and the manner by which such notification was given to the respondent and setting forth the respondent's last known address and telephone number. The notification certificate shall be filed with the court and a copy mailed to the respondent and all other parties. The respondent and opposing counsel shall have 7 days from the date of the notification certificate, or such other time as the court may permit, within which to file objections to the substitution. After order permitting substitution, the respondent shall be notified by the substituting attorney of the effective date of the substitution

(I) **iSubstitution of ORPC Counsel.** With the pre-authorization of the Office of Respondent Parents' Counsel pursuant to chief justice directive, an appointed attorney can substitute for another appointed attorney by filing a "Notice of Substitution of

Commented [wj12]: I think the best solution to fixing this "shall" is to rephrase the sentence "Any objection by the respondent or opposing counsel must be filed within 7 days from the date of the notification certificate, or such other time as the court may permit."

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~~Counsel by The ORPC." Such notice must have all the elements for substituting counsel set forth in this rule.~~

~~**(4) Termination of Representation.** Unless otherwise directed by the trial court or extended by an agreement between counsel and a respondent, counsel for a respondent's representation, whether retained or appointed, terminates at the following points:~~

~~(A) Certification of order allocating parental responsibilities to a district court case;~~
~~(B) Entry of an order terminating parental rights if no appeal is filed;~~
~~(C) Issuance of mandate by the appellate court;~~
~~(D) Dismissal of a Respondent from the case; or~~
~~(E) As otherwise ordered by the court.~~

~~**(c) Counsel for Special Respondents or Intervenors.** Entry of appearance and withdrawal of counsel for special respondents or intervenors shall be as prescribed in C.R.C.P. 121 section 1-1.~~

~~**Comment**~~

~~[1] Nothing in this rule limits the power of the court to appoint counsel or a guardian ad litem prior to the filing of a petition for good cause.~~

~~[2] Section (b) is not intended to supplant section (a). Rather section (b) is intended to provide additional procedures.~~

CASA Rule

(a) **Appointment.** The court may appoint a Court Appointed Special Advocate (CASA) volunteer by order of the court. If ~~T~~the court ~~may~~ appoints a ~~Court Appointed Special Advocate (~~CASA~~)~~ volunteer, ~~it by order in a dependency and neglect case and~~ should do so at the earliest opportunity.

(b) **Role, Responsibilities, and Access to Information.** A CASA ~~The role and responsibilities for the CASA~~ volunteer's role, responsibilities, ~~appointed to the case~~ and ~~the CASA volunteer's~~ 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.

COMMENT

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

Commented [wj13]: Refine to note that office has own power to substitute and some elements (signature) may not apply.

Commented [wj14]: Is this a new phrase not used elsewhere? Is a different phrase better?

Commented [wj15]: Would counsel's appointment really terminate if counsel appealed the judgment and the judgment was reversed? Also, since appeals of adjudication are authorized, a mandate issuing in that situation would be half-way through the case.

Commented [wj16R15]: CRJP committee agrees that the idea is to terminate representation at the true end of the representation. Stated another way, make sure counsel is terminated only when there are no unresolved issues for the respondent outstanding. One committee member cautioned to be careful if using language excluding the adjudication appeal because there can be some question about where disposition fits in with that.

Commented [wj17]: terminate on the counsel's client's dismissal (not just any respondent)

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Commented [wj18]: This word is in the statute CRS 19-3-203(1)

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Time; Continuances

(a) (1) Computation. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run ~~shall~~must not be included. Thereafter, every day ~~shall~~must be counted, including holidays, Saturdays or Sundays. The last day of the period so computed ~~shall~~ must be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(2) As used in this Rule, "Legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the nineteenth day of June, observed as Juneteenth Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the first Monday in October, observed as Frances Cabrini Day~~the second Monday in October, observed as Columbus Day~~; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) Enlargement of Time. When by these rules or by a notice given thereunder or by an order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 59 and 60(b) of the Colorado Rules of Civil Procedure, except to the extent and under the conditions therein stated. ~~[Source, CRCP 6(b)].~~

(c) Reduction of Time. When by these rules an act is required or allowed to be done at or within a specified time, the court for 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 affected.

(d) Continuances. Stipulations for continuance ~~shall~~ will not be effective unless and until approved by the court. A court ~~shall~~may not continue an adjudicatory hearing or other proceeding unless good cause is shown and the court finds that the best interests of the child will be served by granting a delay or continuance. If the hearing ~~or proceeding~~ concerns a child who was under six years of age at the time a petition is filed, the court ~~shall~~ must set forth specific reasons necessitating the delay or continuance and ~~shall~~must schedule the matter at the earliest possible time within thirty days after the date of granting the delay or continuance. ~~[Source CRS 19-3-104, EPP; 19-3-505(3), Adjud. Hrg; 19-3-505(7)(b) & 508(1), Dispo. Hrg,]~~

Evidence

[Draft from Adjudication Subcommittee]

Commented [wj19]: Keep consistent with CRCP 6; except must instead of shall

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(a) Form and Admissibility. In all trials the testimony of witnesses ~~shall~~must be taken orally in open court, unless otherwise provided by these Rules, the Colorado Rules of Civil Procedure, the Colorado Rules of Evidence, or any statute of this state or of the United States (except the Federal Rules of Evidence).

(b) Applicability of Rules of Evidence; Exceptions. The Colorado Rules of Evidence ~~shall~~ apply~~iesy~~ to dependency or neglect actions except as otherwise provided by law, including but not limited to:~~.~~

(1) A~~A~~t a temporary custody hearing conducted pursuant to section 19-3-403, ~~Colorado~~ C.R.~~evised~~ S.~~tatutes~~, any information having probative value may be ~~admitted as evidence~~received by the court, regardless of its admissibility under the Colorado Rules of Evidence, in accordance with section 19-3-403(3.6)(a)(II), C.R.S.; ~~[Source, CRS 19-3-403(3.6)(a)(II);~~]

(2) Social studies and other reports may be admitted as evidence in accordance with section 19-1-107(2) and section 19-3-604(3), ~~Colorado C.Revised~~ R.S.~~tatutes~~;

(3) Reports of known or suspected child abuse or neglect may be admitted as evidence in accordance with section 19-3-307(4), ~~Colorado Revised Statutes~~C.R.S.;

(4) Out-of-court statements of a child witness or victim may be admitted as evidence in accordance with section 13-25-129, ~~Colorado Revised Statutes~~C.R.S.;

(5) Out-of-court statements of persons with intellectual or developmental disabilities may be admitted as evidence in accordance with section 13-25-129.5, ~~Colorado Revised Statutes~~C.R.S.; and~~,~~

(6) Certain evidentiary privileges may be rendered inapplicable by operation of section 19-3-311, ~~Colorado Revised Statutes~~C.R.S.

(c) Reports.

(1) **Advisement**. ~~At an appropriate stage of the case, t~~The court ~~shall~~ must inform the child, his or her parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other materials relating to the child's mental, physical, and social history.

(2) **Deadline For Providing Report.** Except in emergency proceedings and temporary custody hearings under section 19-3-403, ~~Colorado Revised Statutes~~C.R.S., any party who intends to offer evidence in the form of written reports and other material relating to the child's mental, physical, and social history at a proceeding ~~shall~~ must ~~notify the court and~~file and serve the written reports and other material to the other parties ~~no later than~~at least 7 days ~~before~~ in advance of the ~~proceeding~~hearing unless a greater or lesser time is ordered by the court.

(3) **Testimony of Person who Wrote the Report.** If requested by the child, the child's parent or guardian, or other interested party within 48 hours ~~days~~ before the ~~proceeding~~ hearing the court ~~shall~~ must require the person who wrote the report or prepared the material to appear as a witness and be subject to both direct and cross-examination. Absent such a request, the court may, at any time, order the person who wrote the report or prepared other material to appear at the proceeding if it finds that the interest of the child so requires.

(d) Evidence on Motions. When a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, or the court may direct that the matter be heard wholly or partly on oral testimony.

Commented [wj22]: From [Source, CRS 19-3-403(3.6)(a)(II)]

Commented [wj23]: The language about "report and other material" comes from 19-3-604(3), 19-1-107(2); the subcommittee broke this subsection up into three parts, which is not reflected in tracked changes.

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(e) Evidentiary Stipulations. In any dependency or neglect proceeding, the parties may stipulate or agree to the existence of a fact or facts. The parties may also stipulate or agree to what a witness would have testified to if he or she were called to testify. Such a stipulation or agreement makes the presentation of any evidence to prove the matters agreed to or admitted unnecessary. ~~[Source, CJI-Civ. 1:13, 1:14]~~

(f) 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.

(g) Determination of Foreign Law. A court may determine the law of a foreign country in accordance with Rule 44.1 of the Colorado Rules of Civil Procedure.

~~(g)~~

~~(h) (1) Request for~~ **Absentee Testimony.** A request for absentee testimony must be made and determined in accordance with Rule 43 of the Colorado Rules of Civil Procedure. ~~A party may request that testimony be presented at a trial or hearing by a person absent from the courtroom by means of telephone or some other suitable and equivalent medium of communication. A request for absentee testimony shall be made by written motion or stipulation filed as soon as practicable after the need for absentee testimony becomes known. The motion shall include:~~

~~(A) The reason(s) for allowing such testimony;~~

~~(B) A detailed description of all testimony which is proposed to be taken by telephone or other medium of communication; and~~

~~(C) Copies of all documents or reports which will be used or referred to in such testimony.~~

~~**(2) Response.** If any party objects to absentee testimony, said party shall file a written response within 3 days following service of the motion unless the opening of the proceeding occurs first, in which case the objection shall be made orally in open court at the commencement of the proceeding or as soon as practicable thereafter. If no response is filed or objection is made, the motion may be deemed confessed.~~

~~(3) **Determination.** The court shall determine whether in the interest of justice absentee testimony may be allowed. If the court orders absentee testimony to be taken, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.~~

~~(4) **Relevant Factors.** The facts to be considered by the court in determining whether to permit absentee testimony shall include but not be limited to the following:~~

~~(A) Whether there is a statutory right to absentee testimony.~~

~~(B) The cost savings to the parties of having absentee testimony versus the cost of the witness appearing in person.~~

~~(C) The availability of appropriate equipment at the court to permit the presentation of absentee testimony.~~

~~(D) The availability of the witness to appear personally in court.~~

~~(E) The relative importance of the issue or issues for which the witness is offered to testify.~~

~~(F) If credibility of the witness is an issue.~~

~~(G) Whether the case is to be tried to the court or to a jury.~~

~~(H) Whether the presentation of absentee testimony would inhibit the ability to cross examine the witness.~~

~~(I) The efforts of the requesting parties to obtain the presence of the witness.~~

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~~If the court orders absentee testimony to be taken, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.~~

(h)

Intervention

(a) Intervention; Procedure. A person or entity desiring to intervene in a dependency or neglect action must file a motion to intervene and serve the motion upon the parties. The motion must state the grounds and legal authority therefor.

~~(a)~~**(b) Intervention of Right; Grounds.**

(1) Parents, Grandparents, ~~and~~ Relatives, and Kin Caregivers. Upon motion after adjudication, parents, grandparents, or relatives who have information or knowledge concerning the care and protection of the child or kin caregiver who has the child in the caregiver's care for more than three months. ~~shall be are permitted to~~ may intervene as a matter of right.

~~(2)~~ **Foster Parents.** Foster parents who have the child or youth in their care for twelve months or more may intervene, as a matter of right following adjudication. ~~Upon motion after adjudication, foster parents who have the child in their care for more than three months and who have information or knowledge concerning the care and protection of the child shall be permitted to may intervene as a matter of right.~~

(2)

(3) Indian Custodians and Indian Tribes. In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child, ~~dependency or neglect action involving an Indian child, an~~the Indian custodian of the child and the Indian child's tribe ~~shall have a right to~~has a right to~~may~~ intervene at any ~~time~~ point in the proceeding.

~~**(b) Permissive Intervention; Grounds.** Upon timely motion a court may permit a person or entity to intervene in a dependency or neglect action at any time in the proceedings when a statute confers a conditional right to intervene. In exercising its discretion a court shall consider whether the intervention will serve the best interests of the child and the public, whether the intervention will unduly delay or prejudice the rights of the original parties to the action, and whether the movant's interest is adequately represented by existing parties.~~

~~**(c) Procedure.** A person or entity desiring to intervene in a dependency or neglect action shall serve a motion to intervene upon the parties. The motion shall state the grounds therefor and shall cite the legal authority, if any, that confers upon the applicant an unconditional or conditional right to intervene.~~

Comment

[1] This rule is intended to operate in conjunction with a separate rule applicable to parties and joinder. ~~This rule will apply to at least 6 categories of applicants: (1) Parents, grandparents, and relatives of the child who have not been joined as parties; (2) foster parents of the child; (3) a person who does not fall within either of the foregoing categories but who would have standing to petition a court for allocation of parental responsibilities pursuant to § 14-10-123(1), CRS; (4) a person appointed by a parent to act as guardian for a child pursuant to 15-14-201, -202, CRS; (5) a person to whom a parent has delegated by a power of attorney any power regarding care,~~

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~~custody, or property of a minor for a period of not more than 12 months pursuant to CRS 15-14-105; and (6) a tribe acting pursuant to the ICWA, 25 U.S.C. § 1911(c).~~

Motions

See Pre-adjudication draft rule

See Adjudication draft rule

Discovery

Case Management, Duty to Disclose, and Discovery in Dependency and Neglect Cases

~~(a)~~ **Purpose of this Rule.** 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~~; ~~the guardians *ad litem* who represent their best interests;~~ and the government. ~~The purposes of the Colorado Children's Code, codified at 19-1-102, C.R.S., include securing for children subject to its provisions such care and guidance, preferably in such children's own home, as will best serve such children's interests and serve the interests of society; and preserving and strengthening family ties whenever possible, including improving the home environment. Section 19-1-102, C.R.S. also explains that a child may be removed from the custody of his or her parents only when his or her welfare and safety or the protection of the public would otherwise be endangered; and, in either instance, for courts to proceed with all possible speed to a legal determination that will serve the best interests of the child. In general, the Children's Code emphasizes rehabilitating parents and/or the home environment so children may be returned home; and, where such return is not possible under the law, to ensure the safe, stable, and secure placement of children in a permanent home. To reach these goals, the Children's Code sets expedited timeframes deemed to serve the best interests of the children.~~

(a) The~~se and other such~~ purposes ~~and policies~~ of the Children's Code render some of the normal discovery processes found in civil cases, which sometimes involve frequent disputes and inherent delays, unacceptable in Dependency and Neglect cases. It is anticipated that informal disclosure and discovery will continue to occur; these rules are intended to supplement those informal practices. Moreover, nothing in these rules ~~shall~~ should be used to justify an extension of statutory timeframes or to limit the sharing of information required or allowed by law. Further, it is incumbent upon parties and courts to engage in active case management of Dependency and Neglect cases to eliminate delay.

This rule provides a just, timely, and cost-effective process requiring attention to active case management by the court. 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 and policies of the Children's Code. Proceedings are civil in nature. Where not governed by these rules or the procedures set forth in Title 19, proceedings

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~~shall~~ must be conducted according to the Colorado Rules of Civil Procedure, except where those rules specifically exclude their applicability to juvenile proceedings.

(b) Active Case Management. The court ~~shall~~ must provide active case management from the filing of a Petition in Dependency and Neglect to the resolution of all issues before it. The court ~~shall~~ must evaluate each case at all stages to determine proper scheduling and actively monitor disclosures and discovery to ensure these processes move fluidly and do not contribute to unnecessary delay, consistent with the purposes and policies of the Colorado Children's Code. The court ~~shall~~ may utilize a standing Case Management Order, but may ~~consider the unique needs of each case and~~ tailor ~~a separate Case~~ it to address the specific circumstances of ~~Management Order for~~ each case. ~~For the adjudication phase of the case, the Case Management Order shall be filed by the Petitioner within 21 days of a child's removal from the home, the petition's filing, or the initial hearing, whichever is earlier, unless extended by the court. Additional Case Management Orders for later parts of the case (e.g., Allocation of parental responsibilities or termination of parental rights) may be required at the discretion of the court; such Case Management Orders shall be filed by the party who requested the hearing within 21 days of the contested hearing or such other deadline as the court may determine. The court may use the Standard Case Management Order in~~ *See* **Appendix 1.** If the court uses a different Case Management Order, its Case Management Order ~~shall~~must, at a minimum, address whether the matter is an Expedited Permanency Planning case, any potential issues related to the Indian Child Welfare Act, any potential issues related to the Uniform Child Custody Jurisdiction and Enforcement Act, any potential issues related to ~~paternity~~parentage, and any special issues which may affect disclosures and discovery. The Case Management Order may also address the remaining topics outlined in **Appendix** .

