

4.2.11 Responsive Pleadings and Motions *(Revised 10/25/16)*

(a) Pleadings; Jurisdictional Matters. No written responsive pleadings are required. 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. Jurisdictional matters of age and residence of the child shall be deemed admitted unless specifically denied by a party in writing or orally on the record prior to the adjudicatory hearing, admission under Rule 4.2.3, or a continued adjudication under Rule 4.2.5.

(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. [Source, CRCP 7(b)].

(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.

(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 [redacted] days after the filing of the motion in which to file a responsive brief, (2) the moving party shall have [redacted] days after the filing of a responsive brief in which to file a reply brief, (3) summary judgment motions are governed by Rule 4.2.12, and (4) a motion to reconsider interlocutory orders of the court shall be filed within [redacted] days from the date of the order. [Source of proposed subsection (e), CRCP 121§ 1-15] *[See alternative version, below.]*

Alternative Draft, Rule 4.2.11(e):

(e) Determination of Motions.

1. Motions and Briefs; When Required; Time for Serving and Filing--Length.

(a) 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. Unless the court orders otherwise, motions and responsive briefs are limited to 15 pages (but not more than 4,000 words), and reply briefs to 10 pages (but not more than 2,500 words), not including the case caption, signature block, certificate of service and attachments. All motions and briefs shall be double-spaced, except for footnotes and quotes.

(b) The responding party shall have days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief.

(c) The moving party shall have days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief.

(d) A motion shall not be included in a response or reply to the original motion.

2. 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.

3. Effect of Failure to File Legal Authority. 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 responsive brief may be considered a confession of the motion.

4. 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. If possible, the court shall determine oral motions at the conclusion of the argument, but may take the motion under advisement or require briefing before ruling. Any motion requiring immediate disposition shall be called to the attention of the courtroom clerk by the party filing such motion.

5. Notification of Ruling; Setting of Argument or Hearing When Ordered. Whenever the court enters an order denying or granting a motion without a hearing, all parties shall be forthwith notified by the court of such order. If the court desires or authorizes oral argument or an evidentiary hearing, all parties shall be so notified by the court. After notification, it shall be the responsibility of the moving party to have the motion set for oral argument or hearing. Unless the court orders otherwise, a notice to set oral argument or hearing shall be filed within 7 days of notification that oral argument or hearing is required or authorized.

6. 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.

8. 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.

9. Unopposed Motions. All unopposed motions shall be so designated in the title of the motion.

10. Proposed Order. Each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied.

11. Motions to Reconsider. Motions to reconsider interlocutory orders of the court, other than those governed by [C.R.C.P. 59](#) or [60](#), are disfavored. A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. A motion to reconsider shall be filed within ___ days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. Good cause for not filing within days from the date of the order includes newly available material evidence and an intervening change in the governing legal standard. The court may deny a motion to reconsider before receiving a responsive brief.

Note: Paragraph (a) includes the language of CRS 19-3-502(4) barring respondents from asserting counterclaims, cross claims, and claims for damages. The alternative version of subparagraph (e) was prepared as a result of discussion during the advisory committee meeting of 5/6/16. The alternative version of (e) incorporates much of the language contained in CRCP 121, § 1-15, with minor editing. For the sake of brevity, the subcommittee prefers the first version of paragraph (e).

Rule 4.2.13 Summary Judgment *(revised 10/25/16)*

(a) For Petitioner. After commencement of the action the petitioner or a guardian ad litem may move with or without supporting affidavits for adjudication by summary judgment in the petitioner's favor upon all or any part of the petition. Any other party may support or oppose a motion for summary judgment brought under this paragraph (a) by filing a responsive brief in accordance with this rule.

(b) For Respondent. A respondent or a guardian ad litem may move with or without supporting affidavits for a summary judgment in the respondent's favor as to all or any part of the petition. Any other party may support or oppose a motion for summary judgment brought under this paragraph (b) by filing a responsive brief in accordance with this rule.

(c) Motion and Proceedings Thereon. Unless otherwise ordered by the court, a motion for summary judgment shall be filed no later than 28 days (4 weeks) prior to trial; a responding party shall have 14 days (2 weeks) after service of the motion in which to file a responsive brief; and a moving party shall have 7 days (1 week) after service of a response in which to file a reply brief. Any motion, response, or reply involving a contested issue of law shall 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 be rendered forthwith if the petition, admissions on file, and the affidavits, if any, show that 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.

(d) 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 if practicable ascertain what material facts exist without substantial controversy and what material facts are actually in good faith controverted. It shall 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 be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall 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 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 be entered.

(f) 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.

(g) 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.

(h) 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.

Notes: This draft was prepared in response to comments made during the advisory committee meeting of 5/6/16. It incorporates language utilized in CRCP 56 and CRCP 121, with some editing. It also expressly allows a guardian ad litem to initiate a motion for summary judgment. This proposed rule does not apply to summary judgment in proceedings to terminate parental rights. The subcommittee is mindful of the fact that both counsel and judicial officers may find it difficult to comply the presumptive briefing schedule set forth in paragraph (c). On the other hand, a truncated briefing schedule seems necessary because of the deadlines imposed by the Children's Code (especially those applicable to EPP cases). Paragraph (c) allows judicial officers discretion to modify the briefing schedule.

Rule 4.2.14 Time; Continuances *(revised 10/12/16)*

- (a) Computation.** (1) 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 not be included. Thereafter, every day shall be counted, including holidays, Saturdays or Sundays. The last day of the period so computed shall 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 fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor 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 a substantial right of a party would be affected.
- (d) Continuances.** Stipulations for continuance shall not be effective unless and until approved by the court. A court shall 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 set forth specific reasons necessitating the delay or continuance and shall 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,]

Notes: This proposed rule is based on CRCP 6. This draft does not incorporate the “manifest injustice” standard contained in CJD 96-08. CRCP 6 does not mention reduction of time. This

draft has been modified to expressly authorize a court to enlarge or reduce any prescribed period of time.