(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. Guardians ad litem are not required to produce discovery unless ordered by the court for good cause shown.

(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 19-3-405, C.R.S., all exhibits it intends to introduce in its case in chief at the initial hearing

~~(c)~~ (2) No later than the first appearance after the initial hearing pursuant to section 19-3-405, C.R.S.~~:~~

(1) Parties must disclose:

(A) any information related to a parent's, child's, or other family member's potential Native American heritage;~~ and~~

(B) information relevant to jurisdiction determinations under the Uniform Child-custody Jurisdiction and Enforcement Act, C.R.S. 14-13-101, et seq.; and

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~~(B)~~(C) information about any ~~paternity~~parentage, custody, guardianship, child support, or protection order cases, and any other court case relevant to the court's jurisdiction.

(2) Parents must disclose relative information pursuant to section 19-3-403(3.6)(a)(I).

(f) Disclosures Upon Written Request

~~**(1) Before a Contested Initial Hearing Pursuant to Section 19-3-403, C.R.S.** All parties shall disclose to all other parties as soon as practicable, but no later than prior to the commencement of a contested initial hearing pursuant to 19-3-405, C.R.S., all exhibits it intends to introduce in its case in chief at the contested initial hearing.~~

~~**(2) After the Initial Hearing.**~~

~~(A)~~ **(1) By Petitioner**. At any time and ~~U~~upon written request ~~for any or all of the items listed below before a contested trial or a contested hearing~~, the p~~P~~etitioner ~~shall~~ must disclose to requesting parties the following items in its possession, custody, or control~~, which relate to the allegations giving rise to the case or are relevant to the contested issue before the court~~. ~~These d~~Disclosures ~~shall~~ 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 and appropriate. Written notice of any of the following items that are not disclosed and a brief explanation of the reason for withholding ~~shall~~ must be given by the petitioner to the requesting parties~~. Subsequent disclosure is subject to court order~~:

(I) Law enforcement reports;
(II) Photographs;
(III) Interview recordings, notes, and/or transcripts;
(IV) Intake assessment summary reports, notes, record of contact sheets, correspondence, and visitation summaries or reports;
(V) Medical, dental, mental health, substance abuse, and educational documents or information as provided by state or federal law or for which a waiver of privilege or confidentiality has been provided by the privilege holder. See **Appendix** _____ for a sample waiver; and
(VI) Family Safety and Risk Assessments.
~~(VI)~~

~~(B)~~(A) **By Respondents.** Upon written request, r~~R~~espondents ~~shall~~ must disclose to requesting parties a copy of the child's birth certificate, social security card, tribal identity card, and/or Medicaid/insurance card in their possession. These disclosures ~~shall~~ 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 and appropriate.

~~(3)~~**(1) Evidence for a Contested Trial or Hearing.** Parties and others required by the court in accordance with law ~~shall~~ must disclose the following no later than 7 days before a contested trial or contested hearing, or such other time the court determines reasonable and appropriate:

(A) Names, addresses, and telephone numbers of all witnesses that will or may be offered at the contested trial or contested hearing, and any written or recorded statements by the witnesses related to their testimony or the case not protected by work product;
(B) Curricula vitae, résumé, or statement of the qualifications of each witness who will or may be offered as an expert;

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(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 testimony that will be introduced at the contested trial or contested hearing; and

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

~~(4)~~(2) **At Other Times.** Disclosures ~~shall~~ must be obtained and provided at other times as ordered by the court.

(g) Discovery.

(1) Scope. Discovery may be obtained and provided regarding any matter not privileged, relevant to a claim or defense, and proportional to the needs of the case. The court has discretion to limit or expand discovery. Consideration ~~shall~~ [must or should] be paid to the purposes and policies of the Children's Code; the importance of the issues at stake for which the discovery is sought; the parties' relative access to the requested information; the parties' resources; and whether the burden, expense, or delay associated with the proposed discovery outweighs its likely benefit.

(2) Resolution of Discovery Disputes. Discovery disputes must be resolved as quickly and informally as possible. When discovery disputes arise, the parties ~~shall~~ must schedule a telephone conference with the court. Discovery motions ~~shall~~ must not be filed unless requested by the court. However, the parties may file the discovery request and any responses which form the basis of the dispute. The court will exercise due diligence to resolve the discovery dispute within 48 hours of the parties' notice of a dispute, or as soon as practicable.

(3) Oral Depositions. Throughout a case, a party may take depositions of up to four persons. Depositions of incarcerated individuals or repeat depositions of the same person ~~shall~~ must not occur without court order. It is presumed that depositions of children are not in their best interests and require a court order supported by good cause shown. Each deposition ~~shall~~ must be limited to two hours.

(4) Depositions by Written Examination. Throughout a case, a party may take depositions by written examination for the purposes of obtaining or authenticating documents.

(5) Requests for Admission. Throughout a case, a party may serve on each party no more than 20 discrete requests for admissions. Complete responses ~~shall~~ must be served on the requesting party no later than 21 days after service of the requests, or within the timeframe ordered by the court.

(6) Interrogatories. Throughout a case, a party may serve on each party no more than 20 discrete interrogatories. Complete responses ~~shall~~ must be served no later than 21 days after service of the interrogatories, or within the timeframe ordered by the court.

(7) Requests for Production. Throughout a case, a party may serve on each party no more than 20 discrete requests for production of documents. Complete response to the requests ~~shall~~ must be served no later than 21 days after service of the request, or within the timeframe ordered by the court.

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(h) Duty to Supplement Disclosures and Discovery. Unless expressly waived by the receiving party, parties who have provided disclosures or discovery ~~shall~~ 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 ~~shall~~ must be provided as soon as reasonably practicable.

(i) Sanctions and Other Remedial Measures. The court should 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). Where sanctions and/or remedial measures are appropriate, the court ~~shall~~ [must or should] exercise caution and impose the sanctions and/or remedial measures with minimal effects to those rights, interests, and timeframes. Courts are encouraged to develop thoughtful case-specific sanctions, taking care to avoid unnecessary delay or disproportionate penalties to the ability to fairly present a case or defense.

Case Commencement Rules

Procedure Governed, Scope and Purpose of Rules

(a) This part four of the juvenile rules ~~shall~~ will govern the procedure used in ~~trial~~ juvenile courts in dependency and neglect cases.

(b) ~~To the extent is specifically prescribed by rule in this part 4, the court may proceed in any lawful manner not inconsistent with these rules and shall look to the applicable law, to other parts of the Rules of Juvenile Procedure or the Rules of Civil Procedure if no other provision of the Juvenile Rules applies.~~ Proceedings are civil in nature, and where not governed by these rules or the procedures set forth in the Colorado Children's Code must be conducted according to the Colorado Rules of Civil Procedure.

(c) These rules ~~shall~~ must be liberally construed to achieve safe, stable, and secure permanent homes for children and youth ~~that~~ who are ~~subject~~ parties to dependency and neglect proceedings and to assure fairness to all parties.

Definitions

The words and phrases used in the rules in this part four ~~shall~~ have the same meanings as the definitions contained in the Children's Code, and if not in the Children's Code, then other applicable statutes. ~~In addition:~~

~~**(a)** "Confidential information" means information in which the subject of the information possesses a reasonable expectation of privacy based upon the type of information involved, the sensitive personal nature of the information, and legal protections that exist concerning the access to such information.~~

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~~(1) Examples of confidential information include, but are not limited to, social security numbers pursuant to 42 United States Code (U.S.C.) 405(c)(2)(C)(viii)(1); certain educational records as required by the Family Educational Rights and Privacy Act (FERPA); medical information not within the child abuse and neglect reporting exception consistent with the Health Insurance Portability and Accountability Act (HIPAA); substance abuse related information as noted in 42 United States Code (U.S.C.) 290ee-3, Colorado Revised Statute (CRS) Sections 27-81-113 and 27-82-109; the identity of reporting parties as protected by Colorado Revised Statue (CRS) Section 19-1-307(1)(a); and identifying information about foster home or other out-of-home placement providers in accord with Colorado Revised Statute (CRS) Section 19-3-502(7).~~

~~(2) Confidential information about a party may be accessed only by way of agreement of the subject party or as ordered by the court upon finding that the relevance and materiality to the issues outweighs the purported privacy interest claimed by the holder. The court shall, where appropriate, consider appropriate protection orders.~~

~~(b) "Disclosure" means the self-executing process by which parties share information, such as witness lists, exhibit lists, reports, curricula vitae of experts, etc., in advance of court hearings.~~

~~(c) "Discovery" means the process by which parties seek case or party information through a more formal process including, but not limited to, the use of Subpoena, Written Request for Production of Documents, Requests for Admission, Depositions, and Interrogatories.~~

~~(d)~~(a) ~~"Parties" mean the local Department of Human Services, the Guardian(s) ad Litem for the child(ren), Respondents, and Intervenors. The term "parties" does not include the Guardian ad Litem for Respondents or Special Respondents unless the court has granted Special Respondents full party status for specific issues or hearings.~~

~~(e) "Privileged information" means information that is entitled to greater protections based upon the relationship between two individuals as defined in Colorado Revised Statute (CRS) Section 13-90-107, including, but not limited to, information shared between an attorney and client; doctor and patient; and therapist and client. "Privileged information" does not include correspondence and/or communication between a local DHS caseworker and a party to a dependency and neglect or correspondence/communication between the Guardian(s) ad Litem and the child(ren) to whose best interests they are appointed to represent.~~

~~(f) [placeholder for other definition that may not be contained in the statutes]~~

Search Warrants for the Protection of Children

~~(a)~~ A ~~Applications for s~~search warrant~~s~~ for the recovery of a child ~~shall~~ must comply with ~~be in the form~~ section 19-1-112, C.R.S. ~~of an affidavit sworn to or affirmed by a peace officer or a child protection worker employed by a county department of human services. The affidavit shall:~~

~~(1) identify with particularity the child sought;~~

~~(2) explain why it is believed that the child is dependent or neglected;~~

~~(3) identify or describe, as nearly as may be, the premises to be searched; and,~~

Commented [wj33]: Recommend removing definition of confidential information in favor of relying on statutes which define this material. Ask Joe at the next meeting.

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Commented [wj36]: Same comment as above.

Commented [wj37]: See adjudication rule defining these (if necessary). Definitions may not be necessary.

Commented [wj38]: Statute sufficiently covers this

Commented [wj39]: Generally the definitions seem to be creating more problems than solving them.

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~~(4) explain why it is believed that the child is located on the premises searched; and,~~
~~(5) explain why the search warrant is necessary to recover the child.~~
~~(b) The court shall issue the search warrant if it finds that probable cause exists to believe that grounds for the application exist.[1] The warrant shall:~~
~~(1) identify by name or describing with particularity the child sought and the place to be searched for the child; and,~~
~~(2) state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.~~
~~(c) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.~~
~~(d) A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.~~
~~(e) If the child is found, the child may be taken into the temporary custody of the county department of human services or such other person or agency as the court directs.~~
~~(f)~~ ~~The warrant shall be returned to the issuing court.~~

Order to Interview or Examine Child

(a) If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person, the department may apply for an order with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation. Such application ~~shall~~ must be in the form of an affidavit, sworn to or affirmed to before the judge. The affidavit ~~shall~~must:

(1) identify why the department has determined it necessary to interview, observe, or examine the child or the child's residence or location of the reported abuse;

(2) explain why the department has been unable to interview, observe, or examine the child or to conduct a necessary investigation;

(3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,

(4) identify or describe, as nearly as may be, the premises to be observed or examined.

~~[1] At the last meeting it was requested that the preceding sentence be changed to authorize a search warrant if grounds or probable cause exist. However, this would be a violation of the 4th Amendment as we would almost always be issuing warrants to search someone's homes and warrants cannot be issued to do so unless the probable cause standard is met.~~

(b) If good cause is shown to the court to grant the application, the court ~~shall~~ must issue an order granting the application. The order ~~shall~~ must inform the responsible party or parties that failure to comply with the court's order may constitute contempt and subject the responsible party or parties to incarceration in the county jail until the responsible party or parties comply with the court's order.

Temporary Custody

(a) Orders. The court may ~~authorize~~ issue verbal or written temporary protective custody orders as provided in section 19-3-405(2)(a), C.R.S. ~~a child to be taken from his home and physically removed from the child's parents, guardians, or legal custodians and placed in any legally approved placement upon the request of a peace officer or a child protection worker employed by a county department of human services if an emergency exists to the health and safety of the child. In addition, if any physician who is treating or an administrator of a hospital wherein a child is being treated reasonably believes the child has been abused or neglected may request that the child be removed from his home.~~

(b) Verbal Orders Must be Reduced to Writing. ~~If the emergency develops or is discovered at a time other than normal business hours of the court, the request to remove the child and order of the court authorizing removal may be verbal. Any verbal request to remove a child from his home that is granted shall be reduced to writing and filed with the court by no later than the close of business on the next business day.~~ Verbal orders must be followed promptly by a written order entered on the next day that is not a Saturday, Sunday, or legal holiday. Such written order must include the grounds upon which the court relied in granting the order.

(c) Without Court Order. ~~If an emergency exists and the peace officer or the child protection worker employed by a county department of human services is not able to contact the court,~~ The child may be taken into temporary custody by a law enforcement officer without court order as provided in section 19-3-401, C.R.S.

~~(a)~~ ~~(1)~~ The court ~~shall~~ must be notified as soon as practicable after a child is taken into temporary custody without a prior court order. ~~and either authorize the continued temporary custody until the completion of the hearing described in (b) below or order the child returned to his home.~~

(d) Timing of Hearing.

(1) If a child has been taken from his home and placed in temporary protective custody with the county department of social services, the court ~~shall~~ must hold a hearing within seventy-two~~72~~ hours after placement, excluding Saturdays, Sundays, and ~~court~~ legal holidays, to determine further custody of the child or whether the emergency protection order should continue.

~~(b)~~(2) If the child has been placed in a shelter facility or a temporary holding facility not operated by the department of human services, the hearing ~~shall~~ must be held within forty-eight~~48~~ hours, excluding Saturdays, Sundays, and ~~l~~legal holidays.

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(e) Hearing. The hearing must be conducted as provided in section 19-3-403, C.R.S.

(f) Duration. Temporary protective custody orders shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays. At the temporary custody hearing, the court shall order the parent(s) of the child who has been removed from the child's home that they are required to fully complete and file with the court the Relative Affidavit and Advisement concerning the Child's Potential Placement by the earliest next hearing date or seven business days. The parent(s) shall provide a copy of the affidavit to the department of human services.

Comment

(c) [1] At the hearing, the court must order the parent(s) of the child who has been removed from the child's home that they are required to fully complete and file with the court the Relative Affidavit and Advisement Cconcerning the Child's Potential Placement (JDF 559) by the earliest next hearing date or within seven business days. The parent(s) must file provide a copy of the affidavit to the department of human serviceswith the court and serve a copy on all parties.

Emergency Protection Orders

(a) The court may issue verbal or written emergency protection orders orders upon the request of a peace officer, a child protection worker employed by a county department of human services, physician who is treating or an administrator of a hospital wherein a child is being treated reasonably believes the child has been abused or neglected as provided in section 19-3-405(2)(b), C.R.S.

(b) The The emergency protection order may include, but is not limited to and order:

(1) Restraining a person from threatening, molesting, or injuring the child;

(2) Restraining a person from interfering with the supervision of the child; or

(3) Restraining a person from having contact with the child or the child's residence.

(c) If the court issues an emergency protection order that has not been initiated by the county department of human services, the court shall must immediately notify the county department of human services no later than the close of business on the next business day in order that child protection proceedings may be initiated.

(d) Emergency protection orders shall not exceed seventy-two hours, excluding Saturdays, Sundays, and court holidays. If the county department of human services believes it appropriate that the provisions of the emergency protection order should remain in effect, the department shallmust, within three business days, file a motion to continue the emergency protection order. In the motion to continue, the department may also request that the court modify the provisions of the protection order. The court shall must set the motion for hearing as soon as practicable.

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Commented [jw40]: Should we add ICwA affidavit too?

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Commented [MJ41]: This is required by HB 23-1024. The court is required to inquire of the parent on the record if the relative affidavit is not returned and is required to inquire about any updates at the dispo and permanency hearings.

Commented [GU42R41]: Do we want this in the rule as opposed to the comment.

Commented [jw43]: No statutory authority and appears to conflict with the 72 hour time limit. See also 19-3-403(3.5) (" to determine . . . whether the emergency protection order should continue")

~~P~~Report of Suspected Child Abuse to the Court ~~reliminary Investigation (other new title? Conform with 19-3-501)~~Authorizing the Filing of a Petition

(1) When a law enforcement officer or other person refers a matter to the court indicating that a neglected or dependent child appears to be within the juvenile court's jurisdiction, the court must order a preliminary investigation as provided for in section 19-3-501(1), C.R.S. Based on this preliminary investigation, the court may take any action provided for in section 19-3-501(1) or (2).

(2) When a law enforcement agency or any person required to report suspected child abuse submits a report to the court indicating that a child has suffered abuse as defined in section 19-1-103(1), C.R.S. and that the best interests of the child require that the child be protected from risk of further abuse, the court must follow the requirements provided for in section 19-3-501(2).

~~The court, when deciding whether to authorize the filing of a petition in dependency and neglect, shall examine the proposed petition, and accepting the material allegations of fact as being true, determine whether the factual allegations support a finding of dependency and neglect. [The Court need not hold an evidentiary hearing prior to making this determination]. Or [No additional evidence or argument shall be presented to the court prior to making this determination].~~

Pre-adjudication

Petition Initiation~~,~~, Form, ~~and~~ Content, and Service

(a) A petition concerning a child who is alleged to be dependent and neglected ~~shall~~ must be initiated in accordance with s~~S~~ection 19-3-501, C.R.S.~~,~~

(b) The petition ~~and shall~~ must be in the form set forth in s~~S~~ection 19-3-502, C.R.S.

~~(a)~~**(c)** The ~~Said~~ petition ~~shall~~ must be filed within 14 days from the day a child is taken into custody, unless otherwise directed by the court.~~;~~

~~(b)~~**(d)** The petition ~~shall~~ must be initiated on behalf of the ~~C~~county department by the designated c~~C~~ounty or ~~C~~city a~~A~~ttorney in the proper ~~city or~~ county or city pursuant to section 19-3-201, C.R.S. The ~~C~~county department ~~shall~~ must be the p~~P~~etitioner~~;~~.

~~(c)~~**(e)** The ~~P~~petition ~~shall~~ must name the child or children at issue~~;~~.

~~(d)~~**(f)** The ~~P~~petition ~~shall~~ must name as ~~R~~respondents all those required by section 19-3-502(5), C.R.S.~~;~~

~~(e)~~**(g)** The p~~P~~etition may name as a ~~R~~respondent those described in section 19-3-502(5), C.R.S.

~~(f)~~**(h)** The p~~P~~etition may name as a ~~S~~special ~~R~~respondent those described in section 19-3-502(6), C.R.S.

~~(g)~~**(i)** Service of the petition ~~shall~~ must conform with section 19-3-503, C.R.S.

Commented [wj44]: From C.R.J.P. 4.

Commented [wj45]: Refer to 1038 committee. RE: 19-3-502(4.5) (outlining children as parties)

Responsive Pleadings

A~~No~~ written responsive pleading~~s~~ to the p~~P~~etition in ~~Dd~~ependency and n~~N~~eglect is not~~are~~ required.

~~Pre-Trial~~ Motions (currently Frankenstein's monster)

(a) Any party may apply to the court for an order by motion. A motion must state the grounds on which it is based and the relief or order sought. Except when made during a trial or hearing, a motion must be in writing, unless the court orders otherwise. Written motions must be signed by the moving party or counsel and must include a certificate of service listing manner of delivery to all other parties.

OR

~~(a)~~ Any party may apply to the court for relief by motion. Unless otherwise ordered by the court, a motion other than one made during a trial or hearing must be in writing ~~Any issue, except an adjudicatory finding, may be raised by motion All motions shall be in writing~~ and signed by the moving party or counsel and supported by legal authority. If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned and may enter an order denying the motion. ~~The court may grant permission for oral motions.~~ All pleadings ~~shall~~ must include a certificate of service listing manner of delivery to ~~the County Attorney, all named respondents, the guardian ad litem, and any intervenors~~all other parties.

(1) Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel or unrepresented moving party ~~shall have~~ has a duty to confer with non-moving counsel or pro se parties prior to filing any motions. To verify this requirement has been met, every motion to which the rule applies ~~shall~~ must contain a brief statement at the beginning summarizing the moving party's efforts to confer with or notify all other parties. The outcome of that contact ~~shall~~ must also be summarized. The ~~C~~court may strike any motion that does not have the required statement concerning consultation.

OR

Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party ~~shall~~ must confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties ~~shall~~ does not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion ~~shall~~must, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court ~~shall~~ must

Commented [wj46]: The subcommittee believes motions should be covered in one rule (which may involve combining with the later rule motions and responsive pleadings)

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be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, ~~shall~~ must be stated.

(2) Timing. Unless otherwise ordered by the court, ~~A~~all pre-trial motions must be filed at least 21 days prior to trial or within 7 days of setting trial whichever is later. Responses are due no later than 7 days after filing of the motion. Any motions to amend the Petition ~~shall~~ must be filed no later than 7 days prior to trial unless good cause is shown.

(b) Forthwith or Emergency Motions 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. Any objection or response ~~shall~~ must be filed within 72 hours. No reply is permitted unless otherwise ordered by the court. Parties must comply with (the conferral rule).

(c) Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion ~~shall~~ must be accompanied by a proposed order. The proposed order complies with this provision if it states that the requested relief be granted or denied.

(d) Service of Motions.

Stuff on motions from rule on responsive pleadings (which appears later):

(b) Motions. Any defense or objection which is capable of determination without trial of the general issues may be raised by motion. A motion must state with particularity the grounds therefor, and must set forth the relief or order sought. No new motion may be made through a response or reply, but must be separately stated.

(c) Defenses and Objections; Waiver; Lack of Jurisdiction. Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, must be raised only by motion filed prior to the entry of an admission to or denial of the allegations of the petition. Failure to present any such defense or objection by motion, including a defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process, constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction of the subject matter and lack of jurisdiction over the person should be noticed by the court at any time during the proceedings. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court must dismiss the action. [Source, CRCP 12(b), (h)(1), (h)(3)]

(d) Form and Service. All motions must be in writing and signed by the moving party or counsel, except those made orally by leave of court. Unless the court otherwise orders, every motion except one that may be heard ex parte must be served upon each of the parties in the manner specified in Rule 5 of the Colorado Rules of Civil Procedure or Rule XX of the Colorado Rules of Juvenile Procedure.

(e) Determination of Motions. Rule 121 § 1-15 of the Colorado Rules of Civil Procedure applies to dependency or neglect actions except (1) a responding party has 14 days after the filing of the motion in which to file a responsive brief, (2) the moving party may reply only upon authorization of the court, (3) summary judgment motions are governed by Rule 4.2.12, and (4) a motion to reconsider interlocutory orders of the court must be filed within 7 days from the date of the order.

Commented [wj47]: The committee drafted this section to meet the particular needs of juveniles cases.

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(f) Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel must confer with opposing counsel before filing a motion. The motion must, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court must be so advised in the motion. If no conference has occurred, the reason why must be stated. All unopposed motions must be so designated in the title of the motion.

(g) Supporting Legal Authority. Except motions during trial or where the court orders that certain or all non-dispositive motions be made orally, any motions involving a contested issue of law must be supported by a recitation of legal authority incorporated into the motion. If the moving party fails to incorporate legal authority into a motion, the court may deem the motion abandoned and may enter an order denying the motion. Failure of a responding party to file a response may be considered a confession of the motion.

(h) Affidavits. If facts not appearing of record may be considered in disposition of the motion, the parties may file affidavits with the motion or as otherwise ordered by the court. Copies of such affidavits and any documentary evidence used in connection with the motion must be served on all other parties.

(i) Determination of Motions; Motions Requiring Immediate Attention. Motions must be determined promptly if possible. The court has discretion to order briefing or set a hearing on the motion.

(j) Effect of Failure to Appear at Oral Argument or Hearing. If any of the parties fails to appear at an oral argument or hearing, without prior showing of good cause for non-appearance, the court may proceed to hear and rule on the motion.

(k) Proposed Order. Each motion must be accompanied by a proposed order. The title of the proposed order must clearly state the relief requested.

Form and Quality of Pleadings, Motions and Other Documents

~~(d)~~ Except for reports filed pursuant to section 19-1-107, C.R.S., every pleading, motion, E-filed document under C.R.C.P. 121 (1-26), or any other document filed with the court must conform to C.R.C.P. 10(d)–(i) and must contain a caption setting forth the name of the court, the title of the action, the case number, if known to the person signing it, and the name of the document.

Service ~~Reports, Filings, and Other Pleadings~~

(a) Service. ~~Except as otherwise provided in these rules or pursuant to Title 19, every order required by its terms to be served, every pleading subsequent to the original Petition unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, designation of record on appeal, reports as prescribed in Title 19 and similar papers shall be served upon each of the parties.~~ Except as otherwise provided in these rules or pursuant to Title 19 or unless otherwise ordered by the court, every document filed with the court, including reports required by Title 19, must be served on the parties and any Guardian ad litem. No service is required on ~~need be made on~~ unrepresented parties ~~in default for~~who have never ~~failure to a~~appeared and for whom no contact

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2) Send rule to 1038 subcom to consider service to children under 12.

information is known except that pleadings asserting new or additional claims for relief against them ~~shall~~ must be served upon them in the manner provided in 19-3-503.

(1) Making Service: [as outlined in C.R.C.P. 5(b)?]

(A) Service on a party represented by an attorney is made upon the attorney unless the court orders personal service upon the party. Service on a party under 12 is made upon the child's Guardian ad Litem unless the child is represented by Counsel for Youth, in which case service is made upon Counsel for Youth. ~~A resident attorney, on whom pleadings and other papers may be served, shall be associated as attorney of record with any out-of-state attorney practicing in any courts of this state.~~

(B) Service under this rule is made by:

(I) Delivering an electronic copy by Colorado Courts E-filing;

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

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

~~(B)~~ Delivering a copy to the person by~~:~~

~~(a)~~(IV) handing it to the person~~:~~;

~~(b) leaving it at the person's dwelling house or usual place of abode with someone 18 years of age or older residing there;~~

~~Mailing a copy to the last known address of the person served. Service by mail is complete on mailing;~~

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

~~(c)~~ (V) Delivering a copy by any other ~~means, including E-Service, other~~ electronic means ~~or a designated overnight courier~~, consented to in writing by the person served. Designation of a facsimile phone number or an email address in the filing effects consent in writing for such delivery~~;~~, or

~~(d)~~ (VI) Delivering a copy by any other legally authorize~~s~~d means, including any means ~~agreed~~ consented to by the parties~~,~~ or any means approved by the court.

~~(C) Service by other electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service by other electronic means or overnight courier is not effective if the party making service learns that the attempted service did not reach the person to be served.~~

(2) 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.

Commented [wj49]: Suggestion for 1038 subcom: This may be a nice place to add reference to GALs

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Commented [wj50]: Though this phrasing is borrowed from C.R.C.P. 5, the subcommittee intentionally left off serving at an office or at a home. The subcommittee feels that this is a little-used means of service and that these cases are very personal and papers should not be left with other people at homes or offices.

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Service by other electronic means is not effective if the party making service learns that the attempted transmission failed or was otherwise unsuccessful.

~~(2)~~(3) ____ ~~Filing~~ **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. ~~All papers after the initial pleading required to be served upon a party, together with a certificate of service, must be filed with the court within a reasonable time after service.~~

(b) Inmate Filing and Service. Except where personal service is required, a pleading or paper filed or served by an inmate confined to an institution is timely filed or served if deposited in the institution's internal mailing system on or before the last day for filing or serving. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

(c) Format. With the exception of reports filed pursuant to 19-1-107, c~~E~~very pleading, motion, or any other document filed with the court ~~(hereinafter "document")~~ ~~shall~~ must conform with the following:

(1) Caption; Names of Parties. Documents ~~shall~~ must contain a caption setting forth the name of the court, the title of the action, the case number, if known to the person signing it, the name of the document and other applicable information in the format specified by paragraph ____ and the captions illustrated by paragraph _____ of this rule.

~~**Illustration of Case Caption:**~~

~~DISTRICT COURT or DENVER JUVENILE COURT~~ ~~_____ COUNTY, STATE OF COLORADO~~ ~~(Court Address)~~	
~~**PEOPLE OF THE STATE OF COLORADO**~~ ~~**IN THE INTEREST OF:**~~ ~~**child**~~	~~**Court Use Only**~~

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~~AND CONCERNING:~~ ~~Respondents,~~ ~~And concerning~~	
~~Filing party Name~~ ~~Address~~ ~~Phone Number~~ ~~Email Address~~ ~~Attorney Bar #~~	~~Case No.~~ ~~Division~~

Obligation of Parties and Attorneys

(2) Obligations of Parties and Attorneys. Every pleading or document filed by a party represented by an attorney ~~shall~~ must be signed by at least one attorney of record in his or her individual name. The initial pleading ~~shall~~ must state the current number of his or her registration issued to him by the ~~S~~supreme ~~C~~court. The attorney's address and that of the party ~~shall~~ must also be stated. A party who is not represented by an attorney ~~shall~~ must sign his or her pleadings and state his or her address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him or her that he or she has read the pleading or document; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to

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cause unnecessary delay. If a pleading is not signed it ~~shall~~ should be stricken unless it is signed promptly after the omission is called to the attention of the pleader.

(3) Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo. RPC 1.2 and C.R.C.P. 11(b) to a pro se party involved in a court proceeding. ~~Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney; (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this rule. Limited representation of a pro se party under this Rule _____ shall not constitute an entry of appearance by the attorney, and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party does constitute an entry of an appearance.~~

First Appearance Advisement Upon ~~Filing~~ Service of Petition

(a) At the first appearance before the court, the court ~~shall~~ must inquire of all parties and counsel regarding the applicability of the Indian Child Welfare Act pursuant to section 19-1-126, C.R.S. and [ICWA RULE ON INQUIRY] by asking each participant whether the participant knows or has reason to know that any child who is the subject of the proceeding is an Indian child. The court must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.~~.~~

(b) The court ~~shall~~ must require the ~~parties~~ respondent(s), or others as ordered by the court, to complete and file an Affidavit as To Children (see ~~form~~JDF 404~~_____~~) to assist the court in making a jurisdictional determination under the Uniform Child-custody Jurisdiction and Enforcement Act, sections 14-13-101 to -403, C.R.S.

(c) The court ~~shall~~ must fully advise the respondent(s) as to all rights and the possible consequences of a finding that a child is dependent or neglected. The court ~~shall~~ must make certain that the respondent(s) understand the following:

(1) The nature of the allegations contained in the petition, if filed;

Commented [wj53]: Note, 11(b)'s last sentence says that a violation of 11(b) can result in sanctions provided in 11(a). If we truly don't want sanctions in the rule, then we'll need to exclude this sentence.

Commented [wj54]: Send Rule to 1038 subcommittee

Commented [wj55]: Have this rule cover both 19-3-202, 19-3-403, C.R.J.P. 4.3 and advisement after filing a petition

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(2) As a party to the proceeding, the right to counsel;
(3) That if the respondent(s) is a parent, guardian, or legal custodian, and is indigent, the respondent may be assigned counsel as provided by law.
(4) The right to an adjudicatory trial by jury;
(5) That any admission to the petition must be voluntary;
(6) The general dispositional alternatives available to the court if the petition is sustained, as set forth in Ssection 19-3-508, C.R.S.;
(7) That termination of the parent-child legal relationship is a possible remedy which is available if the petition is sustained;
(8) That if a motion to terminate the parent-child legal relationship is filed, the court will set a separate hearing at which the allegations of the motion must be proven by clear and convincing evidence;
(9) That termination of the parent-child legal relationship means that the subject child would be available for adoption;
(10) That any party has the right to appeal any final decision made by the court; and
(11) That if the petition is admitted, the court is not bound by any promises or representations made by anyone about dispositional alternatives selected by the court.

(d) Upon filing of the petition, the court must make certain that the respondent(s) understand the following:

(e) Notwithstanding any provision of this Rule to the contrary, the court may advise non-appearing respondent(s) pursuant to this Rule in writing. The court may also accept a written admission to the petition if the respondent(s) have affirmed under oath that the respondent(s) understand 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 [the admissions Rule].

Comment

[1] If the court receives information that a child may be an Indian child or may have Indian heritage, then the court must proceed in compliance with [ICWA INQUIRY RULE] (c).

Admission or Denial

(a) Response to the Petition's Allegations. After being advised in accordance with Rule _____, each respondent must admit or deny the allegations of the petition.

(b) Admission.

(1) If a respondent admits the allegations contained in the petition, and if no party demands a jury trial pursuant to section 19-3-202(2), C.R.S., then the court may accept the admission after making the following findings: (1) The respondent understands his or her rights, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary.

(2) Absent a demand for a jury trial pursuant to section 19-3-202(2), C.R.S., the court may accept a written admission to the petition if the respondent has affirmed under oath that he or she 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 above.

(c) Adjudication. After accepting an admission, unless proceeding under Rule 4.2.5, the court must determine, in accordance with section 19-3-505(7)(a), C.R.S., at least one

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allegation of neglect or dependency in the petition is supported by a preponderance of the evidence. If so, the court must sustain the petition and make an order of adjudication. The court's determinations pursuant to this subsection (c) must be on the record.

(d) Factual Basis. At the time of admission, the court must find a factual basis sufficient to support the admission, unless the respondent has stipulated or waived a factual basis.

Comment

[1] The language of (b) is intended to allow judicial officers discretion in determining when a case is ripe for entry of an order of adjudication.

Adjudication

Parties and Participants; ~~and~~ Joinder

(a) Petitioner. A dependency or neglect action ~~shall~~ must be brought by a county attorney, city attorney of a city and county, or special county attorney in the name of the People of the State of Colorado. The action ~~shall~~ must be brought in the interest~~s~~ of a child ~~or children~~ who ~~are~~is alleged to be dependent or neglected. The p~~P~~etitioner ~~shall~~ is ~~be~~ a party to the case.

(b) The Child. A child named in the petition is a party to the proceedings and has the right to attend and fully participate in all hearings related to the child's case. ~~The court shall appoint a guardian ad litem for the child in all dependency or neglect cases. A guardian ad litem for a child alleged to be dependent or neglected shall have the right to participate in all proceedings as a party and shall be considered a party for the purposes of these rules. In addition to a guardian ad litem, the court may appoint counsel for a child pursuant to section 19-1-105(2), Colorado Revised Statutes, if it finds that appointment of counsel is in the best interest and welfare of the child or if it deems representation by counsel necessary to protect the interests of the child or other parties. Counsel appointed to represent a child pursuant to section 19-1-105(2), Colorado Revised Statutes, shall have the right to participate in the proceedings to the extent provided by law.~~

(c) Respondents. Any parent, guardian, or legal custodian alleged to have abused or neglected the child ~~shall~~ must be named as a respondent in the petition. Any other parent, guardian, custodian, stepparent, or spousal equivalent of the child may be named as a respondent in the petition if the attorney who brought the action determines that it is in the best interests of the child to do so. Respondents ~~shall~~ are~~be~~ parties to the case and have the right and responsibility to attend and fully participate in all hearings related to the respondent. A guardian ad litem appointed by the court for a respondent ~~shall not be considered~~is not a party to the case.

(d) Intervenors. A court may permit a person or entity to intervene in accordance with Rule ____. ~~An Intervenor shall be a party to the case.~~

(e) Special Respondents. A person who is not a parent, guardian, or legal custodian of a child may be joined in the action as a special respondent for the limited purposes of protective orders or inclusion in a treatment plan if such person resides with the child, has

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assumed a parenting role toward the child, has participated in whole or in part in the neglect or abuse of the child, or maintains a significant relationship with the child. ~~Special Respondents shall not be considered a party to the case.~~

(f) Discretionary Joinder. The court on its own motion or on the motion of any party may join as a respondent or a special respondent or require the appearance of any person it deems necessary to the action and may authorize the issuance of a summons directed to such person. ~~Foster parents, pre-adoptive parents, or relatives with whom a child is placed shall not be made a party to the action solely upon the basis of their right to notice and their right to be heard at hearings and reviews regarding the child.~~

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

Responsive Pleadings

(a) Pleadings. No written responsive pleadings are required.

(b) No Damages Claims by a Respondent. No counterclaim, cross claim, or other claim for damages may be asserted by a respondent in an action alleging the dependency or neglect of a child but nothing in this rule shall be construed to prohibit a respondent from asserting a claim for damages in an action independent of an action alleging the dependency or neglect of a child.

~~**(b) Motions.** Any defense or objection which is capable of determination without trial of the general issues may be raised by motion. A motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. No new motion may be made through a response or reply, but must be separately stated.~~

~~**(c) Defenses and Objections; Waiver; Lack of Jurisdiction.** Defenses and objections based on defects in the institution of the action or in the petition, other than it fails to show jurisdiction in the court, shall be raised only by motion filed prior to the entry of an admission to or denial of the allegations of the petition. Failure to present any such defense or objection by motion, including a defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process, constitutes a waiver, but the court for good cause shown may grant relief from the waiver. Lack of jurisdiction of the subject matter and lack of jurisdiction over the person shall be noticed by the court at any time during the proceedings. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. [Source, CRCP 12(b), (h)(1), (h)(3)]~~

~~**(d) Form and Service.** All motions shall be in writing and signed by the moving party or counsel, except those made orally by leave of court. Unless the court otherwise orders, every motion except one that may be heard ex parte shall be served upon each of the parties in the manner specified in Rule 5 of the Colorado Rules of Civil Procedure or Rule XX of the Colorado Rules of Juvenile Procedure.~~

~~**(e) Determination of Motions.** Rule 121 § 1-15 of the Colorado Rules of Civil Procedure shall apply to dependency or neglect actions except (1) a responding party shall have 14 days after the filing of the motion in which to file a responsive brief, (2) the moving party shall have reply only upon authorization of the court, (3) summary judgment motions are governed by Rule 4.2.12,~~

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Commented [wj67]: Not in 19-1-103(129) or 19-3-502(6)

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Commented [wj70]: We've removed the language from 19-3-505(1) about "jurisdictional matters are deemed admitted" because it seemed more a matter of proof at the adj hearing rather than a jurisdictional matter that can be waived.

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~~and (4) a motion to reconsider interlocutory orders of the court shall be filed within 7 days from the date of the order.~~

~~**(f) Duty to Confer.** Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated. All unopposed motions shall be so designated in the title of the motion.~~

~~**(g) Supporting Legal Authority.** Except motions during trial or where the court orders that certain or all non-dispositive motions be made orally, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion. If the moving party fails to incorporate legal authority into a motion, the court may deem the motion abandoned and may enter an order denying the motion. Failure of a responding party to file a response may be considered a confession of the motion.~~

~~**(h) Affidavits.** If facts not appearing of record may be considered in disposition of the motion, the parties may file affidavits with the motion or as otherwise ordered by the court. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.~~

~~**(i) Determination of Motions; Motions Requiring Immediate Attention.** Motions shall be determined promptly if possible. The court has discretion to order briefing or set a hearing on the motion.~~

~~**(j) Effect of Failure to Appear at Oral Argument or Hearing.** If any of the parties fails to appear at an oral argument or hearing, without prior showing of good cause for non-appearance, the court may proceed to hear and rule on the motion.~~

~~**(k) Proposed Order.** Each motion shall be accompanied by a proposed order. The title of the proposed order shall clearly state the relief requested.~~

Case Management for Adjudicatory Hearing

(a) Discovery ~~shall~~ should be accomplished by the provisions and deadlines of Rule _____.

(b) Pretrial Conference. The court may hold one or more pretrial conferences with trial counsel present to consider such matters as will promote a fair and expeditious trial. Matters which may be considered include but are not limited to:

(1) stipulations as to facts about which there can be no dispute;
(2) identification and marking of exhibits and other documents;
(3) excerpting, highlighting, or redacting exhibits;
(4) waivers of foundation for exhibits;
(5) severance of trials;
(6) seating arrangements for parties and counsel;
(7) accommodations for participants;
(8) jury examination, including confidentiality of juror information;
(9) number and use of peremptory challenges;
(10) trial schedule and order of presentation of evidence and arguments;
(11) procedure for and order of objections;
(12) order of cross-examination;
(13) resolution of motions or evidentiary issues to limit inconvenience to jurors; and

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(14) submission of items to be included in the juror notebook, if any.

(c) Exhibits. At least seven (7) days prior to trial or as ordered by the court, counsel and unrepresented parties ~~shall~~ must mark for identification all proposed exhibits which may be offered at trial and furnish marked copies together with a list of such proposed exhibits to counsel and unrepresented parties.

(d) Witnesses. At least seven (7) days prior to trial or as ordered by court, counsel and unrepresented parties ~~shall~~ must exchange witness lists, including names, addresses, and phone numbers of all witnesses. Witness lists ~~shall~~ must include a statement regarding the content of each witness's testimony. Expert witness lists ~~shall~~ must include a summary of qualifications/experience, in addition to the statement regarding the content of each witness's testimony. Witness lists/statements must be accompanied by proof of service on all parties.

(e) Juror Notebooks. Juror notebooks may be available during the adjudication hearing and deliberations to aid jurors in the performance of their duties. The parties ~~shall~~ must confer about the items to be included in juror notebooks, and, by the pretrial conference or other date set by the court, ~~shall~~ must make a joint submission to the court of items to be included in a juror notebook.

(1) The items to be included from the parties may include:

(A) Joint statement of the case. If the parties are unable to agree upon a joint statement, each side is to submit its own version to the court and the court will draft the statement.

(B) Elemental jury instructions, legal definitions and any affirmative defense instructions applicable to the case.

(C) Any documentary or photographic exhibits that will be stipulated into evidence. In addition, if counsel anticipates asking that an exhibit be published to the jury, sufficient copies of that exhibit are to be made so they may be provided to the jury, if and when it is admitted. The court has the discretion to determine that exhibits may be excerpted, highlighted or otherwise marked.

(D) The court and counsel may agree upon other items to be included in the notebook.

(E) For all of the above items, counsel is responsible for providing a sufficient number of copies, eight, to the court, all of which must be three-hole punched and organized to permit easy insertion into the notebooks, i.e. everything for each notebook is to be collated and clipped together. Counsel should confer with each other regarding the submissions. The county attorney is to prepare the elemental jury instructions, and the legal definitions, and respondents counsel the affirmative defense instructions.

(2) The c~~C~~ourt may provide for inclusion into the juror notebooks, the following items:

(A) Preliminary jury instructions which will include burden of proof, credibility of witnesses, expert witnesses, juror note-taking and juror conduct.

(B) Additional jury instructions given during the trial and final jury instructions as appropriate and at the appropriate times.

(C) Paper or pads and pens for juror note-taking.

(D) A welcoming and thank you letter from the Chief Justice.

(E) Introductory remarks outlining a Dependency and Neglect case.

(F) Any other items the court believes to be appropriate.

(f) Stipulations. Pre-trial stipulations must be in writing, and signed by all necessary parties. Stipulations must be provided to the court within three (3) days of the first day of trial, unless this timeframe is modified by the court.

(g) Any motions, notices, discovery, instructions, or other documents required to be served under this case management rule ~~shall~~ must be served in accordance with Rule XX.

Adjudicatory Hearing

(a) Prompt Hearing. An adjudicatory hearing ~~shall~~ must be held within ninety days after service of the petition or within sixty days after service of the petition if a child alleged in the petition to be dependent or neglected was under six years of age when the petition was filed. Unless modified pursuant to Rule 4.2.14

(b) Right to Participate. The county attorney, city attorney of a city and county, or special county attorney who brought the petition in the name of the people of the state of Colorado; any respondent named in the petition; a guardian ad litem appointed for a child who is alleged to be dependent or neglected; and counsel, if any, appointed pursuant to section 19-1-105(2), Colorado Revised Statutes, to represent a child who is alleged to be dependent or neglected ~~shall~~ have the right to participate in an adjudicatory hearing to the extent provided by law. The court may permit special respondents and intervenors to participate in an adjudicatory hearing, to an extent that the court determines is reasonable and consistent with these rules.

(c) Burden of Proof. The petitioner has the burden of proving the allegations of the petition by a preponderance of the evidence, subject to Rule XX [ICWA]

(d) Evidence. Evidence that child abuse or non-accidental injury has occurred ~~shall~~ ~~should~~ constitutes prima facie evidence that such child is dependent or neglected, and such evidence ~~shall~~ ~~will be~~ is sufficient to support adjudication. Evidence tending to establish the necessity of separating the child from the parents or guardian may be admitted at an adjudicatory hearing but ~~shall~~ is not ~~be~~ required to support an order of adjudication. Admissions by a party in support of an informal adjustment ~~shall~~ must not be used as evidence at a subsequent adjudicatory hearing involving the same parties and the same facts or circumstances.

(e) Amendment to Conform to the Evidence. When evidence presented at an adjudicatory hearing discloses facts not alleged in the petition, the court ~~shall~~ must proceed in accordance with section 19-3-505(4), Colorado Revised Statutes.

(f) Evidence of Mental Illness or Developmental Disability. When evidence presented at an adjudicatory hearing shows that the child may have a mental illness or a developmental disability, the court ~~shall~~ must proceed in accordance with section 19-3-506, Colorado Revised Statutes.

(g) Adjudication. When the allegations of the petition are supported by a preponderance of the evidence, the court ~~shall~~ must proceed in accordance with section 19-3-505(7), Colorado Revised Statutes, subject to Rule XX [ICWA].

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(h) Dismissal. When the allegations of the petition are not supported by a preponderance of the evidence, the court ~~shall~~ must proceed in accordance with section 19-3-505(6), Colorado Revised Statutes, subject to Rule XX [ICWA].

Comment

[1] Paragraph (b) of this rule acknowledges that a child could be represented simultaneously by both a court appointed guardian ad litem and a court appointed attorney. For example, a court may choose to make a dual appointment for a child who allegedly abused a sibling. This rule allows both attorneys to participate in the trial process even though their positions may differ. However, pursuant to CRS 19-1-111(1), (3), party status is accorded to the child's guardian ad litem. Accordingly, counsel for a child would not have the right to demand a jury trial or exercise peremptory challenges. However, counsel for a child would have the right to present evidence, cross-examine witnesses, object to evidence and argue issues of law, tender proposed jury instructions, present an opening statement, and make a closing argument. Paragraph (b) also allows a judicial officer discretion to permit other parties, including special respondents and intervenors, to participate in and adjudicatory hearing if such participation will serve the best interests of the child. The parameters of that participation is left to the discretion of the court.

~~Admissions~~

~~**(a) Admission; Acceptance.** After being advised in accordance with Rule _____, each respondent shall admit or deny the allegations of the petition. If a respondent admits the allegations contained in the petition, the court may accept the admission after making the following findings: (1) The respondent understands his or her rights, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary. The court may accept a written admission to the petition if the respondent has affirmed under oath that he or she 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 above.~~

~~**(b) Adjudication.** After accepting an admission, unless proceeding under Rule 4.2.5, the court shall determine in accordance with section 19-3-505(7)(a), Colorado Revised Statutes, whether the petition should be sustained and whether an order adjudicating the child or children named in the petition to be dependent or neglected should be entered.~~

~~**(c) Factual Basis.** At the time of admission, the court shall find a factual basis sufficient to support the admission, unless the respondent has stipulated or waived a factual basis.~~

~~**Comment**~~

~~[1] The language of (b) is intended to allow judicial officers discretion in determining when a case is ripe for entry of an order of adjudication. The statutory language requiring a court to determine whether "the petition is supported by a preponderance of the evidence" has not been included. Such a finding is unnecessary when a respondent is admitting the allegations of a petition.~~

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Consolidation; Separate Trials

(a) Consolidation of Proceedings. When more than one child is named in a dependency or neglect petition, hearings may be consolidated except that separate hearings may be held with respect to disposition.

(b) Consolidation of Actions. When two or more dependency or neglect actions involving a common question of law or fact and a common party or parties are pending before the same court, the court on its own motion or on the motion of any party may order consolidation of the pending actions, a joint adjudicatory hearing of any or all matters in issue, and such further measures concerning proceedings therein as may tend to avoid unnecessary delay or expense. A party seeking consolidation ~~shall~~ must file a motion to consolidate in each case sought to be consolidated. The motion ~~shall~~ should be determined in the case first filed, in accordance with Rule [4.1(e)]. If consolidation is ordered, all subsequent filings ~~shall~~ must be in the case first filed and all previous filings related to the consolidated cases placed together under that case number, unless otherwise ordered by the court.

(c) Separate Trials and Proceedings. Any allegation against a party may be severed and proceeded with separately. The court, in furtherance of convenience, expedition, or economy or to avoid prejudice, may order a separate hearing or trial of any issue or of any party. In determining whether a separate hearing or trial should be ordered, the court ~~shall~~ must consider all relevant factors including, but not limited to, the risk of inconsistent decisions with respect to material issues of fact; whether any party intends to present evidence, other than reputation or character testimony, which would not be admissible in a separate hearing or trial and which would be prejudicial to a party against whom it is not admissible; whether conducting a separate hearing or trial would result in unnecessary delay; and whether conducting a separate hearing or trial would facilitate early engagement in treatment.

Continued (Deferred) Adjudications

(a) Advisement. Prior to parties consenting to a continued (deferred) adjudication, the respondent must be informed of his or her rights in the proceeding, including the right to have a hearing either dismissing or sustaining the petition, and that he or she is waiving the right to contest their admissions to the allegations of the petition or the factual basis of their admissions. All parties, including the child in a developmentally appropriate manner, must also be advised of the proposed terms and conditions of the continuance (deferral). Once advised, consent to a continued (deferred) adjudication must be given by the State, the child if the child is of sufficient age and understanding, the ~~G~~guardian *ad litem*, and the ~~R~~respondent.

(b) Findings. The court must find that an allegation alleged in the petition is supported by a preponderance of the evidence. The court ~~shall~~ must specify the facts that support an adjudication, unless the ~~R~~respondent has waived the factual basis but concedes there is a basis to enter an adjudication.

(c) Terms and Conditions. During the period of continuance (deferral), the court may review the matter from time to time, allowing the child to remain in his or her home or in the temporary custody of another person or agency.

(1) After consent has been obtained pursuant to paragraph (a), the court ~~shall~~ must adopt terms and conditions for the parties, including but not limited to, a treatment plan, education, visitation, supervision, conditions of conduct, or other requirements as the court may prescribe.

(2) Any decree vesting legal custody of a child ~~shall~~ should continue to be reviewed pursuant to C.R.S. 19-1-115 during the continued (deferred) adjudication.

(d) Amendment of Terms and Conditions. During the period of continuance (deferral), the court may amend the terms and conditions upon stipulation of the parties or upon finding additional circumstances exist that are or would be injurious to the welfare of the child. Amendment of the Terms and Conditions ~~shall~~ must not extend the period of continuance (deferral).

(e) Duration of Continuance (Deferral). The continuance (deferral) of adjudication ~~shall~~ must not extend longer than six (6) months. The court ~~shall~~ must review the matter and upon review may continue the case for another period not to exceed an additional six (6) months.

(f) Dismissal or Entry of Adjudication Following a Continued (Deferred) Adjudication. At any time a party may move to [dismiss the case] or revoke the continued (deferred) adjudication and enter the adjudication.

(1) A hearing on the revocation of a continued (deferred) adjudication ~~shall~~ must determine, by a preponderance of the evidence, whether the r~~R~~espondent has failed to comply with the terms and conditions of the continued (deferred) adjudication.

(2) If the court determines the r~~R~~espondent has been noncompliant with the terms and conditions, the c~~C~~ourt ~~shall~~ will proceed to consider any other relevant factors as required by law in determining whether to enter adjudication and if appropriate issue a written order of adjudication.

(3) If the court has adopted a treatment plan as terms and conditions of a continued (deferred) adjudication, such treatment plan ~~shall~~ must continue as the court's dispositional order following entry of adjudication, unless otherwise ordered by the court.

(4) To be updated, *see* 3/15/19 minutes. Any party may ask for a hearing . . .[reassess status of the child . . . to dismiss the case]?

(g) Waiver of Procedural Rights. A r~~R~~espondent may waive their right to a hearing or other procedural right, after being advised of the consequences of such waiver.

(h) Permanency During and Following Continued (Deferred) Adjudication. A continued (deferred) adjudication ~~shall~~ must not delay or toll any period for permanency as described in part 7 of article 3 of title 19.

Commented [wj75]: This is in conflict with new statute

Commented [MJ76R75]: HB 23-1027 amended 19-3-702 to require that a permanency hearing occur no later than 12 months after removal and every 12 months thereafter, even absent adjudication, so I think we could just delete this section and then address this in the permanency section?

Commented [GU77R75]: Agree this should be removed.

Adjudication on Non-Appearing or Non-Defending Respondent

(a) Entry. When a respondent has failed to appear or has failed to defend in a dependency or neglect action, the court may enter adjudication upon evidence submitted pursuant to this rule. A respondent fails to appear in the action if, after being duly served with process, he or she does not appear before the court, in person or through counsel, at the date and time stated in the summons. A respondent fails to defend in the action if, after being duly served with process, he or she fails or refuses to admit or deny the allegations contained in the petition at the date and time set forth in the summons or as ordered by the court. A party seeking an adjudication for a non-appearing or non-defending respondent may request adjudication be

entered either upon written or verbal motion to the court, with supporting evidence in accordance with this rule.

(b) Supporting Documentation. If the motion is requested in writing, the motion may include an affidavit stating facts sufficient to support at least one of the allegations contained in the petition. Affidavits may be executed by the attorney for the petitioner on the basis of reasonable inquiry.

(c) Testimony. If the motion is requested verbally or a hearing is conducted on a written motion, the moving party ~~shall~~ must present witness testimony or other appropriate evidence stating facts sufficient to support at least one of the allegations contained in the petition.

(d) Proceedings. A court may conduct such hearing or hearings as it deems necessary and proper to determine a motion for adjudication for a non-appearing or non-defending respondent. A court is not required to conduct a hearing if all necessary prerequisites for adjudication are shown by the motion and supporting documentation.

(e) Adjudication. Before adjudication for a non-appearing or non-defending respondent is entered the court ~~shall~~ must be satisfied that it has jurisdiction over the parties and the subject matter of the action, and venue of the action is proper.

(f) Alternative Service. Service of process by publication, mail, personal service out of the state, or any other means authorized by C.R.S. 19-3-503 ~~shall~~ does not preclude adjudication on a non-appearing or non-defending ~~R~~respondent.

[Separate Rule for Setting Aside Adjudication by Default?]

Trial by Jury

(a) Demand. At the time the allegations of a petition are denied, a respondent, petitioner, or a child through their guardian ad litem or counsel for youth may demand or the court, on its own motion may order, a jury of not more than six. Unless a jury is demanded or ordered, it ~~shall~~ will be deemed waived.

(b) Waiver. The court may find the right of a party to a trial by jury is deemed waived, after being advised and receiving notice, if:

(1) a party entitled to demand a trial by jury fails to make a timely jury demand;

(2) a party who demanded a trial by jury consents in writing or on the record to withdraw his or her jury demand before the adjudicatory hearing;

(3) a party who demanded a trial by jury fails to appear ~~in person~~ at a pretrial conference, without good cause, when ordered by a court; or

(4) a party who demanded a trial by jury fails to appear in person at the adjudicatory hearing, without good cause.

(c) Examination, Selection, and Challenges: Except as otherwise provided in this rule, examination, selection, and challenges for jurors in dependency or neglect actions ~~shall~~ should be as provided by Rule 47 of the Colorado Rules of Civil Procedure.

(d) Peremptory Challenges: Examination, selection, and challenges for jurors in such cases shall be as provided by C.R.C.P. 47, except that the following three groups shall each have three peremptory challenges: the petitioner; all respondents; and all the children (through their guardian ad litem or counsel for youth). No more than nine peremptory challenges are authorized.

(e) Unanimity: Unless otherwise agreed by the parties pursuant to Rule 48 of the Colorado Rules of Civil Procedure, any verdict of a jury in an adjudicatory hearing ~~shall~~ must be unanimous.

Commented [wj78]: Removed "in person" at February 2023 C.R.J.P. Committe Meeting. The committee also posed the question: Should we consider defining pretrial conference?

(a) Motion for Summary Judgment. After commencement of the action the petitioner, guardian ad litem or respondent may move with or without supporting affidavits for adjudication by summary judgment upon all or any part of the petition. Any other party may support or oppose a motion for summary judgment brought under this paragraph by filing a response in accordance with this rule.

(b) Motion and Proceedings Thereon. Unless otherwise ordered by the court, a motion for summary judgment ~~shall~~ must be filed no later than 35 days prior to trial; a responding party ~~shall~~ ha~~ve~~s 14 days after service of the motion in which to file a response; no reply may be filed unless authorized by the court. Any motion, response, or reply involving a contested issue of law ~~shall~~ must be supported by a recitation of legal authority incorporated therein. A responding party may file and serve affidavits within the time allowed for a responsive brief, unless the court orders some lesser or greater time. The motion may be determined without oral argument. The judgment sought ~~shall~~ must be rendered if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(c) Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is not rendered upon the whole case and a trial is necessary, the court, by examining the petition and the evidence before it and by interrogating counsel, ~~shall~~ must if practicable ascertain what material facts exist without substantial controversy and what material facts are actually in good faith controverted. It ~~shall~~ must thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified ~~shall~~ must be deemed established, and the trial ~~shall~~ must be conducted accordingly.

(d) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits ~~shall~~must be made on personal knowledge, ~~shall~~must set forth such facts as would be admissible in evidence, and ~~shall~~ must show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit ~~shall~~ must be attached thereto or served therewith. The court may permit affidavits to be supplemented by further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an opposing party may not rest upon mere denial. The opposing party's response by affidavits or as otherwise provided in this Rule must set forth specific facts showing that there is a genuine issue for trial. If there is no response, summary judgment, if appropriate, ~~shall~~ should be entered.

(e) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify its opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such other order as is just.

(f) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, any offending party or attorney may be adjudged guilty of contempt.

(g) Determination of a Question of Law. At any time after commencement of the action, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question.

Advisement After Disposition

The juvenile court must inform the parties in writing in the initial dispositional order of the right to appeal the order adjudicating the child(ren) dependent and neglected and the initial dispositional order, upon the entry of the initial dispositional order.

(b) The advisement must include the time limit for filing a notice of appeal and a statement that all claims arising out of the adjudication and the initial dispositional order must be raised in a timely appeal or may be waived.

(c) If the respondent(s) are pro se, the juvenile court must inform them of the right to appointed counsel through the Office of Respondent Parents' Counsel if they are found to be indigent. If the pro se respondent(s) inform the court of the desire to appeal, the court must notify the Office of Respondent Parents' Counsel in accordance with any applicable chief justice directive within seven calendar days.

Permanency

Permanency Hearings

(c) Hearing. The court should schedule the initial permanency hearing at the dispositional hearing. The court should ensure that the initial permanency hearing occurs within twelve months of removal and a minimum of every twelve months thereafter even if a dispositional hearing has not yet been held.

(d) Notice. For any permanency hearing, the court or its designee must ensure that notice is provided pursuant to section 19-3-702(2)(a), C.R.S. Placement providers must provide notice of the hearing to the child or youth, and the guardian ad litem must ensure that the child or youth understands the notice to the extent practicable considering the child's or

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youth's development. The permanency hearing notice must substantially comply with Form of the Appendix of Chapter 28.

(e) Return Home or Adopting One or More Permanency Goals. When proper notice has been provided pursuant to paragraph (b), and the court has timely received the petitioner's permanency plan and provided an opportunity to be heard to the persons present for the permanency hearing, the court must first determine whether the child or youth should be returned to the child's or youth's parent, named guardian, or legal custodian and, if so, the date on which the child or youth must be returned. If the child or youth cannot be returned to the physical custody of the child's or youth's parent or legal guardian on the date of the hearing, the court ~~shall~~ must enter one or more permanency goals.

(f) Consultation with the Child or Youth. The court must consult with the child or youth in a developmentally-appropriate manner regarding the child's or youth's permanency goal.

(1) To satisfy the requirement of developmentally appropriate consultation, the court may:

(A) speak directly with the child or youth in person, by phone, or by interactive audiovisual device at the permanency hearing;

(B) elicit and consider a written statement from the child or youth, ensuring a copy of the written statement is provided to all parties;

(C) If the permanency goal is an Other Planned Permanent Living Arrangement, the court must ask the child or youth about his or her desired permanency goal.

(2) If the court does not consult with the child or youth directly or by a written statement, the guardian ad litem must:

(A) explain why the child or youth is unable to be consulted in a developmentally appropriate manner; or

(B) report to the court whether he or she consulted with the child or youth concerning the permanency goal; and

(C) explain why the child or youth is not consulting directly with the court; and

(D) unless directed otherwise by the child or youth, state the child's or youth's wishes regarding the permanency goal.

(3) Nothing in this rule limits the court's ability to speak with a child or youth separately pursuant to section 19-1-106(5), C.R.S. If the court speaks separately with the child or youth the court must:

(A) make a verbatim record of the consultation which may be made available to the parties by court order.

(B) identify the statements it relies on and the weight the court gave the statements, if the court relies upon statements made by the child or youth while speaking separately in adopting a permanency goal for the child or youth.

(g) Other Planned Permanent Living Arrangement. Before entering a permanency goal of Other Planned Permanent Living Arrangement for youths 16 years of age or older who have co-occurring complex conditions that preclude any other permanency goal, the petitioner must document the compelling reasons why another permanency goal is not in the youths' best interests and the efforts made to find biological family members for the youths. The court must also ask the youth about his or her desired permanency outcome.

(h) Permanent Home Determination. For a child or youth in a case designated pursuant to 19-1-123 C.R.S.,

(1) the court must determine whether the child or youth is in a permanent home;

(2) if the child or youth is not in a permanent home, the court must find reasonable efforts were made to find the child or youth an appropriate permanent home and such a home is not currently available or that a child's or youth's needs or situation prohibit the child or youth from a successful placement in a permanent home;
(3) at the permanency hearing that occurs immediately prior to 12 months after the original placement outside the home, the court must identify whether the child or youth is in a placement that can provide legal permanency.

Comments

[1] Under paragraph (a), in cases where there is a deferred adjudication or an informal adjustment and where the child or youth is placed out of the home, scheduling the initial permanency hearing is not triggered by the dispositional hearing. In such cases, the court should ~~address permanency in the shortest time possible~~ensure a permanency hearing occurs within twelve months of removal.

[2] In assessing whether it is developmentally appropriate to provide notice or to consult with a child or youth under paragraphs (b) and (d), *see* Whitney Barnes, E., Khoury, A., Kelly, K. (2012). "Seen, Heard, and Engaged: Children in Dependency Court Hearings." *Technical Assistance Bulletin*. National Council of Juvenile and Family Court Judges, Reno, Nevada available at http://www.ncjfcj.org/sites/default/files/CIC_FINAL.pdf.

[3] Court records, including a record made under subsection (d), are not accessible to the public in dependency and neglect proceedings. *See* Chief Justice Directive 05-01 § 4.60(b)(2).

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Permanency Hearing Form Notice

District Court, _____County, Colorado Court Address: _____ THE PEOPLE OF THE STATE OF COLORADO In the Interest of _____, Child, and Concerning, _____and, _____ Respondents.	▲ COURT USE ONLY ▲ Case Number: Division
NOTICE OF PERMANENCY HEARING	

Notice is given, pursuant to section 19-3-702(2)(a), C.R.S., that the court has set a permanency hearing in the above-captioned case on **[date], at [time] in [place]**.

I. At the permanency hearing, the court will first determine whether the child or youth should be returned to the child's or youth's parent, named guardian, or legal custodian and, if so, the date on which the child or youth must be returned. If the child or youth cannot be returned to the physical custody of the child's or youth's parent or legal guardian on the date of the hearing, the court ~~shall~~ must enter one or more permanency goals which include: return home; adoption with a relative; permanent placement with a relative; adoption with a nonrelative; permanent placement with a nonrelative; or Other Planned Permanent Living Arrangement. The court may also take up any other matter contemplated by section 19-3-702, C.R.S.

II. At the permanency hearing, the child's or youth's parents or guardians have the following rights:
   1. The right to be present at the permanency hearing and the right to be heard.
   2. The right to notice of the petitioner's proposed permanency plan at least five working days before the hearing.
   3. The right to be represented by counsel at the hearing. Respondents found to be indigent may request that a lawyer be appointed to represent them at no expense.

Parents or guardians who are under 18 years old, have the right to have a guardian ad litem appointed for them to represent their best interests.

4. The right to have the hearing in front of a district court judge instead of a district court magistrate. The right to a hearing in front of a judge will be waived unless (1) there is a request that the permanency hearing be held before a judge made at the time the hearing is set, if the child's or youth's parent or guardian or his or her lawyer is present at the time the permanency hearing is set; or (2) there is a request that the permanency hearing be held before a judge within seven days after receiving notice that the matter has been set for hearing before a magistrate and the hearing was set outside of the presence of the child's or youth's parent or guardian or his or her lawyer.

III. At the permanency hearing, the child or youth has the right to be present at the hearing and the right to be heard at the hearing, the right to have a guardian ad litem appointed to represent the child's or youth's best interests, and the right to consult with the court about the child's or youth's permanency goal in an developmentally appropriate manner. If the permanency goal is an Other Planned Permanent Living Arrangement, the court must ask the child or youth about his or her desired permanency goal. The child or youth may also ask any person to attend the permanency hearing that he or she wishes to be present.

If there are questions about these rights, those questions can answered by counsel, or may be raised at the permanency hearing.

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of the **NOTICE OF PERMANENCY HEARING** was filed with the court and served on the Petitioner, Respondent(s), Guardian ad Litem(s), Persons with whom the child or youth is placed, the child or youth, and _____ (other) in the following manner:
☐Hand Delivery, ☐E-Filed, ☐Email, ☐Faxed to this number _____, ☐Other manner _____ (describe) or ☐by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____
_____
_____

_____
Signature

Post-Termination

Review Hearing Following Termination of the Parent-Child Legal Relationship

(a) Following termination of parental rights, the court must review the child's progress toward achieving a timely permanent placement. Section 19-3-606, C.R.S., requires the juvenile court to hold a review hearing no later than 90 days following the hearing at which the court terminated parental rights. The court may combine this hearing with a permanency planning hearing as required by section 19-3-702, C.R.S. If the court combines these hearings, the court ~~shall~~ must make findings required by Rule ____ [the rule that addresses permanency planning hearings], in addition to those identified below.

(b) At the hearing, the court's review of the disposition of the child ~~shall~~ must include the following:

(1) the appropriateness of the permanency planning goal;

(2) the appropriateness of the child's current placement; and

(3) the efforts to arrange for an immediate adoption or alternative long-term placement of the child.

(c) The agency or individual vested with custody of the child ~~shall~~ must report to the court what disposition of the child, if any, has occurred. The guardian ad litem ~~shall~~ must submit a written report with recommendations to the court, based on an independent investigation addressing the best disposition of the child. Written reports of the department of human services and guardian ad litem ~~shall~~ must be submitted no later than 7 days prior to the hearing and ~~shall~~ must include, at a minimum, the following:

(1) the child's placement history, including the number of prior placements;

(2) the child's adjustment to the current placement and whether the current placement furthers the child's permanency goal;

(3) a description with recommendations of the child's immediate and long-term needs including safety, health, dental, behavioral health, and educational needs and plans;

(4) whether the services and resources provided to the child and to the child's current and/or potential placement constitute reasonable efforts to finalize the permanency planning goal;

(5) a description of the child's relationship with siblings related to the court's findings in subsection (f)(5);

(6) a description of whether reasonable efforts have been made to establish a permanent placement for the child including:

(A) if the permanency planning goal is adoption, the efforts to finalize adoption of the child, identification of prospective adoptive parents, date of placement of the child in an pre-adoptive home, status of adoption subsidy agreement and negotiations regarding post-adoption services, and status of the adoption proceeding; or

(B) if the permanency planning goal is not adoption, an explanation of why adoption is not an appropriate permanency planning goal and the efforts to finalize legal guardianship. If the permanency planning goal is not adoption or legal guardianship, a compelling reason why the child is placed in another planned permanent living arrangement. For youth over 14 years of age, the description ~~shall~~ must also include a statement of the services and resources necessary to assist the child to make the transition from foster care.

(d) In addition to the requirements in subsection (c), the guardian ad litem ~~shall~~ must include in his or her report the following:

(1) the date, manner, and location of the last contact between the child and the guardian ad litem;

(2) whether the guardian ad litem has identified any impediments or barriers to the previously adopted permanency planning goal for the child; and

(3) if the guardian ad litem consulted with the child following the termination hearing; the child's position with respect to permanency; and, whether the child will participate in person, understanding that there is a presumption the child will appear in person, unless compelling reasons are demonstrated as to why the child is not present.

(e) Any reports provided at the post-termination review hearing ~~shall~~ will be subject to the confidentiality and release requirements contained in section 19-1-309, C.R.S.

(f) At the conclusion of the hearing, the court ~~shall~~ must determine and ~~shall~~ must include in its orders:

(1) a description of whether reasonable efforts have been made to establish a permanent placement for the child including the efforts to finalize an adoption. If an adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for alternative long-term placement of the child;

(2) if an adoption is not immediately feasible or appropriate, and the post-termination hearing has not been combined with a permanency hearing pursuant to 19-3-702, the court ~~shall~~ must schedule a permanency hearing within 42 days. If this is a combined post-termination and permanency hearing, the court ~~shall~~ must make findings required by Rule _____, [the rule that addresses permanency planning hearings];

(3) whether the services and current placement meet the child's immediate and long-term needs, specifically addressing the child's safety, health, dental, behavioral health, and educational needs and plans;

(4) whether the services and resources provided to the child and to the child's current and/or potential placement constitute reasonable efforts to finalize the permanency plan; and

(5) sibling placement and visitation:

(A) whether siblings are in a joint placement and whether joint placement would be contrary to the safety or well-being of any of the siblings;

(B) if the children are not in a joint placement, whether reasonable efforts have been made to facilitate joint placement in the same placement;

(C) in the case of siblings who are not jointly placed, the court must make the following findings regarding visitation:

(I) Whether visits occur with sufficient frequency and duration to promote continuity in the siblings' relationship;

(II) If visits of sufficient frequency and duration to promote continuity of the sibling relationship are not occurring, whether it has been established by a preponderance of the evidence that sibling visits would be contrary to the safety or well-being and not in the best interests of any of the siblings.

(g) The court ~~shall~~ must set a further review or permanency hearing at least every 6 months until legal permanency is achieved.

Appendix

_____ COUNTY DEPARTMENT OF HUMAN SERVICES

Address: _____

Telephone Number: _____

PART 1 OF 5:
AUTHORIZATION FOR PERSONS, AGENCIES, AND INSTITUTIONS TO RELEASE INFORMATION TO COUNTY DEPARTMENT OF HUMAN SERVICES

Printed Name: _____ **Date of Birth: _____**

I authorize the following persons, agencies, or institutions to supply the following information to the _____ County Department of Human Services (County DHS) concerning my application for/receipt of social services. I permit any authorized representative of the County DHS to inspect and reproduce records pertaining to me in the possession of the following persons, agencies, or institutions. I release the following persons, agencies, and institutions from any and all liability for supplying such information.

Names and Addresses of Persons, Agencies, and Institutions	Type of Person, Agency, or Institution	Type of Information the **Listed Persons, Agencies and Institutions May Disclose to the County DHS**
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	☐ Assessments and evaluations ☐ HIV records ☐ Intake summaries ☐ Treatment plan(s) and goals ☐ Frequency of treatment ☐ Treatment progress ☐ Discharge summaries ☐ Clinical/psychosocial history ☐ Educational records, IEPs and/or behavioral reports ☐ Court orders ☐ Other court records ☐ Child Family Investigator (CFI) reports ☐ Police reports ☐ Probation department records ☐ District Attorney records ☐ Other: _____
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other:	
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	
	☐ Domestic violence	

	☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	

PART 2 of 5:
AUTHORIZATION FOR COUNTY DEPARTMENT OF HUMAN SERVICES TO RELEASE INFORMATION TO PERSONS, AGENCIES, OR INSTITUTIONS

I authorize the _____ County Department of Human Services (County DHS) to supply information obtained directly from me in the course of my application for/receipt of social services to the following persons, agencies, and/or institutions. I authorize the County DHS to supply information obtained from any persons, agencies, or institutions that has provided information to the County DHS with my written consent. I release the County from any and all liability for supplying information as permitted in this document.

Names and Addresses of Persons, Agencies, and Institutions	Type of Person, Agency, or Institution	Type of Information **the County DHS May Disclose to the Listed Persons, Agencies and Institutions**
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other:	☐ Assessments and evaluations ☐ HIV records ☐ Intake summaries ☐ Treatment plan(s) and goals ☐ Frequency of treatment ☐ Treatment progress ☐ Discharge summaries ☐ Clinical/psychosocial history ☐ Educational records, IEPs and/or behavioral reports ☐ Court orders ☐ Other court records ☐ Child Family Investigator (CFI) reports ☐ Police reports ☐ Probation department records ☐ District Attorney records ☐ Other: _____
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other:	
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	
	☐ Domestic violence ☐ Medical	

	☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	
	☐ Domestic violence ☐ Medical ☐ Mental health/psychiatric/ psychological/psychosexual /psychosocial ☐ Substance abuse ☐ Other: _____	

PART 3 of 5:
GENERAL TERMS AND CONDITIONS

Limitation Regarding Use: The above releases of information are for the limited purpose of the County Department's administration of social services.

Effective Dates: The above releases ~~shall~~ will be in effect for six (6) months, unless rescinded earlier in writing.

Signatures

Signature of adult client:

_____

Printed legal name of client:

_____

First Middle Last

Signature of youth(s) 15 or older whose records are sought pursuant to this release:

_____

Printed Legal Name:

_____

First Middle Last

Signature of child's/youth's client's parent, guardian, legal custodian, or other authorized legal representative:

_____

Printed Legal Name:

_____

First Middle Last

Effective Date: _____

Distribution of Copies

Did the client receive a copy of this signed release form? ☐Yes ☐No

_____Client Initials indicating receipt of copy

Notice of Rights And Remedies

YOU HAVE THE RIGHT TO REVOKE THESE RELEASES AT ANY TIME BY GIVING WRITTEN NOTICE TO THE COUNTY DHS. IF YOU DO NOT REVOKE THESE RELEASES, THEY WILL EXPIRE ON THE FOLLOWING DATE: _____ (six months from date the client signed this form). **BEFORE THIS RELEASE EXPIRES, YOU MAY BE ASKED TO VOLUNTARILY SIGN A NEW ONE. DOING SO WILL EXTEND THIS RELEASE AN ADDITIONAL SIX MONTHS.**

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) PROVIDES STUDENTS CERTAIN RIGHTS RELATED TO THE PRIVACY OF, OR ACCESS TO, THEIR EDUCATIONAL RECORDS. STUDENTS MAY VOLUNTARILY CHOOSE TO SIGN THIS RELEASE AUTHORIZING RELEASE OF THEIR EDUCATIONAL RECORDS TO LISTED THIRD PARTIES. PLEASE SEE THE UNITED STATES DEPARTMENT OF EDUCATION WEBSITE AT www.ed.gov/policy/gen/guid/fpco/ferpa/index.html FOR ADDITIONAL INFORMATION ABOUT FERPA.

SUBSTANCE ABUSE RECORDS ARE PROTECTED BY 42 CODE OF FEDERAL REGULATIONS (C.F.R.) PART 2 CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE RECORDS. SUBSTANCE ABUSE RECORDS AND CANNOT BE DISCLOSED WITHOUT YOUR CONSENT, UNLESS OTHERWISE PROVIDED FOR IN THE REGULATIONS. EXCEPT FOR ANY ACTION ALREADY TAKEN IN RELIANCE UPON THIS RELEASE, YOU MAY RESCIND THIS RELEASE AT ANY TIME.

IF RECORDS AND INFORMATION REGARDING YOUTHS 15 OR OLDER ARE SOUGHT PURSUANT TO THIS RELEASE, THE YOUTH MUST SIGN THIS RELEASE, AS WELL AS A PARENT, GUARDIAN, LEGAL CUSTODIAN, OR OTHER LEGAL REPRESENTATIVE.

PART 5 OF 5:
REVOCATION OF RELEASES

If you wish to revoke your releases, sign the below and deliver this signed document to your County DHS.

_____
Signature and Date of Revocation of Release

_____
Printed Name of Person Signing Revocation of Release

Case Management Order

_____ County, Colorado **_____** **_____, CO _____** **_____** **THE STATE OF COLORADO IN THE INTEREST OF** **_____,** **Child(ren)** **AND CONCERNING** **_____,** **Respondents**	**▲ COURT USE ONLY ▲** **Case Number: _____** **Div.: _____ Courtrm: _____**
STANDARD CASE MANAGEMENT ORDER FOR DEPENDENCY AND NEGLECT CASE	

Parties ~~shall~~ must attach additional pages where necessary to provide further information.

I. **EPP:** This case □ is □ is not an EPP case.

II. **ICWA:**

□ The participants know or have reason to know that the child/ren is/are a Native American child/ren. Proper notice ~~shall~~ must be sent to all tribes in which the child/ren may be eligible for membership, including a family chart or genogram to facilitate the tribe's membership determination. If a tribe or tribes are unknown, notice ~~shall~~ must be sent to the regional Bureau of Indian Affairs.

OR

□ No participant knows or has reason to know that the child/ren is/are Native American child/ren. The parties ~~shall~~ must inform the court if they receive information that provides
reason to know that the child/ren is/are a Native American child/ren.

III. **PRESENTING CONCERNS**: This case opened due to the following concerns:
□ abandonment;
□ abuse: □ emotional □ physical □ sexual;
□ beyond control of parent: □ delinquency □ incest □ mental health □ runaway □ truant;
□ criminal: □ current charge(s) □ current incarceration □ prior conviction(s);
□ domestic violence: □ current □ history;
□ drugs: □ child born pos. □ current use □ distribution □ hx. of use □ manufacture;
□ neglect: □ educ. □ failure to protect □ med. □ phys. □ unstable/unsafe housing; and

□ other _____
_____

IV. PARTIES, REPRESENTATION, PLACEMENT, AND MORE	Child 1	Child 2	Child 3	Child 4
Child's name and representation:	Name GAL CASA	Name GAL CASA	Name GAL CASA	Name GAL CASA
Child's DOB	_____/_____/_____	_____/_____/_____	_____/_____/_____	_____/_____/_____
Name and representation of child's mother(s) □ *Circled mother(s) in custody at*	Name Atty	Name Atty	Name Atty	Name Atty
Name and representation of child's father □ *Circled father(s) in custody at*	Legal fa Atty	Legal fa Atty	Legal fa Atty	Legal fa Atty
	Presumed fa(s) Atty	Presumed fa(s) Atty	Presumed fa(s) Atty	Presumed fa(s) Atty
	Alleged fa(s) Atty(s)	Alleged fa(s) Atty(s)	Alleged fa(s) Atty(s)	Alleged fa(s) Atty(s)
Name and representation of child's legal guardian/legal custodian/other □ *Circled LG/LC/other in custody at*	Name Atty	Name Atty	Name Atty	Name Atty
Legal custody with	□ mother □ father □ DHS □ other	□ mother □ father □ DHS □ other	□ mother □ father □ DHS □ other	□ mother □ father □ DHS □ other
Placed with	□ mother □ father □ other	□ mother □ father □ other	□ mother □ father □ other	□ mother □ father □ other

V. ADDITIONAL PARTIES/PERSONS:

	Party or Person 1	Party or Person 2	Party or Person 3
Name			
Attorney			
Role	□ Intervenor □ Special Respondent □ Other _____ _____ _____	□ Intervenor □ Special Respondent □ Other _____ _____ _____	□ Intervenor □ Special Respondent □ Other _____ _____ _____
Relationship to the Family			

VI. SUBSTANTIVE MOTIONS *(not disclosure or discovery motions)*:

A. Pending and anticipated substantive motions:

Motion	Motion Filed by/ Expected to Be Filed by	Motion Contested/Expected to Be Contested by
	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other_____	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other_____
	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other_____	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other_____

	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other_____	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other_____

B. Orders regarding substantive motions: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____

VII. DATES RELEVANT TO PENDING SUBSTANTIVE MOTION(S):

	Party/ies and Date(s)
Removal	Child 1 _____ (name) on _____/_____/_____ Child 2 _____ on _____/_____/_____ Child 3 _____ on _____/_____/_____ Child 4 _____ on _____/_____/_____
Service	Mother _____ (name) on _____/_____/_____ Father _____ on _____/_____/_____ Other _____ on _____/_____/_____ Other _____ on _____/_____/_____ Other _____ on _____/_____/_____
Treatment Plan(s) and Amendments □ N/A	Mother _____ (name) on _____/_____/_____ Father _____ on _____/_____/_____ Other _____ on _____/_____/_____ Other _____ on _____/_____/_____ Other _____ on _____/_____/_____

Other *(e.g., advisements)*	

VIII. SPECIAL ISSUES: This case involves the following special issues which may affect disclosures and discovery: _____

_____
_____
_____
_____
_____
_____

IX. DISCLOSURES

A. The parties anticipate the following problems or difficulties in providing disclosures: _____
_____
_____

B. All discovery ~~shall~~ must be provided by 5:00 p.m. on _____/_____/_____.

C. Other orders regarding disclosures: _____
_____
_____
_____
_____

X. DISCOVERY

A. Discovery sought or intended to be sought before the contested hearing or trial:

Discovery	Discovery Requested by/ Anticipated to be Requested by:	Objections Have Been Made by/Are Expected to be Made by:
□ Requests for Admission	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other _____	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other _____
□ Interrogatories	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other _____	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other _____
□ Requests for Production	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other _____	□ Mother(s) _____ □ Father(s) _____ □ DHS □ GAL(s) _____ □ Other _____

B. Orders regarding discovery: _____
_____
_____
_____

_____
_____
_____

XI. TRIAL SETTING AND LENGTH OF TRIAL

A. The evidence to be presented at trial is:

	Mother	Father _____	DHS	GAL	Other _____
Judicial Notice					
Lay Witnesses					
Expert Witnesses					
Exhibits					

B. The trial is scheduled for _____/_____/_____, from _____ □ a.m. or □ _____ p.m. to _____ □ a.m. or □ _____ p.m.

C. Other orders regarding trial setting and length of trial: _____
_____

Permanency Hearing Form Notice

District Court, _____County, Colorado Court Address: _____ THE PEOPLE OF THE STATE OF COLORADO In the Interest of _____, Child, and Concerning, _____and, _____ Respondents.	▲ COURT USE ONLY ▲ Case Number: Division
NOTICE OF PERMANENCY HEARING	

Notice is given, pursuant to section 19-3-702(2), C.R.S., that the court has set a permanency hearing in the above-captioned case on **[date], at [time] in [place]**.

IV. At the permanency hearing, the court will adopt a permanency plan for the child and a target date for achieving the plan and may take up any other matter contemplated by section 19-3-702, C.R.S.

V. At the permanency hearing, the child's parents or guardians have the following rights:

5. The right to be present at the permanency hearing.
6. The right to notice of the petitioner's proposed permanency plan at least three working days before the hearing.
7. The right to be represented by counsel at the hearing. Respondents found to be indigent may request that a lawyer be appointed to represent them at no expense. Parents or guardians who are under 18 years old, have the right to have a guardian ad litem appointed for them to represent their best interests.
8. The right to have the hearing in front of a district court judge instead of a district court magistrate. The right to a hearing in front of a judge will be waived unless (1) there is a request that the permanency hearing be held before a judge made at the time the hearing is set, if the child's parent or guardian or his or her lawyer is present at the time the permanency hearing is set; or (2) there is a request that the permanency hearing be held before a judge within seven days after receiving notice that the matter has been set for hearing before a magistrate and the hearing

was set outside of the presence of the child's parent or guardian or his or her lawyer.

VI. At the permanency hearing, the child has the right to be present at the hearing, the right to have a guardian ad litem appointed to represent the best interests of the child, and the right to consult with the court about the child's permanency plan in an developmentally appropriate manner. If the permanency plan is an Other Planned Permanent Living Arrangement, the court must ask the child about his or her desired permanency outcome. The child may also ask any to person attend the permanency hearing that he or she wishes to be present.

If there are questions about these rights, those questions can answered by counsel, or may be raised at the permanency hearing.

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of the **NOTICE OF PERMANENCY HEARING** was filed with the court and served on the Petitioner, Respondent(s), Guardian ad Litem(s), Persons with whom the child is placed, and _____ (other) in the following manner:
☐Hand Delivery, ☐E-Filed, ☐Email, ☐Faxed to this number _____, ☐Other manner _____ (describe) or ☐by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____
_____
_____

_____
Signature

From: Zaven Saroyan
Sent: Wednesday, September 13, 2023 9:45 AM
To: wallace, jennifer
Subject: [External] RE: An idea for the Main CRJP Committee

I appreciate you pinging me. I would like this to be put on the agenda.

The issue is that it appears that ex parte requests, including for emergency removals, are FTRd in some jurisdictions (such as Weld), but not in others. Having a discoverable FTR from the requests for emergency removals allows all counsel to know whether the information provided to the judge in the ex parte hearing is different than what is later told at the emergency hearing or even in the petition/exhibit A that alleges the facts that caused the case's filing.

It is also good to have for middle of cases issues, including when ACAs request ex parte verbal orders to remove kids again or stop visits etc. This causes a very drastic action to occur (removal/visits stopping). When such occurs, having discoverable FTRs from that hearing allows the parent to properly challenge the information if/when the parent moves for a litigated return home hearing.

Best regards,

Z-

Zaven ("Z") Saroyan
Appellate Director
Office of Respondent Parents' Counsel
1300 Broadway, Suite 340
Denver, CO 80203
719-421-6767

From: wallace, jennifer [redacted]
Sent: Wednesday, September 13, 2023 9:28 AM
To: Zaven Saroyan [redacted]
Subject: FW: An idea for the Main CRJP Committee

Hi Z,

Hope your week is going well. You had mentioned asking the Juvenile Rules Committee to draft a rule to require court to put ex parte emergency removal hearings on the record. Did you still want to put that on the agenda? Do you want me to include your short email below outlining the issue or do you want to elaborate on the issue more? We are still over three weeks away, so you have some time. I was working on the agenda this morning, and I remembered your email, so I wanted to touch base. Let me know by 9/27.

Thanks,

J.J.

From: wallace, jennifer
Sent: Friday, August 4, 2023 1:37 PM
To: Zaven Saroyan [redacted]
Subject: RE: An idea for the Main CRJP Committee

Hi Z,

Email Judge Welling (and cc me) with a request to be put on the agenda. I would recommend making your email specific about 1) what the issue is and 2) a proposed solution (if you have one). That

way, I can put your email outlining the issue in the meeting materials so committee members have a heads up on the issue.

Let me know if you need anything else,

J.J.

From: Zaven Saroyan [redacted]
Sent: Friday, August 4, 2023 1:29 PM
To: wallace, jennifer [redacted]
Subject: [External] An idea for the Main CRJP Committee

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

J.J.,

I wanted to see how I would go about putting a proposal on the agenda for the main rules committee's consideration. In short, it appears that some jurisdictions FTR the ex parte hearings for emergency removal orders while a great many do not. This would seem to be something that should be FTRd by all JDs for everyone's protection. Thoughts?

Best regards,

Z-

Zaven ("Z") Saroyan
Appellate Director
Office of Respondent Parents' Counsel
1300 Broadway, Suite 340
Denver, CO 80203
719-421-6767
[redacted]

MEMORANDUM

TO: JUVENILE RULES COMMITTEE

FROM: DRAFTING SUBCOMMITTEE

SUBJECT: ADMISSION OR DENIAL RULE

DATE: 6/7/2023

SUMMARY: The Drafting Subcommittee recommends removing (d) of the draft rule on Admission or Denial.

EXPLANATION: The Drafting Committee has begun review of the draft advisement rule, which was modeled on C.R.J.P. 4.2. In reviewing the rule, the Drafting Committee recommended separating out the admission/denial part of the rule from the advisement part of the rule (currently found at C.R.J.P. 4.2(b)–(c)).

In focusing on the admission/denial part of the rule, the Drafting Committee recommends removing subsection (d) from the rule. Subsection (d) is titled "Factual Basis." The subcommittee felt (1) subsection (d) is not required by the statute and (2) subsection (d)'s requirement that "the court must find a factual basis sufficient to support the admission" repeats the requirement in subsection (c) that "the court must determine, in accordance with section 19-3-505(7)(a), C.R.S., at least one allegation of neglect or dependency in the petition is supported by a preponderance of the evidence." The subcommittee thought that stating the same basic idea two different ways may lead to confusion rather than clarity. Although the subcommittee acknowledged that some jurisdictions routinely allow a waiver of the factual basis as a matter of local practice, there was uncertainty about how this practice comports with the requirement that the court find that the petition's allegations were supported by a preponderance of evidence.

One member of the subcommittee pointed out that including subsection (d) may be clearer because it expressly clarifies that a parent may waive the factual basis. For example, if there is a pending criminal case against a parent, waiving the factual basis in the D&N may help the D&N move forward without prejudicing a parent's rights in the criminal case. One option may be for the committee to add the intent of (d) as a comment to the rule.

DRAFT RULE TEXT:

ADMISSION OR DENIAL

(a) Response to the Petition's Allegations. After being advised in accordance with Rule _____, each respondent must admit or deny the allegations of the petition.

(b) Admission.

(1) If a respondent admits the allegations contained in the petition, and if no party demands a jury trial pursuant to section 19-3-202(2), C.R.S., then the court may accept the admission after making the following findings: (1) The respondent understands his or her rights, the allegations contained in the petition, and the effect of the admission; and (2) the admission is voluntary.

(2) Absent a demand for a jury trial pursuant to section 19-3-202(2), C.R.S., the court may accept a written admission to the petition if the respondent has affirmed under oath that he or she 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 above.

(c) Adjudication. After accepting an admission, unless proceeding under Rule 4.2.5, the court must determine, in accordance with section 19-3-505(7)(a), C.R.S., at least one allegation of neglect or dependency in the petition is supported by a preponderance of the evidence. If so, the court must sustain the petition and make an order of adjudication. The court's determinations pursuant to this subsection (c) must be on the record.

(d) Factual Basis. At the time of admission, the court must find a factual basis sufficient to support the admission, unless the respondent has stipulated or waived a factual basis.

Comment

[1] The language of (b) is intended to allow judicial officers discretion in determining when a case is ripe for entry of an order of adjudication.

To: Juvenile Rules HB22-1038 Workgroup

From: Sheri Danz

Re: Consideration of Rule to Support Children and Youth's Right to Attend Court

Date: 1/24/2023

In addition to changing the model of representation for youth 12 and older in D&N proceedings in Colorado, HB 22-1038 clarified that children and youth have a right to attend and participate in hearings related to their case. Specifically, § 19-3-402(4.5) now states:

> A child named in the petition shall be a party to the proceedings and have the right to attend and fully participate in all hearings related to the child's case. The child's Guardian ad Litem or Counsel for Youth shall provide developmentally appropriate notice to the child of all hearings related to the child's case.

The OCR believes that a juvenile rule regarding child/youth attendance and participation will provide guidance for courts, promote consistency in practice, and protect the rights of children and youth to attend court and participate in their case.

This memo highlights national recommendations regarding youth in court and outlines key components OCR believes this work group should consider for inclusion in a child/youth attendance and participation rule. Where applicable, examples from other states are highlighted in the key components section.

National Recommendations

Several organizations have supported youth attendance and engagement through practice standards and policy statements:

American Bar Association

The American Bar Association's 2011 *Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*, pp. 14-15, available at https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf, has a section dedicated to participation in proceedings (Section 9). This section provides:

> (a) Each child who is the subject of an abuse and neglect proceeding has the right to attend and fully participate in all hearings related to his or her case.
>
> (b) Each child shall receive notice from the child welfare agency worker and the child's lawyer of his or her right to attend the court hearings.
>
> (c) If the child is not present at the hearing, the court shall determine whether the child was properly notified of his or her right to attend the hearing, whether the child wished to attend the hearing, whether the child had the means (transportation) to attend, and the reasons for the non-appearance.
>
> (d) If the child wished to attend and was not transported to court the matter shall be continued.

(e) The child's presence shall only be excused after the lawyer for the child has consulted with the child and, with informed consent, the child has waived his or her right to attend.

Commentary to this statute states that courts "should the child's right to attend and fully participate in all hearings related to his or her abuse and neglect proceeding," notes that courts "should reasonably accommodate the child to ensure the hearing is a meaningful experience for the child," and outlines the following considerations for the court in making such accommodations: scheduling hearing dates and times when the child is available and least likely to disrupt the child's routine, setting specific hearing times to prevent the child from having to wait, making courtroom waiting areas child friendly, and ensuring the child will be transported to and from each hearing.

In a recent resolution, the ABA urged various entities, including state legislatures to enact, and courts to enforce, "laws establishing a presumption of child presence in all dependency proceedings." 2022 ABA Resolution 613, available at https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-resolution-613.pdf. According to the resolution, this presumption ensures that:

(1) legal decisions and practices respect and value a child's unique identity, including their racial, cultural, ethnic, linguistic, sexual orientation, and gender identities;

(2) the child can express their individual needs and interests and meaningfully engage in a case; and

(3) the child, in consultation with the child's attorney, has the sole right to choose not to be present and reasons such as age, disability, scheduling conflicts, lack of transportation, or perceived trauma which is not documented, are not used to rebut the presumption.

The resolution specifically "urges courts to support a presumption of child presence through changes in court rules and policies."

National Association of Counsel for Children

Recommendation V of the NACC's *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*, pp. 16-17, available at https://naccchildlaw.app.box.com/s/vsg6w5g2i8je6jrut3ae0zjt2fvgltsn, sets forth attorney practices to ensure youth opportunities for full participation in their dependency proceedings. This recommendation states that youth should have the opportunity to "personally express their wishes to the court" and to "fully participate in their legal proceedings," while also acknowledging youth's right to "refrain from expressing themselves in court, or to choose to have their position relayed through counsel." The recommendation outlines attorneys' advocacy responsibilities regarding the scheduling of hearings at dates and times that support child's attendance (noting that youth scheduling conflicts should "be treated with the same caution as conflicts with the court's own calendar"), ensuring a

transportation plan and requesting court orders for one if necessary, waiving only in exceptional circumstances, and offering alternative means of participating when a youth does not want to attend in person. The recommendation notes attorney strategies for ensuring client understanding of proceedings, such as requesting recesses to confer with the client.

National Council of Juvenile and Family Court Judges

In its Children in Court Policy Statement https://www.ncjfcj.org/wp-content/uploads/2019/08/ncjfcj-children-in-court-policy-statement.pdf, the NCJFCJ announced its policy "that children of all ages should be present in court and attend each hearing, mediation, pretrial conference, and settlement conference unless the judge decides it is not safe or appropriate" and made the following recommendations to support youth presence:

- Judges should seek and participate in training on how to best engage children in court.
- Courts should develop policies and protocols to ensure that children have the opportunity to attend all court events.
- Children should be parties to their cases and be appointed competent representation.
- When children are not present in court, the judge should ask why and make findings as to the reason the child is not present. If the judge does not find good cause for the child's absence, the case should be continued to an expedited time certain to secure the appearance of the child. The court should work with the agency and the caregivers to ensure the child has transportation to court.

Key Components of a Colorado Juvenile Rule

From the national authorities above and a review of other state statutes and rules regarding child/youth attendance and participation, the OCR has identified the following components as important to consider for a Colorado rule. OCR understands not all of these components may ultimately end up in a rule but believes consideration of each component is an important endeavor.

- ***Purpose***: Some courts and stakeholders continue to have reservations about youth appearing in court on D&N cases and questions about whether/how judges should interact with youth who do attend. A purpose section would alleviate some of these concerns and orient courts as to best practices regarding youth engagement.
- ***Presumption:*** Consistent with 2022 ABA Resolution 613, the Rules Committee may wish to consider articulating a presumption that children and youth attend and participate in court proceedings. OCR recognizes that this would constitute a significant shift from current practice in many judicial districts, which appear to be operating under the presumption that children and youth should not attend court proceedings. Iowa provides an example of a state that has enacted a statutory presumption regarding youth attendance. *See* I.C.A. § 232.91(4) ("A presumption exists that it is in

the best interests of a child ten years of age or older to attend all hearings and all staff or family meetings involving placement options or services provided to the child.") .

- ***Advisement***: While CJD 04-06 requires OCR attorneys to explain to children and youth their right to attend court, *see* §V.D.1.b, a court advisement would reinforce the information children and youth receive through their attorneys and convey a powerful message about the value the court places on youth attendance and participation. Arizona provides an example of an advisement-type rule: "At the first hearing, the court must determine that the child was informed of and understands these rights." 17B A.R.S. Juv.Ct.Rules of Proc., Rule 310(a) (eff. July 1, 2022) (referencing children's right to attend hearings and speak to the judge). California statutes provide another example. *See* Ca.Welf. & Inst.Code § 349(c) ("Courts must inform present minors of their right to address the court and participate in the hearing and the court shall allow the minor, if the minor so desires, to address the court and participate in the hearing.").
- ***Inquiry:*** A rule should prompt the court to engage in an inquiry when a child/youth is not present to determine: whether the child/youth received developmentally appropriate notice; whether transportation was made available; what, if any, barriers prevented the child from attending court; and what efforts were made to overcome the barriers. Arizona provides an example of an inquiry rule. *See* A.R.S. Juv.Ct.Rules of Proc., Rule 310(b) (*"*At every hearing thereafter, if the child is not present, the court must inquire whether the child requested to attend the hearing."). California statutes provide another example. CA WEL & INST § 349(d)("If a minor aged 10 or older is not present at the hearing, the court shall determine whether the minor was properly notified of their right to attend and inquire whether the minor was given an opportunity to attend."). Iowa provides yet another example. *See* I.C.A. § 232.91(3) ("If a child is of an age appropriate to attend the hearing but the child does not attend, the court shall determine if the child was informed of the child's right to attend the hearing.").
- ***Findings:*** From the inquiry outlined above, the rule should require the court to make findings about the child/youth's wishes to attend the particular hearing, whether transportation was made available to the child/youth, the barriers that prevented the child/youth from attending court, and the efforts made to overcome those barriers.
- ***Orders:*** While a rule cannot provide substantive authority for a court to enter orders, a rule that prompts or requires the court to consider whether any orders to address barriers and enforce the right of the child/youth to attend court are within the court's authority and warranted by the case circumstances would promote an important procedural step in concluding the inquiry and findings sections outlined above. For example, California statutes provide "[t]he court may issue any and all orders reasonably necessary to ensure the child has an opportunity to attend." Ca.Welf. & Inst.Code § 349(d). Delaware provides another example: children "aggrieved by a violation of this section may motion the court, through an attorney or court-appointed special advocate, for appropriate equitable relief." 13 Del.C. § 2522(b). *See also* H.R.S. § 587A-3.1(c) ("*Sua sponte* or upon appropriate motion, the court may issue necessary orders to any party to ensure children are provided with these and other rights. "). The rule could outline some examples, such as transportation orders, scheduling orders, accommodations, etc. The work group should discuss whether this rule should flag continuances as a potential court order. California statutes provide an example of continuance language. *See* Ca.Welf. & Inst.Code § 349(d) ("If the minor was not properly notified or if they wished to be present and were not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the

best interest of the minor not to continue the hearing. The court shall continue the hearing only for the period of time necessary to provide notice and secure the presence of the child.").

- ***Scheduling:*** A rule that encourages courts to schedule hearings at a time that youth can attend without missing school or other important events would be consistent with national recommendations, increase attendance opportunities, and minimize stress on the child/youth.
- ***Waiver***: A rule requiring that the child/youth affirmatively waive the right to attend court would promote youth attendance. OCR understands that this could create issues for younger children. If the work group chooses to pursue a waiver rule, OCR recommends making clear that waiver could be accomplished in person, in writing, or through counsel.
- ***Notice****:* The statute makes clear that the CFY or GAL is responsible for providing developmentally appropriate notice. A corresponding juvenile rule could prompt the court to confirm that the child/youth has received notice of the hearing when a child/youth is not present.
- ***Accommodations/Strategies for Meaningful Participation***: To promote meaningful and accessible participation, the rule could outline alternatives to in-person attendance. Examples include telephone participation, Webex, writing a letter to the court. Any rule should make clear that the availability of alternatives should not substitute for a child/youth's right to attend court in person if the child/youth wants to attend in person.
- ***In camera interviews.*** While not specifically referenced in the national standards above or other state rules, a common question the OCR has received is whether the court can conduct *in camera* interviews of child/youth parties or youth represented by counsel. §19-1-106(5) states that "the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court." The cases *H.K.W*., 2017COA 70, and *S.L*., 2017 COA 160, affirm the court's authority to hold *in camera* interviews and outlines the procedures a court should follow. OCR does not believe that the change to party status or client-directed representation changes the analysis as to whether *in camera* interviews can be held in D&N cases. A juvenile rule that reinforces the statute and required procedures could promote consistency in this practice.

Child/Youth Participation Rule

Overview

The 1038 Juvenile Rules workgroup settled on the following ideas for potential inclusion in a youth participation rule:

- *Advisement—group had consensus about some form of advisement, but do not want to add unnecessary paperwork, etc. The group recommends an advisement rule be considered in context of current draft of advisement rule.*
- *Consider including the child/youth participation rule as part of a "general hearings procedures" rule rather than a standalone child/youth participation rule.*
- *The workgroup also considered all ideas set forth in the OCR's memo to the group and made the following decisions:*
    - *Rationale/purpose: It is important to have commentary explaining why YIC is important and resources such as bench cards.*
    - *Inquiry: The rule should prompt court to ask, when children/youth are not present, whether they are noticed and why they are not present. A comment to this rule may state that inquiry may inform a court's decision whether to enter findings as to the reasons for the child/youth's absence and consider taking measures (i.e., scheduling at a non-school time) and/or entering orders (i.e., transportation responsibilities) to support youth attendance. Commentary/rule should not direct the substance of what court may order.*
    - *Scheduling: The group discussed potential commentary regarding scheduling actions court can take to support youth attendance ("whenever possible, the court should consider the child's schedule when setting hearings," time specific hearing, rolling dockets).*
    - *In camera interviews: The workgroup decided to address in-camera interviews as a subsection of this rule and decided to work off the permanency work group's version, amending it significantly.*

Draft Rule for consideration

Child and Youth Attendance and Participation

(a) Right to Attend and Fully Participate. Each child and youth named in the petition shall be a party to the proceedings and have the right to attend and fully and meaningfully participate in all hearings related to the child's or youth's case.

(b) Notice of Hearing. The child's guardian ad litem or counsel for youth shall provide developmentally appropriate notice to the child or youth of all hearings related to the child's or youth's case.

(c) Inquiry. If a child or youth is not in attendance at a hearing, the court shall inquire whether the child or youth wished to attend the hearing, whether the child or youth had the means to attend, and what barriers, if any, prevented the child or youth from attending.

(d) Separate Hearings. The child, parents, guardian, or other custodian may be heard separately when deemed necessary by the court**.** C.R.S. § 19-1-106(5). The court must make an on the record finding of the necessity of the hearing and must make a verbatim record of the separate hearing. The court must make a record available to other parties, upon request.

Comment

[1] Colorado Revised Statute 19-3-502(4.5), amended by H.B. 22-1038, establishes a right for children and youth to attend and fully participate in all hearings related to their case. This statutory right recognizes that every child or youth has a liberty interest in their own health, safety, well-being, and family relationships, that these interests may be directly impacted by dependency and neglect proceedings, and that children and youth deserve to have a voice when important and life-altering decisions are made about their lives. *See* Ch. 92, sec. 1, 2022 Colo. Sess. Laws, 430, 430–31.

[2] National Organizations, such as the American Bar Association, the National Association of Counsel for Children, and the National Council of Juvenile and Family Court Judges, have developed policies, protocols, and resources to support youth participation in court. The American Bar Association's Center on Children and the Law, for example, has developed a series of judicial bench cards to support effective judicial engagement with children, youth, and their caregivers at each developmental stage. See *https://www.ncjfcj.org/wp-content/uploads/2021/03/ABA_Child-Engagement-Benchcards.pdf*. Courts may find additional resources and supports on the Office of the Child's Representative's Youth Webpage Resources for Professionals Section. *See* https://coloradochildrep.org/youth/.

[3] The inquiry required by these rules supports the court in determining whether to take any measures to secure the appearance of a child or youth who wishes to attend. Examples of such measures may include but are not limited to scheduling hearing dates and times when the child is available and/or least likely to disrupt the child's routine, setting specific hearing times to prevent the child from having to wait, making courtrooms and courtroom waiting areas child friendly, entering orders to ensure the child will be transported to and from each hearing by the appropriate responsible persons or parties, and, for closed hearings, entering orders permitting court attendance by persons the child wishes to be present. *See* American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings *Commentary*, C.R.S. § 19-1-106(2). The court's duty to inquire does not supersede or abrogate counsel's duty of confidentiality under Colo. RPC 1.6 or the attorney-client privilege.

(4) Once a court has determined a separate hearing is necessary, due process considerations must inform the procedures the court uses to conduct the hearing. If the court speaks separately with a party, the court has the discretion to determine whether to allow counsel for other parties and guardians ad litem for other children to be present. In considering whether to allow the presence of other attorneys during a separate hearing of a child or youth, the court should consider, in addition to any other relevant factors, the age and maturity of the child, the nature of the information to be obtained from the child, the relationship between the parents, the child's relationship with the parents, any potential harm to the child, and any impact on the court's ability to obtain information from the child. The court should allow other parties to submit questions in advance of the separate hearing, which the court may ask in its discretion.

OPTION 1: Order to Interview or Examine Child; Investigation

(a) The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting a sworn statement to the court.

(b) The sworn statement [must] **or** [should], at a minimum:

(1) provide identifying information about the child;

(2) identify the entity, person or persons responsible for refusing the interview, examination or investigation; and

(3) demonstrate good cause.

(c) If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.

(d) The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

Commented [AU1]: See People v Dyer 2019 COA 161, 457 P.3d 783 and People in Interest of K.K., No 22CA210 (Colo. App. Sept. 29, 2022) (unpublished) for context.

OPTION 2: Order to Interview or Examine Child; Investigation

(a) The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting a sworn statement to the court.

(b) The affidavit [must] **or** [should], at a minimum:

(1) provide identifying information about the child;

(2) identify the entity, person or persons responsible for refusing the interview, examination or investigation; and

(3) explain the circumstances preventing the department from interviewing or examining the child, or conducting the investigation.

(c) If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.

(d) The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

Commented [AU2]: See People v Dyer 2019 COA 161, 457 P.3d 783 and People in Interest of K.K., No 22CA210 (Colo. App. Sept. 29, 2022) (unpublished) for context.

OPTION 1: Order to Interview or Examine Child; Investigation

(a) ~~If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person,~~ T~~t~~he department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by ~~with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation.~~ submitting a ~~an affidavitSuch application must be in the form of an affidavit, sworn to or affirmed to before the judge~~sworn statement to the court.

~~(a)~~**(b)** The ~~affidavit must~~sworn statement [must] **or** [should], at a minimum:

(1) provide identifying information about the child~~Identify~~;

~~(1) explain why the department has determined it is necessary to interview or examine the child, or to conduct the investigation;w, observe, or examine the child or the child's residence or location of the reported abuse;~~

(2) identify the entity, person or persons responsible for refusing the interview, examination or investigation; and

(3) demonstrate good cause.

~~(2) explain the circumstances preventing the department fromwhy the department has been unable to interviewing, observe, or examininge thethe child, or to conducting thea necessary investigation.;~~

~~(3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,~~

~~(4) identify or describe, as nearly as may be, the premises to be observed or examined.~~

(c) If good cause is shown to the court to grant the application, the court must ~~issue an~~ order the responsible person or persons~~granting the application~~ to allow the interview, examination, and investigation. ~~.~~

~~(b)~~**(d)** The order must inform the responsible person or persons~~party or parties~~ that failure to comply with the court's order may result in being held in contempt of court and ~~constitute contempt and~~ committed to jail ~~subject the responsible party or parties to incarceration in the county jail~~ without bond until the responsible person or persons~~party or parties~~ complies~~y~~ with the court's order.

OPTION 2: Order to Interview or Examine Child; Investigation

(a) The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting a sworn statement to the court.

(b) The affidavit [must] **or** [should], at a minimum:

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Commented [AU4R3]: See CRS 19-3-308(2), (3)

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(1) provide identifying information about the child;
(2) identify the entity, person or persons responsible for refusing the interview, examination or investigation; and
(3) explain the circumstances preventing the department from interviewing or examining the child, or conducting the investigation.

(c) If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.

(d) The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

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Memorandum

To: C.R.J.P. Committee
From: Drafting Subcommittee
Re: Order to Interview or Examine Child
Date: 9/22/22; *Updated 1/27/2023 by Subcommittee formed to Redraft the Rule—redlined and clean rule proposals are attached at the end of the memo.*

SUMMARY: The Subcommittee recommends forming a subcommittee to redraft this rule.

EXPLANATION: The Subcommittee recognizes that procedures around securing an order to interview or examine a child would be helpful. However, the draft rule does not precisely track the process laid out in section 19-3-308(3), C.R.S. (2022) (e.g., there's no mention of the proceeding to show cause). The current draft rule also requires an affidavit, which the statute does not. The draft rule also seems to suggest that the interviewer can enter the home to investigate (which the Subcommittee believes would require a search warrant). The Subcommittee generally feels the rule's language authorizing "investigation" may be too broad.

Present *(9/22/2022)* Draft Rule:

Order to Interview or Examine Child

(a) If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person, the department may apply for an order with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation. Such application must be in the form of an affidavit, sworn to or affirmed to before the judge. The affidavit must:
  (1) identify why the department has determined it necessary to interview, observe, or examine the child or the child's residence or location of the reported abuse;
  (2) explain why the department has been unable to interview, observe, or examine the child or to conduct a necessary investigation;
  (3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,
  (4) identify or describe, as nearly as may be, the premises to be observed or examined.

(b) If good cause is shown to the court to grant the application, the court must issue an order granting the application. The order must inform the responsible party or parties that failure to comply with the court's order may constitute contempt and subject the responsible party or parties to incarceration in the county jail until the responsible party or parties comply with the court's order.

Excerpt of section 19-3-308(3):

(3)(a) The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect. The investigation may include a visit to the child's place of residence or place of custody or wherever the child may be located, as indicated by the report. In addition, in connection with any investigation, the alleged perpetrator shall be advised as to the allegation of abuse and neglect and the circumstances surrounding such allegation and shall be afforded an opportunity to respond.

(b) If admission to the child's place of residence cannot be obtained, the juvenile court or the district court with juvenile jurisdiction, upon good cause shown, shall order the responsible person or persons to allow the interview, examination, and investigation. Should the responsible person or persons refuse to allow the interview, examination, and investigation, the juvenile court or the district court with juvenile jurisdiction shall hold an immediate proceeding to show cause why the responsible person or persons shall not be held in contempt of court and committed to jail until such time as the child is produced for the interview, examination, and investigation or until information is produced that establishes that said person or persons cannot aid in providing information about the child. Such person or persons may be held without bond. During the course of any such hearing, the responsible person or persons, or any necessary witness, may be granted use immunity by the district attorney against the use of any statements made during such hearing in a subsequent or pending criminal action.

Order to Interview or Examine Child; Investigation

(a) ~~If there is a report of a child being abused or neglected and if the department is denied the ability to interview, observe, or examine the child or the child's residence or location of the reported abuse by the child's parent, caretaker, or other responsible person,~~ The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by ~~with the juvenile court or district court having jurisdiction for an order that the department be allowed to interview, observe, or examine the child and to conduct any necessary investigation.~~ submitting an affidavit~~Such application must be in the form of an affidavit~~, sworn ~~to~~ or affirmed to before the judge.

~~(a)~~**(b)** The affidavit must, at a minimum:

(1) provide identifying information about the child~~Identify;~~

~~(1)~~**(2)** ~~explain~~ why ~~the department has determined~~ it is necessary to interview or examine the child, or to conduct the investigation;~~w, observe, or examine the child or the child's residence or location of the reported abuse~~;

(3) identify the person or persons responsible for refusing the interview, examination or investigation; and

~~(2)~~ explain the circumstances preventing the department from~~why the department has been unable to~~ interviewing~~, observe,~~ or examining~~e the~~the child, or ~~to~~ conducting the~~a necessary~~ investigation.~~;~~

~~(3) identify the person or persons responsible for not allowing the department to interview, observe, or examine the child or the child's residence or location of the reported abuse; and,~~

(4)

~~(4) identify or describe, as nearly as may be, the premises to be observed or examined.~~

(c) If good cause is shown to the court to grant the application, the court must ~~issue an~~ order the responsible person or persons~~granting the application~~ to allow the interview, examination, and investigation. ~~.~~

~~(b)~~**(d)** The order must inform the responsible person or persons~~party or parties~~ that failure to comply with the court's order may result in being held in contempt of court and ~~constitute contempt and~~ committed to jail ~~subject the responsible party or parties to incarceration in the county jail~~ without bond until the responsible person or persons~~party or parties~~ complies~~y~~ with the court's order.

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Order to Interview or Examine Child; Investigation

(a) The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting an affidavit, sworn or affirmed to before the judge.

(b) The affidavit must, at a minimum:

(1) provide identifying information about the child;

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(3) identify the person or persons responsible for refusing the interview, examination or investigation; and

(4) explain the circumstances preventing the department from interviewing or examining the child, or conducting the investigation.

(c) If good cause is shown to the court to grant the application, the court must order the responsible person or persons to allow the interview, examination, and investigation.

(d) The order must inform the responsible person or persons that failure to comply with the court's order may result in being held in contempt of court and committed to jail without bond until the responsible person or persons complies with the court's order.

wallace, jennifer

From: David Ayraud [redacted]
Sent: Monday, February 6, 2023 10:43 AM
To: wallace, jennifer
Subject: [External] OTI Rule

JJ - I circulated the proposed OTI Rule for County Attorney comment. Below is the proposed rule and the feedback.

Order to Interview or Examine Child; Investigation
(a) The department may apply for an order to interview or examine a child or to conduct an investigation pursuant to § 19-3-308 by submitting an affidavit, sworn or affirmed to before the judge.
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There is a question/concern about (b)(2) - C.R.S. 19-3-308(3)(a) says "The investigation shall include an interview with or observance of the child who is the subject of a report of abuse or neglect." While it is likely a motion for an OTI may include some of this information, it appears the proposed rule is adding requirements for an OTI and could be viewed to conflict with the statute. The statute requires an interview/observation.

(b)(3) and (4) could almost be combined. The assumption is that a specific person may be preventing or refusing, but that is not always the case. As an example, there have been circumstances where it's known that a child is at a DV shelter and after discussing the situation with the DV shelter, they have said they need to stick to their policy of not disclosing if someone is at the shelter, but they agree if there is a court order they will comply. We would want to support DV shelters sticking to their policies and are fine obtaining an order, but this does not specifically fit with how the proposed (b)(3) and (4) are worded - maybe only (4) is needed.

Finally, it is understood why the final provision about advising a party of the possibility of contempt if they violate an OTI may be helpful. There were two questions about this: First, this presumes the only remedy is contempt, when really there is no statute or case law that clarifies this, so there is a bit of concern on the rule possibly "making law". Second, along that same line, it was recommended this be changed to "may" advise. Making a mandatory procedural statement in a rule that does not exist anywhere else does appear to go into the "making law" realm, but also seems to possibly create appeal issues by creating a mandatory procedure. Making the advisement discretionary/encouraged makes the most sense.

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I wasn't sure who else this should go to if it's not to go to the full committee. Thanks.

David

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